BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code.	))))	Case No. 19-1429-GA-ORD

MEMORANDUM CONTRA APPLICATION FOR REHEARING OF THE EAST OHIO GAS COMPANY D/B/A DOMINION ENERGY OHIO AND VECTREN ENERGY DELIVERY OF OHIO, INC.

In accordance with Ohio Adm.Code 4901-1-35, The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO) and Vectren Energy Delivery of Ohio, Inc. (VEDO), a CenterPoint Energy Company (collectively, the Companies) hereby file their memorandum contra to the Office of the Ohio Consumers' Counsel's (OCC) application for rehearing of the Commission's February 24, 2021 Order (the Order) regarding the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Administrative Code (MGSS Rules). The OCC assignments of error fail to demonstrate that the Commission's Order is unreasonable or unlawful. For the reasons identified herein, the OCC application for rehearing should be denied in its entirety.

I. DISCUSSION

OCC's application alleges four assignments of error. Each one fails to offer any new arguments that the Commission has not already considered and rejected. The Commission should deny OCC's application in its entirety. OCC has not justified any further revisions to the MGSS Rules.

A. Rule 4901:1-13-11 – The Commission lawfully and reasonably rejected OCC's proposed "shadow-billing" rules.

OCC's comments proposed new subparagraphs to Rule 4901:1-13-11(B) to require natural gas companies to conduct and inform shopping customers of "shadow-billing." Order

¶ 82. These proposed rules, if adopted, would have created several new regulatory mandates and associated compliance burdens, the costs of which would have been passed on to all customers. The Order properly rejected OCC's proposed new "shadow-billing" requirements as unsupported and unnecessary. *Id*. ¶ 89.

In its first assignment of error, OCC claims that the Commission's decision to reject its new rules is "unlawful because it failed to make findings of fact based on record evidence." (OCC's App Reh'g at 2.) OCC specifically argues that the Commission violated R.C. 4903.09 because the Order did not provide sufficient detail on the facts and reasoning that supported its conclusion. (*Id*. at 2-4.) OCC misconstrues the governing statute and fails to demonstrate any error.

Assuming this statute applies in a quasi-legislative proceeding such as a rulemaking, the purpose of R.C. 4903.09 is "'to enable [the Supreme Court] to review the action of the commission without reading the voluminous records in Public Utilities Commission cases.'" *MCI Telecomms. Corp. v. Pub. Util. Comm'n*, 32 Ohio St.3d 306, 311 (1987), *quoting Commercial Motor Freight, Inc. v. Pub. Util. Comm'n*, 156 Ohio St. 360, 363 (1951). Strict compliance with the terms of the statute is not required. *Tongren v. Pub. Util. Comm'n*, 85 Ohio St.3d 87, 89 (1999). The Commission is required only to set forth "some factual basis and reasoning based thereon in reaching its conclusion." *Allnet Commc'n Serv., Inc. v. Pub. Util. Comm'n*, 70 Ohio St.3d 202, 209 (1994); *see also MCI Telecomms. Corp*., 32 Ohio St.3d 306, 312 (requiring "enough evidence and discussion in an order to enable the PUCO's reasoning to be readily discerned"). The Commission is *not* required to specifically and separately address every single assertion that may be contained in a party's brief. *See*, *e.g.*, *Allen v. Pub. Util.*

Comm'n, 40 Ohio St.3d 184, 187 (1988); *Office of Consumers' Counsel v. Pub. Util. Comm'n*, 589 Ohio St.2d 108, 116 (1979).

The Commission's Order clearly complied with these requirements. The Order cited several prior decisions where the Commission rejected a similar OCC proposal—decisions that other parties to this rulemaking, including the Companies, also highlighted in their comments. Order ¶¶ 84-85, 89. "Consistent with [those] decisions in prior cases," the Commission once again declined to adopt OCC's proposal. *Id*. ¶ 89. OCC has offered no credible explanation why the Commission should revisit and deviate from this precedent. *Cleveland Elec. Illuminating Co. v. Pub. Util. Comm'n*, 42 Ohio St.2d 403, 431 (1975), *superseded on other grounds by statute as recognized in Babbit v. Pub. Util. Comm'n*, 59 Ohio St.2d 81, 89 (1979) (instructing the Commission to "respect its own precedents in its decisions to assure the predictability which is essential in all areas of the law, including administrative law").

