BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of Chapter 4901:1-13 of the Ohio Administrative Code	: : :	Case No. 09-326-GA-ORD

REPLY COMMENTS OF THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO AND VECTREN ENERGY DELIVERY OF OHIO, INC.

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Pursuant to the Commission's Entry of April 22, 2009, The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") and Vectren Energy Delivery of Ohio, Inc. ("VEDO") hereby jointly file Reply Comments to the comments docketed in this proceeding on May 22, 2009, regarding Staff's proposed revisions to the Minimum Gas Service Standards contained in Ohio Administrative Code Chapter 4901:1-13 ("MGSS").

I. INTRODUCTION

Most of the parties that filed Initial Comments in this proceeding regarding the MGSS wisely took the "If it ain't broke, don't fix it" approach. Columbia Gas of Ohio, Inc. ("COH") and Ohio Gas Company ("OGC") offered comments that, for the most part, are limited to only a few sections of the MGSS and generally pertain to the same issues raised by DEO and VEDO. Ohio Home Builders, Inc. ("OHB") limited its comments to issues concerning main line extensions. Little effort should be required to harmonize the positions of these parties into revised MGSS that make sense for both the industry and the public.

The same cannot be said for Ohio Consumers' Counsel ("OCC") and Ohio State Legal Services Association (collectively, "Joint Advocates"). The Joint Advocates propose to convert the existing MGSS from a set of minimum standards for uniform and reasonable practices into a

user's manual for how to micromanage a utility. Simply stated, Joint Advocates have taken the notion of "common sense business regulation"[1] and turned it on its head.

Examples of command and control regulation and micromanagement abound in the Joint Advocates' comments. As but one example, Joint Advocates seek to re-write the MGSS to require more charts in each monthly bill. Lots more. One chart would show 12 months of prior usage, with an indication of whether the usage for each of the prior 12 months was based on an estimated or actual read. A different chart would compare Choice customers' rates for the prior 12 months with the local distribution company's ("LDC") standard service offer rates. Yet another chart would be prepared especially for PIPP customers, this one showing payments for the past 12 months, arrearage credits for 24 months, and a comparison of individual usage to average residential usage. In addition to all of the new charts, Joint Advocates also propose numerous additional bill messages, inserts and reminders. Whether customers would find any of this information useful, or are willing to pay for it through higher rates (which would inevitably be the case because of new programming required to make these changes), is never addressed in the Joint Advocates' comments.

In addition to urging substantial changes in the type of information that must be contained in monthly bills, Joint Advocates propose a number of other changes that, if adopted, would drastically increase the cost of service for Ohio LDCs, with little or no benefit to customers. These proposals include longer document retention periods, more reporting requirements, unrealistic performance standards, and numerous restrictions that would allow LDCs less flexibility in dealing with customers. Ohio LDCs would also have to surrender management judgment to OCC in areas such as advertising and customer outreach.

[1] See Entry in this proceeding dated April 22, 2009, p. 1, citing Executive Order 2008-04S, Implementing Common Sense Business Regulation.

Joint Advocates also propose to do away with the current system of compliance and enforcement contained in Administrative Code Chapter 4901:1-34. All reporting would have to be formally docketed and subject to public comment and/or evidentiary hearings. OCC would be involved in all enforcement, and all enforcement would be the subject of a formal proceeding and evidentiary hearing. All of these proposals are made despite the fact that the Commission did not provide notice that Chapter 4901:1-34 was within the scope of this proceeding. For that reason, DEO and VEDO are not responding at this time to the substance of the Joint Advocates' comments pertaining to compliance and enforcement. DEO and VEDO will respond if and when the Commission determines that Chapter 4901:1-34 is properly within the scope of this proceeding.

As for what is within the scope of this proceeding, the Commission need not give serious consideration to most of what Joint Advocates propose. R.C. 119.032(C) lists criteria that the Commission is required to consider in adopting, amending or rescinding administrative rules. Among other things, these criteria include whether existing rules should be amended or rescinded to give more flexibility at the local level, whether rules should be amended to eliminate unnecessary paperwork, and whether rules duplicate, overlap with or conflict with other rules. Most of what Joint Advocates propose is at odds with both the letter and spirit of the criteria listed in R.C. 119.032(C). Joint Advocates propose rigidity over flexibility, more paperwork rather than less and increasing rather than reducing the overlap between the MGSS and other regulations.

