

## 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

### FINDING AND ORDER

Entered in the Journal on December 12, 2018

#### I. SUMMARY

{¶ 1} The Commission adopts proposed amendments to the alternative rate plan and exemption rules in Ohio Adm.Code Chapter 4901:1-19.

#### II. DISCUSSION

##### A. *Procedural Background*

{¶ 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of their rules every five years to determine whether those rules should be continued without change, be amended, or be rescinded.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 alternative rate plan and exemption rules applicable to natural gas companies in the state of Ohio.

{¶ 3} R.C. 106.03(A) requires that the Commission 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- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;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} In addition, on January 10, 2011, the governor of the state of Ohio issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the promulgation of rules and the review of existing rules. Among other things, the Commission must review its rules to determine the impact that a rule has on small businesses; attempt to balance the critical objectives of regulation and the cost of compliance by the regulated parties; and amend or rescind rules that are unnecessary, ineffective, contradictory, redundant, inefficient, or needlessly burdensome, or that have had negative, unintended consequences, or unnecessarily impede business growth.

{¶ 5} Additionally, in accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the

agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. The Commission is also required, pursuant to R.C. 121.82, to provide the Common Sense Initiative office the draft rules and the BIA.

{¶ 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 various interested stakeholders attended the workshop. Several natural gas companies jointly submitted written proposed rule revisions, with two representatives providing comments on the joint proposal.

{¶ 7} Staff evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-19 and considered the proposed revisions provided at the workshop. As a result of its review, Staff proposed some minor, non-substantive changes throughout the chapter that were intended to improve clarity, better align language with that used in the related statutory provisions, or correct typographical errors. Several of the recommendations provided at the workshop, including proposed revisions regarding the submission of applications filed in accordance with Ohio Adm.Code Chapter 4901:1-19, were also reflected in the proposed rules. 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, were proposed in Ohio Adm.Code 4901:1-19-07 and 4901:1-19-08.

{¶ 8} On June 13, 2018, the Commission issued an Entry seeking comments on the proposed amendments to Ohio Adm.Code Chapter 4901:1-19 and the BIA. Initial and reply comments were due on July 13, 2018, and July 27, 2018, respectively.

{¶ 9} Consistent with the June 13, 2018 Entry, written comments were filed in this proceeding on July 13, 2018, by Ohio Partners for Affordable Energy (OPAE), The East

Ohio Gas Company d/b/a/ Dominion Energy Ohio (Dominion), Retail Energy Supply Association (RESA), and Ohio Consumers' Counsel (OCC). Reply comments were filed on July 27, 2018, by Ohio Gas Company (Ohio Gas), Dominion, OPAE, RESA, OCC, and jointly by Columbia Gas of Ohio, Inc., Duke Energy Ohio, Inc., and Dominion (collectively, Gas Companies).

***B. Consideration of the Comments***

**1. GENERAL COMMENTS**

{¶ 10} In its comments, OPAE recommends the elimination of all provisions in Ohio Adm.Code Chapter 4901:1-19 that provide for exit-the-merchant-function plans, which, as defined by Ohio Adm.Code 4901:1-19-01(K),<sup>1</sup> entail a complete transfer of the obligation to support 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. In support of its position, OPAE contends that exit-the-merchant-function provisions are incompatible with R.C. Chapter 4929, which, according to OPAE, does not mention exit-the-merchant-function plans or default commodity sales service that does not involve a competitive retail auction. OPAE adds that an auction-based default commodity service is consistent with the state policy set forth in R.C. 4929.02. OPAE also asserts that the promotion of effective competition requires an auction-based default service option that provides all consumers a price for natural gas that is set by the competitive market.

{¶ 11} OCC argues that residential customers should have the protection of the natural gas company's standard offer as an option of last resort under all circumstances. OCC, therefore, recommends that the rules throughout Ohio Adm.Code Chapter 4901:1-19 be revised such that natural gas companies are not permitted to exit the merchant

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<sup>1</sup> Rule references in this Finding and Order follow the lettering and numbering of the proposed rules as issued for comment on June 13, 2018.

function with respect to residential customers. Additionally, OCC recommends that the Commission adopt a rule that prohibits the assignment of residential customers to a supplier under a monthly variable rate (MVR) program as a default service. OCC asserts that the natural gas company's standard offer should be the only default service. OCC adds that, if the Commission nevertheless permits a default service other than the natural gas company's standard offer, Ohio Adm.Code 4901:1-19-10(A) should be amended to prohibit suppliers from charging customers more than the competitive standard choice offer rate.