The Order, moreover, did not merely rely on precedent but confirmed the reasons for rejecting OCC's proposals: (1) they "would require significant billing system changes" and (2) "there are a number of existing resources, such as the Commission's Energy Choice Ohio website, that provide a substantial amount of information for customers to compare and available offers." Order ¶ 89. These are the same fatal flaws that doomed a similar OCC proposal to require natural gas companies to include "choice comparison information" on customers' bills. Case No. 09-326-GA-ORD, Finding & Order (July 29, 2010) at 48-49 (the *2009 MGSS Case*) (finding that "there are options already available for customers to refer to in order to detect that there are competitive choice opportunities" and "it would not be appropriate to require the companies to provide this information on the bill, especially in light of the costs that they would potentially incur and that would potentially be passed on to their customers").

OCC argues that the Commission's decision is unreasonable "because it failed to determine what 'significant billing system changes' entail and what the associated costs of these changes are." (OCC App. Reh'g at 3.) In OCC's opinion, the Commission cannot reject OCC's proposal, if the record does not contain information on the specific costs of each billing system change. (*Id*. at 3-4.) This granular level of detail is not required for the Commission to reject OCC's proposed new rules. OCC does not contest that, if its rules were adopted, billing system changes would be needed and costs would be incurred that ratepayers would ultimately bear. The Commission does not need an itemized list of each billing system change to reasonably conclude that the new rules would require utilities to incur incremental costs and that additional costs would not be justified.

On the contrary, OCC is the party who bears the burden of justifying its proposal, and it has not shown that its rules would actually result in incremental bill savings for natural gas customers, given other comparable pricing data already publicly available. The only "fact" that OCC cites in its application derives from a news article alleging amounts by which customers allegedly overpaid nationwide. (OCC App. Reh'g at 2 n.8 & 4 n. 17.) Even assuming the facts in the article are true or could properly be relied on by the Commission, there is no explanation how any of this relates to prices that natural gas customers pay in Ohio. OCC's comments fall far short of demonstrating that "consumers are over-paying" in Ohio because natural gas companies are not currently offering "shadow-billing." (*Id*. at 4.)

OCC further argues that the Commission's Energy Choice Ohio website is insufficient based on the Commission's statement in the price-to-compare section of the Order that "there are many Ohioans with insufficient or no internet access." (OCC App. Reh'g at 5-6.) OCC argues that "customers should not have less information and choices available to them because they do

not have internet access." (*Id*. at 6.) OCC does not explain how the utilities could possibly include all of the available information on the Energy Choice Ohio website on the customer bill. Moreover, the Order's "price-to-compare statement" directed customers to the very same website to find more information on the SCO or GCR rate and other suppliers' offers. Order ¶ 69. OCC has not demonstrated that the Commission's website is an insufficient resource for consumers.

OCC also claims that "it's difficult to rely on the Energy Choice Ohio website when marketers are providing misleading information and harming consumers." (OCC App. Reh'g at 5.) In support of this claim, OCC points to allegations from the same news article referenced earlier, which showed that the Commission had investigated information that certain suppliers provided about their variable rates. (*Id*. at 5 n.23.) OCC's argument proves too much. If a bad actor can overcome other sources of accurate information through misleading statements, then the same would hold for shadow-billing or any other remedy the Commission may develop. But as OCC's own pleading demonstrates, the Commission has taken appropriate action to protect consumers from misleading information when a given marketer has stepped out of line.

Although OCC may disagree with the Commission's decision to reject shadow billing, the Commission's reasoning and its conclusions are clear and well-supported. There is no issue under R.C. 4903.09. And the Commission should reject OCC's first assignment of error.