DEO and VEDO respond to Joint Advocates' comments below. Where applicable, DEO and VEDO also respond to other parties that filed Initial Comments. The failure of DEO and

VEDO to respond to any party's comments is neither an endorsement nor rejection of a position taken by any party.

II. REPLY COMMENTS

Rule 4901:1-13-01(A)

Staff proposes to define "bona fide dispute" as "a complaint registered with the commission's call center or formal complaint filed with the commission's docketing division." Joint Advocates propose an alternative definition that would include calls to OCC as constituting a bona fide dispute. Neither definition should be accepted.[2] As pointed out by OGC, Staff's definition would allow any customer who registers a "high bill" complaint to avoid collection or disconnection. OCC's definition would provide an additional option for customers seeking to game the system to avoid paying a bill. Whether a dispute is "bona fide" necessarily depends on the facts and circumstances of each case. The new definition is not needed.

Rule 4901:1-13-01(E)

Joint Advocates propose that the definition of "consumer" be more "narrowly defined" to avoid any implication that a consumer (as opposed to a customer) may have financial responsibility to pay for service. Under their proposed definition, a "consumer" is "any person who is an end user of gas or natural gas service who may or may not have an agreement by contract and/or tariff with the gas or natural gas company, or responsibility to pay the gas or natural gas company for service." (Emphasis added.) Joint Advocates' proposed definition is confusing. It lumps "consumers" and "customers" together by including end users who "may or may not" be financially responsible for service. The existing definition of "consumer" is far preferable to what Joint Advocates have proposed.

[2] OCC requested a similar change in the Case No. 08-724-GA-ORD rulemaking regarding Chapter 4901:1-29. The Commission rejected OCC's proposal, finding it inappropriate to allow customers to avoid disconnection for failing to pay a competitive supplier's charges simply by calling OCC. (Sept. 24, 2008 Finding and Order, ¶¶ 41-46.)

Rule 4901:1-13-01(K)

Staff proposes to amend the definition of "governmental aggregator" by including a specific reference to R.C. 4929.01. In contrast to Staff's straightforward approach, Joint Advocates' proposed definition of "governmental aggregator" potentially encompasses entities that having nothing to do with either government or aggregation. Joint Advocates' definition — "[A]n agent, certified by the Commission, who arranges to buy or coordinate competitive retail natural gas service for the natural gas loads of consumers under section 4929.01 of the Ohio Revised Code" — could include any number of entities, including LDCs, which routinely "coordinate" aggregation service. Joint Advocates' proposed definitional change confuses, rather than enlightens, and should therefore be rejected.

Joint Advocates' "Missing Definitions"

Joint Advocates requests that the MGSS include definitions for "Mcf" and "Ccf." Both are well-known and understood terms in the gas industry. DEO and VEDO see no reason to define these terms in the MGSS, but have no objection if the Commission decides to define them.

The MGSS does not need to include a definition for "tampering," as proposed by Joint Advocates. Whether certain activity constitutes "tampering" is fact specific and must necessarily be determined on a case-by-case basis. Any slight nuance in the facts could cause something that looks like tampering in one case to not constitute tampering in another. To include the Joint Advocates' proposed definition of "tampering" within the MGSS would serve only to increase litigation over whether certain activity fits within the four corners of the administrative definition. This is not necessary.

Rule 4901:1-13-04(C)

Rule 4901:1-13-04(c) gives LDCs the right to access their metering equipment. One of the reasons an LDC may need to access metering equipment is for purposes of "determining that the installation or the metering equipment is in compliance with the company's requirements," as provided in the existing rule. OCC proposes to change "company's requirements" to "Ohio law and/or Commission rules," purportedly because "natural gas utilities should not be allowed to implement policies that result in requirements for access to premises that go beyond the requirements approved by Ohio law, or Commission standards that are promulgated through either rules and/or tariffs." (JA Initial Comments, p. 6.) Joint Advocates' proposed change is unnecessary and should be rejected. An LDC's metering requirements must be consistent with Ohio law and Commission rules, regardless of whether the MGSS says so explicitly. No purpose is served by Joint Advocates' substitute language.