{¶ 12} RESA replies that OPAE's and OCC's recommendations are contrary to the provisions of R.C. 4929.04, which permit exit-the-merchant-function plans, and the state policy in R.C. 4929.02(A)(6) to recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment. RESA asserts that OPAE's and OCC's attempts to disallow the exit the merchant function in this rulemaking proceeding should be rejected, as OPAE and OCC will have an opportunity to present their arguments in response to any exit-the-merchant-function proposal that is filed with the Commission. With respect to OCC's attempt to either eliminate or modify the MVR, RESA responds that the MVR is not intended to serve as a default option but is a way to induce a small group of prior shopping customers to continue to shop for natural gas. RESA notes that Ohio Adm.Code 4901:1-19-10, in its current form, provides protections for choice-eligible customers that have been assigned to a supplier. RESA contends that OCC's position is also contrary to state policy in favor of retail natural gas competition. RESA concludes that OCC should address its concerns through discussions with the stakeholders in Dominion's exemption case, Case No. 12-1842-GA-EXM, before unilaterally seeking a modification of the MVR.

{¶ 13} In response to OCC's position that an exit-the-merchant-function plan should be prohibited for residential customers, Dominion argues that OCC disregards

R.C. 4929.04, which neither prohibits an exit-the-merchant-function plan as to residential customers nor permits the Commission to impose such a prohibition. Acknowledging that the Commission has the authority to review and take appropriate action on an individual exit-the-merchant-function plan application, Dominion contends that the Commission does not have the broad authority to adopt a blanket prohibition against any application that involves residential customers. In response to OCC's alternative proposal to cap the MVR, Dominion states that OCC's concerns should be addressed through a collaborative approach among the stakeholders in Dominion's exemption proceeding, given that the pricing issues involved are highly complex and should be resolved on a case-by-case basis rather than through generally applicable rules.

{¶ 14} In response to OPAE's request for the elimination of all provisions related to an exit-the-merchant-function plan, Dominion notes that 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 R.C. 4905.22 to provide the commodity sales service. According to Dominion, the statute clearly expresses the legislative authorization for a complete transfer of the commodity-sales function. Dominion asserts that, in the absence of statutory limits, the Commission has discretion to determine the type of commodity-sales program to adopt as a replacement. Dominion adds that OPAE's other arguments regarding state policy violations and unjust pricing should be raised and considered in individual exemption cases and not by rule.

{¶ 15} Initially, the Commission declines to adopt OPAE's and OCC's recommendations seeking to eliminate all exit-the-merchant-function plan provisions from Ohio Adm.Code Chapter 4901:1-19. Although OPAE asserts that exit-the-merchant-function plans are not consistent with Ohio law, R.C. 4929.04 clearly authorizes the Commission, upon the application of a natural gas company, to exempt any commodity sales service or ancillary service from all provisions of R.C. Chapters 4905, 4909, and 4935, with certain exceptions; from specified sections of R.C. Chapter 4933; and from any rule

or order issued under those chapters or sections, including the obligation under R.C. 4905.22 to provide the commodity sales service or ancillary service, and subject to certain requirements. Additionally, the Commission has previously considered and rejected similar recommendations from OPAE for being contrary to R.C. 4929.04. *In re Commission's Review of the Alternative Rate Plan and Exemption Rules Contained in Chapter 4901:1-19 of the Ohio Administrative Code*, Case No. 11-5590-GA-ORD (*Prior Rulemaking Case*), Finding and Order (Dec. 12, 2012) at 9-10, 11-12, 26-27, 36.

{¶ 16} Regarding OCC's and OPAE's position that the natural gas company's standard offer should be the sole default service available to customers, the Commission notes, again, that exit-the-merchant-function plans may be authorized under R.C. 4929.04. Further, OCC has previously recommended that the defined term "default commodity sales service" be limited to service provided by the natural gas company and the Commission declined to adopt the recommendation. *Prior Rulemaking Case* at 8-9. OCC's and OPAE's attempt to limit the scope of the rules in Ohio Adm.Code Chapter 4901:1-19 is not consistent with the statutory scheme set forth in R.C. Chapter 4929. We note, however, that any specific concerns that OCC and OPAE have with respect to Dominion's MVR or any other default service option, including the pricing of such service, should be resolved through a case-by-case determination rather than through our review of the general rules that govern the filing and consideration of applications submitted by a natural gas company under R.C. 4929.04. Any such application will be thoroughly evaluated by the Commission to ensure that it fully complies with the requirements of R.C. 4929.04 and Ohio Adm.Code Chapter 4901:1-19. For these reasons, OPAE's and OCC's proposed modifications should not be adopted.