B. Rules 4901:1-13-01 and 4901:1-13-11 – The Commission lawfully and reasonably declined to adopt Staff's proposal to limit the types of charges that can be included on natural gas bills and OCC's proposed definition of a "commodity charge."

Staff proposed a new paragraph (K) for Rule 4901:1-13-11 that would mandate that residential bills contain only charges for the natural gas commodity and tariffed distribution service. Order ¶ 69. In response, OCC proposed that Rule 4901:1-13-01 be amended to define a "commodity charge" as "the portion of the natural gas bill that is based on the cost of the actual natural gas supplied to the customer by either the natural gas utility or competitive retail natural

gas supplier." *Id*. ¶ 18. The Commission declined to adopt Staff's new regulatory restriction, finding that it would impose an outright prohibition on the inclusion of charges for non-commodity goods and services on natural gas bills. *Id*. ¶ 81. For this reason, the Commission also found OCC's proposed definition of a "commodity charge" to be unnecessary. *Id*. ¶ 21.

In its second assignment of error, OCC argues that its definition is "necessary for disclosing what consumers can and cannot be disconnected for." (OCC App. Reh'g at 7.) That simply is not true. The rules already protect consumers from being disconnected for failure to pay nontariffed charges. Rule 4901:1-18-10(D) prohibits the natural gas utility from refusing or disconnecting service for "[f]ailure to pay any nontariffed charges." Rule 4901:1-13-12(C) prohibits the natural gas company from "representing to a customer that distribution service will or may be disconnected unless the customer pays any amount due for nonregulated, nontariffed service." Rule 4901:1-13-11(20) requires the natural gas utility to include on its bill "each charge for a service that is either nontariffed or nonregulated and, with regard to services that are, the name and toll-free telephone number of each provider of service." And Rule 4901:1-13-11(G)(1)(c) requires the natural gas utility to apply any partial payment first to past due and current distribution and sales service charges and then past due and current nontariffed charges.

In contrast, OCC's proposed definition would neither offer any additional consumer protections nor materially improve the disclosures that utilities are already required to make. The definition is unnecessary, and as the Companies pointed out in their reply comments, it is also overly simplistic and ambiguous, as it equates the commodity charge solely with the cost of the natural gas, despite the fact that commodity charges include other upstream costs. Order ¶ 19. The Commission's decision to reject OCC's definition of "commodity charge" was reasonable and lawful and OCC has not demonstrated otherwise.

OCC also argues that the Commission's rejection of Staff's proposed new paragraph was unreasonable because, in OCC's opinion, the regulated utility bill should only include regulated natural gas charges. (OCC App. Reh'g at 8-9.) The Commission, however, disagreed. It did not believe that it should "impose an outright prohibition on the inclusion of charges for non-commodity." Order ¶ 81. And it pointed out that this was consistent with its decision not to adopt a similar Staff recommendation to prohibit the inclusion of charges for non-commodity goods and services on electric bills in its recent review of electric safety and service standards. *Id*. The Companies, in their comments, agreed that there should not be an outright elimination of this billing option for customers. (DEO/VEDO Init. Cmts. at 7; Rep. Cmts. at 13.) The inclusion of non-commodity charges on residential bills should remain subject to the reasonable discretion and technical capabilities of the individual utilities.

OCC claims that this outright prohibition should be adopted as "important consumer protection" against disconnections and slamming. (OCC App. Reh'g at 8-9.) As noted above, the existing rules offer consumers protection from being disconnected for failure to pay nontariffed charges. OCC offers no explanation or support for its claim that the Staff proposal offers additional consumer protections. Moreover, if a particular supplier violates the Commission's rules, those issues can and should be dealt with directly, by addressing either the actor or the practice—not by universally removing a billing option that many customers find beneficial. The Commission should reject OCC's second assignment of error.

C. Rule 4901:1-13-11 – The Commission lawfully and reasonably adopted Staff's proposed "price-to-compare" statement with certain modifications.