Rule 4901:1-13-04(D)

Joint Advocates propose several changes to this rule, which governs meter testing. First, citing Rule 4901:1-10-05 of the Electric Service and Safety Standards, Joint Advocates recommend that natural gas customers be given the right to a free meter test once every three years, and that this right be communicated to customers through annual bill inserts. The Commission rejected this request in the last MGSS rulemaking and should reject it again here. (See Case No. 05-602-GA-ORD, Opinion and Order of Jan. 18, 2006, p. 7.) As noted in the prior rulemaking, R.C. 4933.09 provides specific statutory procedures for meter testing. Nothing in the statute gives customers the right to a free meter test once every three years.

Second, Joint Advocates argue that where a customer has been overcharged because of a meter inaccuracy, the customer should be given the option of a refund or a credit to their

account. Customers already have that option under the existing rule. See Rule 4901:1-13-04(D)(5)(c).

Third, Joint Advocates argue that it is "fundamentally unfair" (JA Initial Comments, p. 8) that LDCs do not pay interest to customers where the LDC has overcharged a customer. Left unstated is that the fact that LDCs also do not charge interest where a customer has been undercharged. Not paying interest on overcharges is the quid pro quo for not collecting interest on undercharges. The current rule is equitable to both LDCs and customers. Joint Advocates' proposal is not.

Fourth, Joint Advocates argue that LDCs should change their method of estimating usage, when required to do so because of a meter inaccuracy, to account for "weather, changes in household size, changes in the efficiencies of furnaces or other appliances that affect usage, and other changes in the physical energy profile of the household." (JA Initial Comments, p. 9.) The language proposed in Joint Advocates' version of the rule would require LDCs to take into consideration an infinite number of unspecified variables that could potentially affect usage. Joint Advocates' proposal would essentially require LDCs to perform a full-blown energy audit whenever it is necessary to estimate historical usage. Customers should not be saddled with this hugely expensive task. Joint Advocates point to no facts to demonstrate that historical metered usage is not a reasonable proxy for estimating usage during a period of metering inaccuracy. Joint Advocates' proposal should be rejected.

Rule 4901:1-13-04(G)

Joint Advocates propose a number of changes to this rule, which governs meter reading. All of their changes should be rejected.

In subdivision (G)(1), Joint Advocates propose to add language at the end of the rule requiring LDCs to obtain actual monthly meter reads once AMR installations are complete in a specific geographic area. But not every LDC has or will have systemwide AMR. While AMR no doubt will facilitate monthly actual reads (for LDCs that have AMR), Joint Advocates' proposal ignores the role of Service Monitoring and Enforcement ("SMED") in meter reading activities, and fails to address circumstances in which monthly reads are impossible because of equipment failure. It is not necessary to address that process through specific requirements in the MGSS. SMED may continue to monitor meter reading activities to the extent it deems necessary.

Subdivision (G)(1)(a) requires LDCs to file a plan with SMED outlining plans the LDC will take to ensure that customers receive at least one actual meter reading annually. Joint Advocates propose to change the rule to require that these plans be filed publicly with the Commission, and that the plans include "special provisions for making evening and weekend meter reads available to customers." (JA Initial Comments, p.14.) Considering that these plans are already available to OCC upon request (as well as any other member of the interested public), it is difficult to fathom what additional benefit would be obtained by filing the plans in a formal public docket. Moreover, Joint Advocates' attempt to micromanage the details of meter reading plans is unnecessary. SMED should retain the flexibility to determine what must be addressed in the meter reading plans. Additionally, the Commission must consider the costs that LDCs would incur if required to offer weekend meter reading appointments. LDCs would effectively be required to staff meter reading personnel 24/7. DEO and VEDO's rates cannot accommodate this extraordinary and unnecessary level of service.

Next, Joint Advocates propose to eliminate subdivision (G)(1)(c). This section of the rule provides a rebuttable presumption that where an LDC has adhered to its meter reading plan on file with SMED, the failure to read a meter at least once in the prior twelve months was beyond the LDC's control. Joint Advocates argue that this change is necessary because the "arbitrary meter reading plans" submitted by LDCs are approved by SMED and not the Commission. But SMED is part of the Commission and answerable to the Commissioners. To characterize as "arbitrary" all of the work done by SMED in reviewing and monitoring meter reading plans is wholly inaccurate and mischaracterized.