## 2. OHIO ADM.CODE 4901:1-19-01

{¶ 17} RESA notes that the term "competitive retail auction" is defined in Ohio Adm.Code 4901:1-19-01(G) and is used in only two places throughout the chapter - Ohio Adm.Code 4901:1-19-01(K) and Ohio Adm.Code 4901:1-19-05(D)(1). RESA recommends

that the definition of “competitive retail auction” be deleted by replacing the phrase in those two other rules with the phrase “competitive bidding process.” RESA asserts that this modification would simplify the rules and account for the fact that competitive retail auctions are not the only available competitive bidding process, as requests for proposals (RFP) are another means of securing supply. RESA adds that, if the Commission agrees with the proposal, the same modification should be made with respect to Ohio Adm.Code 4901:1-19-09(A).

{¶ 18} OCC replies that RESA failed to explain how its proposed changes would simplify the rules or why it is necessary or beneficial to broaden the scope of competitive procurement options beyond the current practice of competitive retail auctions. OCC asserts that competitive retail auctions, as the only gas commodity procurement option, have served choice-eligible customers well as a low-priced means of obtaining default service. OCC adds that there is no reason to believe that other procurement options, such as an RFP process, would yield lower prices or improve the gas commodity procurement process. OCC concludes that the proposed changes are unnecessary and should be rejected.

{¶ 19} In response to RESA’s comments, OPAE notes that an auction for default commodity service is the long-established and sole method used by the Commission for natural gas companies that have been granted an exemption under Ohio Adm.Code Chapter 4901:1-19. Noting that a competitive auction is both consistent with the state policy in R.C. 4929.02 and recognized as an industry best practice, OPAE adds that RESA points to no requests for a bid process for natural gas commodity default service in Ohio or any other state.

{¶ 20} The Commission finds that RESA’s proposal is reasonable and should be adopted. We recognize that, to date, auctions to procure default supply have been used by the large natural gas companies granted a statutory exemption from the obligation to provide the commodity sales service. However, nothing in R.C. 4929.04 precludes a



natural gas company from proposing another method of procurement, and any such proposals will be considered by the Commission pursuant to the statute. Accordingly, we find that the definition of “competitive retail auction” in Ohio Adm.Code 4901:1-19-01(G) should be deleted. Further, the reference to “competitive retail auction” in Ohio Adm.Code 4901:1-19-01(K) and Ohio Adm.Code 4901:1-19-05(D)(1) should be changed to “competitive procurement process.” Finally, in Ohio Adm.Code 4901:1-19-09(A), the reference to “an auction or a public request for proposal” should also be changed to “a competitive procurement process.”

{¶ 21} OCC recommends several modifications to the definition of “alternative rate plan” in Ohio Adm.Code 4901:1-19-01(A). First, OCC asserts that it should be clear that all of the rates and charges under an alternative rate plan must be just and reasonable, consistent with state policy. Accordingly, OCC recommends that the phrase “just and reasonable” be inserted in the first sentence of the definition. OCC further recommends that the definition should make clear that the rates and charges under an alternative rate plan are for natural gas service. Finally, with respect to Staff’s proposal to note in the definition that alternative rate plans may include revenue decoupling mechanisms, OCC contends that the reference to revenue decoupling mechanisms should be inserted in the third sentence of the definition rather than at the end of the second sentence.

{¶ 22} RESA responds that OCC’s proposed changes to the definition of “alternative rate plan” are not consistent with the statutory definition. RESA requests that the Commission reject OCC’s attempt to insert a standard that is not found in the governing statute and, instead, adopt Staff’s proposed modification.

{¶ 23} Like RESA, Dominion argues that the current definition follows the statutory definition, which does not include either of the phrases proposed by OCC. Dominion adds that OCC’s proposed modifications are unnecessary and would likely raise questions about the meaning of the rules rather than resolve them.

{¶ 24} The Commission finds that the current definition of “alternative rate plan,” with the addition of Staff’s recommended language providing that such plans may include revenue decoupling mechanisms, is fully consistent with the statutory definition in R.C. 4929.01(A). With respect to OCC’s recommended modifications to clarify in the definition that alternative rate plans must relate to natural gas service and be just and reasonable, we find that the proposed modifications are unnecessary and should not be adopted.