Staff proposed that new Rule 4901:1-13-11(B)(13) be adopted, which would require natural gas companies to include a price-to-compare (PTC) statement on customer bills, so that customers could compare their natural gas company's standard choice offer (SCO) or gas cost

recovery (GCR) rate with suppliers' offers. Order ¶ 53. The Order adopted Staff's proposal, with certain modifications. Order ¶ 69. Specifically, the Order's adopted PTC statement does not require the utility to print its current SCO or GCR rate on customer bills. Instead, the statement refers to the Commission's Energy Choice website for more information about the SCO or GCR rate. *Id*.

In its third assignment of error, OCC argues that the Commission "erred by failing to include the SCO or GCR rate in the price-to-compare." (OCC Reh'g App. at 11.) OCC asserts that "[a]dding the price-to-compare language without the rate *removes any benefit* gained by adding the price-to-compare message to the bill." (*Id*. at 10 (emphasis added).) And OCC further claims that consumers without internet are "harmed" by the removal of specific SCO or GCR rates from the price-to-compare message. These claims are speculative and grossly exaggerated. The Companies opposed Staff's proposed statement in their comments, in part because the statement was not necessarily true and raised concerns regarding state energy policy and company-specific codes of conduct. (DEO/VEDO Init. Cmts. at 3-5.) Among other things, the Companies noted that: (1) the SCO at the time a bill prints will almost certainly not be the same as it is at the time a customer makes a rate comparison or actually enrolls in a given service; (2) a pure comparison to the SCO may not reflect benefits a competitive supplier may be offering via a bundled service; and (3) not all customers are eligible for the SCO. (*Id*. at 4.) Directing customers to the Commission's Energy Choice website to find out more about the SCO or GCR rate will cause less customer confusion. Referring customers to publicly available information also does not put utilities in the position of providing customer-specific advice on the choice for commodity service or implying that the SCO or GCR rate is the most favorable. (*Id*. at 5.)

The Order struck a balance between Staff's proposal and comments received from the Companies and other parties by removing the requirement that the SCO or GCR rate be included as part of the PTC statement. As the Order explained, "the Commission's Energy Choice Ohio website provides information intended to facilitate a comparison of rates that will enable customers to make informed decisions about their choice of supplier." Order ¶ 69. Natural gas companies should not be required to make potentially inaccurate, non-neutral statements on bills, which could result in detrimental reliance by customers. OCC's application entirely ignores the natural gas companies' concerns about customer confusion, the benefits of the Order's modified statement, and the publicly available resources. The Commission should reject OCC's third assignment of error.

D. Rule 4901:1-13-12 – The Commission lawfully and reasonably declined to adopt Staff's proposal to establish a switching block provision in the MGSS rules.

The Order rejected Staff's proposal to add a new paragraph (G) to Rule 4901:1-13-12 to permit a customer to request that the natural gas company place a retail natural gas supplier block on the customer's account. Order ¶ 118. Staff's rule, if adopted, would have prevented the current commodity service provider from being switched without the customer's authorization through a code or personal identification number provided to the natural gas company. *Id*. ¶ 109.

The Commission found that its existing rules "guard against unjust practices such as slamming, while striking a suitable balance between protecting vulnerable customer populations and allowing for fair competition." *Id*. ¶ 118. In addition, the Commission found that the existing rules "are intended to prevent unauthorized supplier switching throughout the solicitation and enrollment process, such as third-party verification following in-person sales and contract rescission periods." *Id*. The Commission also noted that there are "proactive steps that consumers can take to minimize unwanted solicitation from suppliers." *Id*. Lastly, the

Commission pointed out that its decision on Staff's proposal is consistent with the Commission's decision in the most recent review of the electric safety and service standards. *Id*. For these reasons, the Commission found Staff's proposed rule unnecessary.

In its fourth assignment of error, OCC argues that the Commission's conclusion is unreasonable, because it does not "require inclusion of information regarding the ability for consumers to place a switching block on their account to avoid unapproved changes to their gas service. (OCC Reh'g App. at 12.) Echoing previous arguments, OCC again points to "slamming" as the sole reason why a customer block should be included in the new rules. But OCC provides no evidence to back up this assertion, which the Commission already considered when initially reviewing the proposed rule and did not find convincing.