Subdivision (G)(3) pertains to undercharges to small commercial customers. Joint Advocates' proposal to include residential customers within this rule should be rejected. Subdivision (G)(2) applies to both residential and small commercial customers, and establishes rules for calculating backbills for underestimated or overestimated usage in instances where the meter has not been read in the prior 12 months. Subdivision (G)(3) serves a different purpose. This rule applies to small commercial customers only, and establishes the rules for backbilling undercharges caused by metering inaccuracies. Subdivisions (G)(2) and (G)(3) apply to different circumstances and should therefore be left as is, subject to Staff's proposed modifications.[3]

Subdivision (G)(4) requires LDCs, upon a customer's request, to provide two free actual meter readings per year, subject to the following limitation, which Joint Advocates propose to eliminate: "The customer may only request an actual meter reading, without charge, if the customer's usage has been estimated for more than two of the immediately preceding billing

[3] Joint Advocates' proposed revision of Subdivision (G)(3) is also inconsistent with R.C. 4933.28. Under Joint Advocates' proposal, the rule would limit backbilling of commercial customers to 12 months. R.C. 4933.28, however, applies only to residential customers. See also Cincinnati Gas & Elec. Co. v. Joseph Chevrolet (1st Dist. 2003), 153 Ohio App. 3d 95, 105 ("The legislature, while limiting backbilling of residential customers to 365 days immediately prior to the date the utility remedies the meter inaccuracy, has placed no similar limitation on nonresidential meter inaccuracies.") (Footnotes omitted.)

cycles consecutively." Joint Advocates contend that this limitation is improper because "Customers should be able to request meter reads to confirm that a previous read was performed correctly." (JA Initial Comments, p. 12.) Joint Advocates' proposal makes little sense. For example, if a customer requests an actual read in January and again in February, the February read will not necessarily confirm whether the January read was correct. In any case, the limitation on free actual reads should be retained. LDCs are only required to provide one actual read per year. Subdivision (G)(4) allows an additional free read, but only in circumstances where the utility has not obtained an actual read for the prior two consecutive months. The rule should not mandate that LDCs obtain additional actual reads for customers who are already receiving actual reads.

Subdivision (G)(5) requires LDCs to obtain actual reads at the initiation or termination of service if the meter has not been read in the immediately preceding seventy days. Joint Advocates propose to reduce the time period to seven days. Otherwise, they claim, "A new customer can be paying for some portion of up to seventy days of usage that occurred before they moved to the household." (JA Initial Comments, p. 12.) Due to normal monthly meter reading cycles, there will be frequent occasions when a meter has not been read in the seven days prior to initiation or termination of service. It is unclear to DEO or VEDO how this translates into new customers paying for a prior customer's usage. A customer initiating service on January 1 would be responsible for service on and after January 1, regardless of when or how the prior customer's meter was read.

Joint Advocates propose to add language to the end of subdivision (G)(8) specifying that, in landlord/tenant situations, "Any cost incurred by the gas or natural gas company to obtain reasonable access to the meter shall be borne by the landlord, not the customer." This language

should not be included in the rule. While landlords presumably should be able to grant access to meters at property they own, specific lease provisions between landlords and tenants may limit a landlord's ability to do so. At a minimum, landlords have to give notice to tenants before entering a tenant's premises. See R.C. 5321.04(A)(8) (requiring landlords to "give the tenant reasonable notice of his intent to enter and enter only at reasonable times.") If a tenant prevents access to a meter, the tenant should be charged with the costs to gain access. There is no basis to require landlords to assume these costs in all circumstances.

Rule 4901:1-13-05(A)

Rule 4901:1-13-05(A) establishes minimum customer service levels for new service. The current rule requires that at least ninety percent (on a monthly average basis) of new service requests that do not require installation of new gas pipelines must be completed within the requirements stated in -05(A)(1)(a) or (b). Under the performance standard provided in Rule 05(A)(1)(a), service requests must be completed within 5 business days after the LDC has been notified that the service location is ready for service and all regulatory requirements have been met.