### 3. OHIO ADM.CODE 4901:1-19-03

{¶ 25} RESA notes that Ohio Adm.Code 4901:1-19-03(C)(2) requires an applicant that seeks to implement an auction for default commodity sales service to describe how the auction may or may not be consistent with previous Commission orders and best industry practices. Given that auctions are not the only competitive bidding process used by utilities, RESA recommends that “auction” be replaced with “process,” or, at a minimum, “competitive bidding process.”

{¶ 26} For the reasons discussed above with respect to the definition of “competitive retail auction,” the Commission finds that RESA’s proposal is reasonable and should be adopted. We, therefore, find that Ohio Adm.Code 4901:1-19-03(C)(2) should be modified to reference “an auction or other competitive procurement process.”

{¶ 27} OCC offers two recommendations to clarify Ohio Adm.Code 4901:1-19-03(B)(2). First, OCC notes that Staff proposes to use the word “they” in reference to the direct testimony and exhibits required to be filed with an exemption application. OCC proposes to use “the direct testimony and exhibits” in place of the word “they,” in order to avoid misinterpretation. Second, OCC notes that the rule provides for a 14-day period for the filing of the direct testimony and exhibits, which is consistent with the standard filing requirements in Ohio Adm.Code 4901-7-01. OCC, therefore, requests that the rule be modified to reference explicitly the standard filing requirements. Additionally, OCC

notes that its proposed modifications to Ohio Adm.Code 4901:1-19-03(B)(2) should also be implemented with respect to Ohio Adm.Code 4901:1-19-05(C)(2), which governs exit-the-merchant-function applications, and Ohio Adm.Code 4901:1-19-06(B)(2), pertaining to alternative rate plan applications.

{¶ 28} The Commission finds that it is unnecessary to include a reference to the standard filing requirements, as recommended by OCC. We agree with OCC that the word “they” should be replaced by the full phrase “the direct testimony and exhibits,” in order to provide clarity. The Commission has, therefore, modified Ohio Adm.Code 4901:1-19-03(B)(2), Ohio Adm.Code 4901:1-19-05(C)(2), and Ohio Adm.Code 4901:1-19-06(B)(2), consistent with OCC’s recommendation.

{¶ 29} OCC notes that Ohio Adm.Code 4901:1-19-03(C)(4) provides that an exemption application must include the name of a contact person to work with Staff in addressing customer complaints. Noting that R.C. 4911.021 permits OCC to assist consumers with complaints, OCC recommends that the rule be amended to provide that the listed contact person is also required to work with OCC regarding residential consumer complaints.

{¶ 30} According to RESA, R.C. 4911.021 does not mandate or imply that OCC must be involved to resolve a consumer complaint. RESA notes that the statute only gives OCC the authority to assist consumers that call OCC’s office or to forward the complaint to the Commission’s call center. RESA asserts that OCC’s recommendation far exceeds its authority under R.C. 4911.021.

{¶ 31} In its current form, Ohio Adm.Code 4901:1-19-03(C)(4) requires an exemption application to include the name of a contact person to work with Staff in resolving customer complaints and inquiries. Nothing in the rule precludes OCC from communicating with the listed contact person in response to customer calls received by

OCC. We find that it is unnecessary to modify the rule and, accordingly, decline to adopt OCC's recommendation.

#### 4. OHIO ADM.CODE 4901:1-19-05

{¶ 32} RESA notes that, although Ohio Adm.Code 4901:1-19-05(E) permits an applicant to request recovery of costs associated with exiting the merchant function, the rule does not specify which entity will be responsible for the costs. RESA, therefore, proposes that the rule be revised to clarify that choice-eligible default customers are responsible for such costs, rather than shopping customers or suppliers. RESA asserts that, based on cost-causation principles, non-shopping customers should bear the costs, as they determine the level of customer education and other costs for the exemption process.

{¶ 33} The Gas Companies respond that it would be premature, as part of this rulemaking proceeding, for the Commission to determine cost recovery responsibility for exit-the-merchant-function plans. According to the Gas Companies, it is only after an exit-the-merchant-function proposal is filed with the Commission in an individual exemption proceeding that the parties can investigate the costs associated with the proposal and debate the cost recovery alternatives. The Gas Companies conclude that the Commission should reject RESA's request for a predetermination of the issue solely in favor of competitive suppliers.