As the Companies pointed out in their comments, for customers who elect to place a block, Staff's proposal would raise obstacles to shopping, as tracking yet another passcode and making an additional phone call will be necessary to change suppliers. (DEO/VEDO Init. Cmts. at 7-8.) OCC has failed to demonstrate that existing remedies are not sufficient to address any issues of "slamming," much less justified such a significant change to the customer enrollment process and one that is out of step with state energy policy fostering a competitive market.

OCC argues that Staff's proposal is "better protection for consumers." (OCC Reh'g App. at 12.) OCC, however, does not address the potential costs and inefficiencies of the new rule, or the potential obstacles to shopping. Nor does OCC identify a specific customer issue that would justify this new requirement. As stated in its joint comments, any issues with unauthorized switching should be dealt with directly— addressing either the actor or the practice—not by universally imposing a new tracking requirement on all natural gas companies. Adding the customer block provision is unnecessary, could restrict competition in favor of the utility, and

would require costly implementation, borne by all rate payers. The Commission should reject OCC's fourth assignment of error.

II. CONCLUSION

For the reasons discussed herein, the Commission should deny OCC's application for rehearing. Their assignments of error fail to demonstrate that there are specific grounds upon which the Commission's Order is unreasonable or unlawful.

Dated: April 5, 2021

Respectfully submitted,

/s/ Christopher T. Kennedy
Mark A. Whitt (0067996)
Christopher T. Kennedy (0075228)
Lucas A. Fykes (0098471)
WHITT STURTEVANT LLP
88 East Broad Street, Suite 1590
Columbus, Ohio 43215
Telephone: (614) 224-3912
Facsimile: (614) 675-9448
whitt@whitt-sturtevant.com
kennedy@whitt-sturtevant.com
fykes@whitt-sturtevant.com

Attorneys for The East Ohio Gas Company d/b/a Dominion Energy Ohio and Vectren Energy Delivery of Ohio, Inc., A CenterPoint Energy Company

/s/ Andrew J. Campbell
Andrew J. Campbell (0081485)
DOMINION Energy, INC.
88 East Broad Street, Suite 1303
Columbus, Ohio 43215
Telephone: (614) 601-1777
andrew.j.campbell@dominionenergy.com

Attorney for The East Ohio Gas Company d/b/a Dominion Energy Ohio

(All counsel willing to accept service by email)

CERTIFICATE OF SERVICE

I hereby certify that a courtesy copy of the foregoing pleading was served by electronic mail this 5th day of April, 2021 to the following individuals:

John.jones@ohioattorneygeneral.gov
Ambrosia.Wilson@occ.ohio.gov
regulatory@infiniteenergy.com
josephclark@nisource.com
talexander@beneschlaw.com
slesser@beneschlaw.com
khehmeyer@beneschlaw.com
Rocco.dascenzo@duke-energy.com
Jeanne.Kingery@duke-energy.com
Larisa.vaysman@duke-energy.com
mpritchard@mcneeslaw.com
cendsley@ofbf.org
lcurtis@ofbf.org
amilam@ofbf.org
sdismukes@eckertseamans.com
dclearfield@eckertseamans.com
SStoner@eckertseamans.com
gkrassen@bricker.com
dstinson@bricker.com
dparram@bricker.com
Bethany.Allen@igs.com
Michael.Nugent@igs.com
Joe.Oliker@igs.com
mjsettineri@vorys.com
glpetrucci@vorys.com

Attorney Examiners:

sarah.parrot@puco.ohio.gov

/s/ Lucas A. Fykes
One of the Attorneys for The East Ohio Gas Company d/b/a Dominion Energy Ohio and Vectren Energy Delivery of Ohio, Inc., A CenterPoint Energy Company

Summary: Memorandum Memorandum Contra OCC Application for Rehearing electronically filed by Christopher T Kennedy on behalf of The East Ohio Gas Company d/b/a Dominion Energy Ohio and Vectren Energy Delivery of Ohio, Inc.