Joint Advocates argue that the performance standard in Rule 4901:1-13-05(A)(1) should be changed to 2 business days for new installations during winter months because of their "lingering concern from the last case that the rules were established at substandard levels." (JA Initial Comments, p. 16.) According to Joint Advocates, "all of the natural gas companies have been able to meet the minimum service requirements . . . ." (Id., p. 16.)

Apparently, Joint Advocates seek a regulatory system where the bar for compliance is continually raised until compliance becomes impossible. But the fact that Ohio LDCs have been able to meet the existing 5 business day standard in no way establishes that the current rules are

"substandard." Five business days is the ceiling, not the floor. In the experience of DEO and VEDO, new service installations are often completed in less than 5 business days. The rule appropriately recognizes that it sometimes takes 4 or 5 days to complete a service request because of factors beyond an LDCs control, such as weather or service requests during seasonal peak periods. During the winter months, DEO and VEDO try to complete new service requests as quickly as possible, but the demand for service in the winter sometimes makes it impractical to complete all service requests within 2 business days. If 2 business days becomes the new standard, DEO and VEDO will have to significantly increase the number of personnel devoted to new service requests. Joint Advocates present no evidence that this cost will provide any meaningful customer benefit, or that customers are willing to pay for this level of service.

OHB recommends a substantial revision to Rule 4901:1-13-05(A)(2), which establishes a performance standard for new service installations. OHB seeks to make the rule applicable to main line extensions, which are currently exempt from the rule. This change should be rejected. DEO and VEDO's tariffs already thoroughly and adequately address main line extensions. OHB's concerns would be more properly addressed in a workshop setting rather than a rulemaking.

Columbia recommends that the Commission simplify Rules 4901:1-13-05(A)(3)(b) and (A)(3)(c), which govern house line testing, so that the rules refer to specific provisions of the National Fuel Gas Code instead of a narrative discussion of these provisions. This is a good idea. DEO and VEDO support this change.

Rule 4901:1-13-05(C)

In their Initial Comments, DEO and VEDO recommended that Staff's new rule concerning cancellation of call-ahead appointments should be eliminated or, in the alternative,

modified. DEO and VEDO thus agree with Joint Advocates' proposal to remove this new section. To the extent the Commission is inclined to adopt a rule, the Commission should adopt the DEO and VEDO proposal and reject the proposal offered by Joint Advocates. DEO and VEDO already attempt to make repeated contacts with customers before cancelling an appointment. The Joint Advocates proposed rule would serve only to increase the administrative burden of attempting to track repeated phone calls to different phone numbers. The MGSS should not micromanage how LDCs handle interactions with customers.

Rule 4901:1-13-05(D)

Staff has proposed a new rule which would requires LDCs to complete 95% of service line repairs (on an average monthly basis) by the next day. As DEO and VEDO explained in their Initial Comments, Staff's proposal is both premature and impractical. It is premature because LDCs have only recently assumed ownership of service lines, and impractical because there are numerous factors that may prevent restoration of service by the next day.

Joint Advocates' proposal to require restoration of service the same day that service has been shut off takes the rule from impractical to impossible. If the Commission wants to ensure that no LDC meets the performance standard proposed in this rule, it should adopt Joint Advocates' proposal. Otherwise, the proposed rule should be shelved until the Commission gathers more facts to establish whether this rule is even necessary, as DEO and VEDO have proposed.

Rule 4901:1-13-05(E)

This rule requires LDCs to send written notice to SMED in any month in which the LDC does not meet a performance requirement contained in the MGSS. For reasons unstated in their Initial Comments, Joint Advocates propose to change the rule to require LDCs to "publicly file a

notice" whenever performance targets are not met. With whom this notice should be filed and what it should say are left to the reader's imagination. Presumably, the Joint Advocates want the notice to be filed in a public docket at the Commission. DEO and VEDO do not understand the point. OCC already receives copies of any notices provided to SMED under this rule, and is thus able to follow up or take other action deemed appropriate by OCC. Requiring LDCs to publicly file written reports, and for Commission staff to publicly file recommendations made in response to such reports, is needless paperwork. The Commission is required to promulgate rules that reduce the level of unnecessary paperwork, not increase it. R.C. 119.032(C)(3).