{¶ 34} In response to RESA, OCC reiterates its position that, at least with respect to residential customers, natural gas companies should not be permitted under the rules to exit the merchant function. Alternatively, OCC argues that the reasonable costs of an exit from the merchant function should be charged to suppliers based on their relative market share. Noting that suppliers would be the primary beneficiary of an exit-the-merchant-function plan, OCC also reasons that, in the event of an exit, there would likely

be an insufficient number of choice-eligible customers remaining on default service to pay the costs.

{¶ 35} OPAE asserts that, because all customers directly benefit from the auction-based standard offer, there is no basis to charge only non-shopping customers for the exit-the-merchant-function process. Like OCC, OPAE argues that suppliers are the only entities that benefit from an exit-the-merchant-function plan and, therefore, suppliers should pay any costs associated with the process.

{¶ 36} Consistent with our determination in the prior review of Ohio Adm.Code Chapter 4901:1-19, we find that it would be premature to determine cost recovery responsibility for exit-the-merchant-function plans as part of this rulemaking proceeding. *Prior Rulemaking Case*, Finding and Order (Dec. 12, 2012) at 28. Cost recovery is an issue that is better addressed on a case-by-case basis rather than as a general matter. Accordingly, we decline to adopt RESA's recommendation.

{¶ 37} RESA also contends that Ohio Adm.Code 4901:1-19-05(D)(5), (F), and (G)(1) exceed the Commission's authority under R.C. 4929.04. With respect to Ohio Adm.Code 4901:1-19-05(F), RESA recommends that the rule be revised to provide that "[t]he commission shall order such procedures as it deems necessary, consistent with *section 4929.04 of the Revised Code and these rules*, in its consideration of an application to exit the merchant function." Regarding Ohio Adm.Code 4901:1-19-05(D)(5) and (G)(1), RESA notes that the rules require that an exit-the-merchant-function application be just and reasonable, which, according to RESA, is a requirement that is not found in R.C. 4929.04. RESA, therefore, recommends that the requirement be removed from the rule.

{¶ 38} Contrary to RESA's position, OPAE contends that exit-the-merchant-function plans are not authorized by Ohio law or Ohio Supreme Court precedent. Noting that exit-the-merchant-function plans are not mentioned in R.C. 4929.04 or elsewhere in R.C. Chapter 4929, OPAE again asserts that such plans should be entirely eliminated from

Ohio Adm.Code Chapter 4901:1-19, in order to ensure that the benefits of market-based pricing are retained through an auction-based standard offer that functions as the default service for all customers.

{¶ 39} With respect to Ohio Adm.Code 4901:1-19-05(F), OCC responds that RESA failed to identify any language in the rule that is not included in R.C. 4929.04 or to show that the rule is inconsistent with the statute. OCC adds that RESA's proposal to reference R.C. 4929.04 in the rule would not resolve RESA's concern that the rule exceeds the scope of the Commission's authority under the statute. Further, OCC asserts that the "just and reasonable" requirement in Ohio Adm.Code 4901:1-19-05(D)(5) and (G)(1) is consistent with the state policy in R.C. 4929.02(A)(1). OCC adds that, without the standard of review set forth in the rule, the Commission would have no basis for deciding an exemption case.

{¶ 40} The Commission finds that RESA's recommendations should not be adopted, as nothing in Ohio Adm.Code 4901:1-19-05(D)(5), (F), or (G)(1) is inconsistent with the Commission's authority under R.C. 4929.04. Specifically, regarding RESA's recommendation to remove the just and reasonable requirement from Ohio Adm.Code 4901:1-19-05(D)(5) and (G)(1), we note that R.C. 4929.04 does not limit the factors that the Commission may consider in reviewing an application filed under the statute. With respect to RESA's proposal to add an explicit reference to R.C. 4929.04 in Ohio Adm.Code 4901:1-19-05(F), the Commission finds that the statutory reference is unnecessary, given that it is already clear that Ohio Adm.Code 4901:1-19-05 amplifies R.C. 4929.04.