Rule 4901:1-13-06(A) and (B)

These rules require LDCs to provide to new customers a written summary of customer rights and responsibilities. Joint Advocates propose to amend division (A) of the rule to require LDCs to "annually inform customers about the availability of the customer rights and obligations document via bill insert or as a bill message." This is necessary, according to Joint Advocates, because "customers may not remember having received the document when the service was initiated or cannot locate it at a later date, and may not be aware of their right to some later request." (JA Initial Comments, p. 21.) Joint Advocates' unsupported speculation does not justify the significant costs that would be entailed in modifying billing systems to make sure that each one of the approximately 1.2 million DEO customers and 317,000 VEDO customers doesn't forget that certain rights and obligations are involved in receiving utility service. The rule also does not need to require LDCs to provide a copy of their summary information to OCC or post the information on their websites. With or without the rule, DEO and VEDO are happy to provide the summary information to OCC — or anyone else — upon request.

Equally unnecessary is Joint Advocates' proposal to require that the summary information contain "information about the different components of the bill including how to read the bill and payment rights and obligations." This information is already available on DEO and VEDO's respective websites.[4] "Information regarding choice options available for the consumer," which Joint Advocates also propose to add to the rule, is already covered in Rule 4901:1-13-06(B)(8), which requires disclosure of "[g]as choice programs available to its customers, including information on slamming."

Rule 4901:1-13-09(A)

This rule requires LDCs to establish and maintain an anti-theft and anti-tampering plan. That is all the rule needs to say. These plans are provided to Staff, and Staff has the ability to recommend changes where warranted. There is no need for the MGSS to dictate the content of these plans. Nor is there a need to design these plans by committee, with review and participation by Joint Advocates.

Rule 4901:1-13-09(B)

This rule allows LDCs to disconnect service, without notice, for safety reasons. Joint Advocates contend that Staff's re-wording of the rule expands the circumstances under which LDCs may disconnect without notice. DEO and VEDO do not read Staff's change this way. As DEO and VEDO read this rule, Staff's elimination of the term "for safety reasons" is not intended as a substantive change. This rule allows disconnection, without prior notice, where metering and associated equipment have been tampered with or where there has been an unauthorized reconnection of service. These situations inherently implicate safety. Tampering with gas

[4] See http://www.dom.com/dominion-east-ohio/customer-service/energy-choice/index.jsp; https://www.vectrenenergy.com/web/eenablement/manage/understanding_my_bill/understanding_my_bill_i.jsp.

equipment necessarily causes a safety hazard, regardless of whether the hazard is imminent. The Commission should confirm DEO and VEDO's interpretation of the rule.

Rule 4901:1-13-09(C)

LDCs must send a notice before disconnecting service for a fraudulent practice. The notice must include, among other things, a description of the fraudulent practice and a phone number for the customer to call to discuss the matter with a company representative. Joint Advocates contend that the rule should be changed to require "the department in charge of investigating the alleged fraudulent practice" to communicate directly with the customer, rather than a "company representative." The rules do not need to micromanage how LDCs handle investigations of fraudulent practices. As a practical matter, calls to DEO or VEDO's general call center are already routed to the appropriate risk management personnel. The whole point of having a call center is to take calls and make sure customers are routed to the correct person or department.

Rule 4901:1-13-10

This rule specifies certain complaint handling procedures. If an investigation into a complaint has not been completed within ten business days, LDCs are required to provide status reports to Staff. Joint Advocates contend that the rule should be amended so that LDC's are required to respond to OCC complaints on the same schedule they are required to respond to Commission complaints.

DEO and VEDO would like to think that they have a good track record in responding to OCC complaints within a "reasonable time," as they are required to do under R.C. 4911.19 ("Any utility to which the consumers' counsel makes an inquiry on behalf of a residential customer concerning that customer's billing, or the availability, unavailability, or quality of that

customer's service shall respond to the consumers' counsel on the merits of that inquiry within a reasonable time.") R.C. 4911.19 continues: "If a definitive response cannot be made within three weeks of the making of the inquiry, the utility initially shall send an acknowledgment of receipt of the inquiry to the consumers' counsel and indicate the position of the utility concerning the nature of any investigation of the facts that it considers necessary to an ultimate response, and then, when it becomes possible to make a definitive response, shall respond to the consumers' counsel on the merits of the inquiry." (Emphasis added.) Considering that R.C. 4911.19 already provides a procedure and schedule for responding to OCC complaints, it would be improper to amend the MGSS in a manner that is inconsistent with the established statutory procedure.