## **5. OHIO ADM.CODE 4901:1-19-06**

{¶ 41} Dominion notes that Staff proposes to modify Ohio Adm.Code 4901:1-19-06(C)(1) to provide that any alternative rate plan application that does not use the billing determinants and revenue requirement from the natural gas company's last rate case will be considered to be for an increase in rates. Dominion asserts that the proposed rule revision is not entirely consistent with R.C. 4929.051. Dominion states that, whereas the

statute defines two ways in which an alternative rate plan may not be for an increase in rates, the proposed rule would establish a standard under which an alternative rate plan would always be considered for an increase in rates – if the billing determinants and revenue requirement change. Dominion points out that an alternative rate plan could use different billing determinants and a different revenue requirement for the purpose of lowering rates. Dominion, therefore, recommends that the proposed rule be modified to recognize the Commission's discretion to determine on a case-by-case basis whether a given application is for an increase in rates. Specifically, Dominion proposes that Ohio Adm.Code 4901:1-19-06(C)(1) provide as follows: "Except as otherwise provided in rule 4901:1-19-13 of the Administrative Code *or as otherwise determined by the commission*, 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."

{¶ 42} In its comments, OCC asserts that Staff's proposed revisions to Ohio Adm.Code 4901:1-19-06(C)(1) would require that both the Commission-authorized billing determinants and the revenue requirement be different for an application to be considered as an application for an increase in rates, which would deprive consumers of a more thorough review of the application. OCC proposes that the language in the rule be clarified as follows: "Except as otherwise provided in rule 4901:1-19-13 of the Administrative Code, an alternative rate plan application that *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." OCC also recommends that the Commission move this language from Ohio Adm.Code 4901:1-19-06 to Ohio Adm.Code 4901:1-19-13, where a similar provision can already be found in paragraph (B). According to OCC, Ohio Adm.Code 4901:1-19-06(C)(1) addresses the narrow subject of the required exhibits for an alternative rate plan application, whereas Ohio Adm.Code 4901:1-19-13 focuses on the broader topic of the

initiation or continuation of such plans. OCC concludes that a provision addressing whether an application is for an increase in rates is more appropriate in the broader rule.

{¶ 43} In response, Dominion states that it continues to support its prior recommendation, which would recognize the Commission's discretion to determine whether an application is for an increase in rates. Dominion notes, however, that it does not oppose OCC's proposed revision.

{¶ 44} We find that Dominion's modification to proposed Ohio Adm.Code 4901:1-19-06(C)(1), which would explicitly acknowledge the Commission's discretion to determine whether an alternative rate plan application is for an increase in rates, is reasonable and should be adopted. With respect to OCC's proposed changes, the Commission does not agree with OCC's interpretation of Staff's proposed rule or find it necessary to move the language to another rule. Accordingly, we decline to adopt OCC's recommendations.

{¶ 45} OCC asserts that, in order to protect consumers from paying potential cross-subsidies, Ohio Adm.Code 4901:1-19-06(C)(2)(c) should require an alternative rate plan application to include specific details concerning potential subsidies and how they will be avoided. In addition to the rule's current requirement that the applicant must address issues concerning cross-subsidization of services, OCC recommends that the following sentence be added to the rule: "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."

{¶ 46} The Gas Companies respond that there is no need for the rules to require additional detail about cross-subsidization issues in alternative rate plan cases. According to the Gas Companies, OCC has not identified any problem with the current



rule and, in any event, Staff can request additional information if it finds that the applicant's discussion of cross-subsidization issues is insufficient.

{¶ 47} The Commission notes that Ohio Adm.Code 4901:1-19-06(C)(2)(c) already requires an alternative rate plan application to provide a detailed discussion of how potential issues concerning cross-subsidization of services have been addressed in the plan. Although OCC claims that the rule does not adequately protect consumers, OCC has not offered any support for its position. We find that OCC's proposed language is unnecessary and should not be adopted.

#### 6. OHIO ADM.CODE 4901:1-19-08

{¶ 48} Ohio Adm.Code 4901:1-19-08 governs the process for the withdrawal of an exemption, exit-the-merchant-function plan, or alternative rate plan by a natural gas company. Noting that even the slightest modification of a plan by the Commission could result in a withdrawal under the current rule, RESA proposes that the rule be modified to provide for withdrawal only if the Commission substantially modifies the application. RESA asserts that its proposed clarification will avoid the result of a withdrawal occurring when a non-substantive modification of an application is made by the Commission.

{¶ 49} The Gas Companies and OCC respond that RESA's proposed modification of the rule is counter to R.C. 4929.07(A)(2), as the statute permits the withdrawal of an exemption or alternative rate plan if the Commission makes any modification to the plan. Additionally, the Gas Companies and OCC assert that RESA's proposal would result in unnecessary ambiguity by adding a subjective element to the rule that is likely to be a matter of dispute in any case. The Gas Companies also note that RESA has identified no problem with the current rule. The Gas Companies add that the rule, in its current form, is reasonable, as the natural gas company should have the right to withdraw the

application, if it is modified by the Commission, and instead rely upon more traditional regulatory processes.

{¶ 50} The Commission has previously rejected a recommendation that withdrawal should only be permitted if the application has been rejected or significantly modified by the Commission. *Prior Rulemaking Case*, Finding and Order (Dec. 12, 2012) at 36-37. We agree with OCC and the Gas Companies that RESA's recommendation is not consistent with R.C. 4929.07(A)(2), which expressly permits a natural gas company to withdraw its application if it is modified by the Commission. Accordingly, we decline to adopt RESA's proposed change to Ohio Adm.Code 4901:1-19-08(A)(2).

#### 7. OHIO ADM.CODE 4901:1-19-09

{¶ 51} Ohio Adm.Code 4901:1-19-09 requires a natural gas company with an approved exit-the-merchant-function plan to continue to supply default commodity sales service for choice-ineligible customers and customers enrolled in the percentage of income payment plan (PIPP). Addressing OPAE's comments and Staff's proposed changes to the rule, Ohio Gas notes that, despite the fact that OPAE focuses on the results of Dominion's exit-the-merchant-function plan and the MVR, OPAE nevertheless seeks a remedy that would apply to all natural gas companies. According to Ohio Gas, OPAE advocates that all natural gas companies should be required to implement an auction to serve default customers, including PIPP customers. Ohio Gas argues that it should not be required to implement an auction or request for proposal process to serve its small number of PIPP customers. In support of its position, Ohio Gas argues that the possibility that there would be a population of PIPP customers significant enough to permit Ohio Gas to implement an auction in a cost-effective manner is remote at best. Ohio Gas, therefore, requests that the Commission either reject the PIPP auction requirement, as proposed by OPAE and in the draft proposed changes to Ohio Adm.Code 4901:1-19-09, or exempt smaller natural gas companies with less than 100,000 customers from any requirement to secure natural gas commodity service for PIPP customers.

{¶ 52} For the reasons discussed above, the Commission declines to adopt OP&E's proposal. With respect to Staff's proposed changes to Ohio Adm.Code 4901:1-19-09, we note that the proposed changes must be read in the context of the entire paragraph. In its entirety, Ohio Adm.Code 4901:1-19-09(A), as amended, would require a natural gas company that has an approved exit-the-merchant-function plan to continue to supply default commodity sales service for choice-ineligible customers and PIPP-enrolled customers through a competitive procurement process. With that clarification, the Commission finds it unnecessary to exempt smaller natural gas companies from the rule, as Ohio Gas requests.

#### 8. OHIO ADM.CODE 4901:1-19-10

{¶ 53} RESA notes that Ohio Adm.Code 4901:1-19-10 imposes restrictions on retail natural gas suppliers that have been assigned a choice-eligible customer. Through modifications to the introductory sentence, RESA proposes that the rule be clarified to provide that it only applies during a period in which a supplier is assigned a choice-eligible customer and not during a period in which the customer may be voluntarily contracting with the supplier. RESA contends that the clarification is necessary for its members.

{¶ 54} OCC replies that RESA's proposed change to Ohio Adm.Code 4901:1-19-10 would make the rule vague, as it is not clear what RESA means by "during the period a retail natural gas supplier is assigned a choice-eligible customer." OCC also argues that the change could put a customer's personal information at risk, because a supplier's obligation to protect the information would appear to end when the customer is no longer assigned to the supplier.

{¶ 55} The consumer protection requirements set forth in Ohio Adm.Code 4901:1-19-10 clearly apply only where a retail natural gas supplier has been assigned a choice-eligible customer pursuant to an exemption or exit-the-merchant-function plan.

Accordingly, the Commission declines to adopt RESA's proposed changes as unnecessary.

**C. Conclusion**

{¶ 56} The Commission has considered the matters set forth in Executive Order 2011-01K and R.C. 121.82. With these factors in mind, and upon consideration of Staff's recommendations and the written comments, the Commission finds that Ohio Adm.Code 4901:1-19-01, -02, -03, -05, -06, -07, -08, -09, -10, -11, -12, -13, -14, and -15 should be amended, as set forth in Attachment A. The Commission also finds that no change should be made to Ohio Adm.Code 4901:1-19-04.

{¶ 57} The rules are 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 Finding and Order only. All interested persons are directed to input case number 17-1945 into the Case Lookup box to view this Finding and Order, as well as the rules, or to contact the Commission's Docketing Division to request a paper copy.

**III. ORDER**

{¶ 58} It is, therefore,

{¶ 59} ORDERED, That amended Ohio Adm.Code 4901:1-19-01, -02, -03, -05, -06, -07, -08, -09, -10, -11, -12, -13, -14, and -15 be adopted. It is, further,

{¶ 60} ORDERED, That Ohio Adm.Code 4901:1-19-04 be adopted with no changes. It is, further,

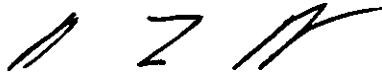
{¶ 61} ORDERED, That the adopted rules be filed with the Joint Committee on Agency Rule Review, the Secretary of State, and the Legislative Service Commission, in accordance with divisions (D) and (E) of R.C. 111.15. It is, further,

{¶ 62} ORDERED, That the final rules be effective on the earliest date permitted by law. Unless otherwise ordered by the Commission, the five-year review date for Ohio Adm.Code Chapter 4901:1-19 shall be in compliance with R.C. 106.03. It is, further,

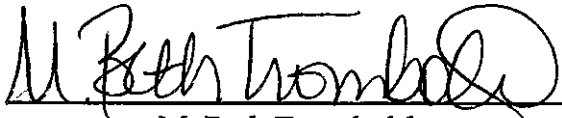
{¶ 63} ORDERED, That a copy of this Finding and Order be sent to the gas-pipeline industry service list. It is, further,

{¶ 64} ORDERED, That a copy of this Finding and Order 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, Ohio Consumers' Counsel, and all other interested persons of record in this case.

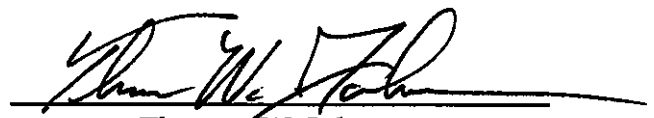
THE PUBLIC UTILITIES COMMISSION OF OHIO



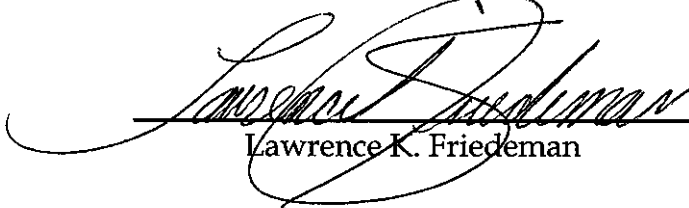
Asim Z. Haque, Chairman



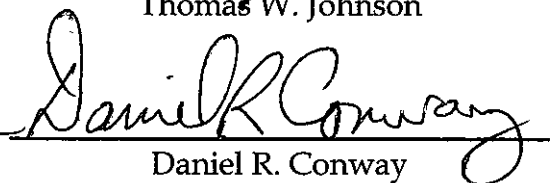
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman

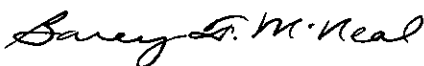


Daniel R. Conway

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Entered in the Journal

DEC 12 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) "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)(G) "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)(H) "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)(I) "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.~~
- (O)(J) "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

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to retail natural gas suppliers without the occurrence of a competitive ~~retail auction~~procurement process.

~~(P)~~(K) "Market" means the set of all actual and potential buyers and sellers of a particular product.

~~(Q)~~(L) "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)~~(M) "Product" means commodity sales and/or ancillary goods or services.

~~(S)~~(N) "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)~~(O) "Relevant market" means the market for the product that is the subject of ~~the an~~application for exemption or alternative rate making.

~~(U)~~(P) "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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**AMENDED**

**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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## **AMENDED**

### **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 the direct testimony and exhibits 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 or other competitive procurement process for provision of default commodity sales service, the applicant shall provide a detailed description of how the proposed auction or competitive procurement process 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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**AMENDED**

**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 the direct testimony and exhibits 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 procurement 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. ~~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 no exit from the merchant function shall be granted.~~
- (3) 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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## **AMENDED**

### **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 the direct testimony and exhibits 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 or as otherwise determined by the commission, 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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**AMENDED**

**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 fourteen~~fourteen~~fifteen 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 utility applicant in determining the completeness of the filing.
  - (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.

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- (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) Intervenor 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
  - (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.

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

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

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

## **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~~ a competitive procurement process.
- (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.