Rule 4901:1-13-11(B)

The current version of this rule requires LDCs to render bills at "regular" intervals, which Staff proposes to change to "monthly" intervals. As DEO and VEDO explained in their Initial Comments, DEO and VEDO do not bill accounts on the same day each month. The companies attempt to bill approximately every 30 days, but this interval is sometimes longer or shorter because of weekends and holidays. This is also the case for OGC, according to their comments. (OGC Initial Comments, pp. 3-4.) This minor fluctuation in billing cycles is adequately addressed in DEO and VEDO's existing tariffs. Retaining the "regular" billing cycle language will maintain harmony between the MGSS and the tariffs. Joint Advocates proposal to specify billing intervals of 28-31 days does not resolve the issue because some billing periods may be 27 or 32 days, depending on how weekends and holidays fall on the calendar.

Rule 4901:1-13-11(B)(22)(e)

Joint Advocates propose that the rule requiring disclosure of various information to PIPP customers include a laundry list of additional items, including the number of payments made by the due date in the prior 12 months, usage data compared to average residential usage, and missed payments since that last PIPP re-verification. OCC made a similar request in the recent PIPP rulemaking in Case No. 08-723-AU-ORD. As explained in that proceeding, disclosing the information requested by Joint Advocates in each PIPP customer's monthly bill would require costly programming changes and provide only marginal benefits to PIPP customers, if any. The expense of these changes, however, would be borne by all customers. As stated in the April 1, 2009 Entry on Rehearing in Case No. 08-723-AU-ORD, whether additional summary information should be provided to PIPP customers should be decided during the course of implementation of the new PIPP rules. (Entry on Rehearing, p. 36.) That finding should not be subject to collateral attack in this proceeding.

Rule 4901:1-13-11(B)(25)

Joint Advocates are unclear about what exactly they are proposing with respect to this rule. In their narrative discussion, Joint Advocates merely suggest that the requirement to provide twelve months of historical consumption should apply to all LDCs, not just LDCs with Choice programs. DEO and VEDO take no position on this issue. But the text of Joint Advocates' proposed rule adds additional requirements to which DEO and VEDO object. Significant programming changes would need to be made, at a significant cost, in order to provide 12 months consumption data which indicates "whether the usage was determined by an actual meter read, by an estimated meter read, by a customer-provided meter read, or whether any adjustments to the consumption data is included," as Joint Advocates propose. Moreover, all

of this information is already included in the bills customers receive each month for consumption during the month being billed. If a customer wants to keep track of meter readings and adjustments for a 12 month period (or any period), all the customer needs to do is keep copies of its bills. Customers who are not interested in this information should not be forced to bear the cost of the programming changes necessary to provide this information to every customer, every month.

Rule 4901:1-13-11(B)(26)

In addition to requiring LDCs to include on their bills a reference to the Commission's "Apples-to-Apples" chart, Joint Advocates seek to require LDCs to also direct customers to OCC's website for the *Comparing Your Energy Choices* analysis. Bill presentment is limited by the number of characters that can be included in an information field and adjustments to bill presentment results in costs. Without intending to render a value judgment on the OCC's price comparison analysis, given the similarity in functionality and informational output, the need for inclusion of this additional reference is not readily apparent.

Additional New Rules Requested by Joint Advocates

Joint Advocates propose a number of additions to the MGSS. The first is a requirement that monthly bills separately list the monthly customer service charge. This rule is not necessary. DEO and VEDO would be surprised to learn of any LDC in this state that does not already list the monthly customer service charge on customers' bills.

Joint Advocates also propose a new rule that would require LDCs to provide Choice customers, on a monthly basis, a chart comparing the Choice rate paid by that customer for each of the past 12 months and the LDCs standard service offer rate. There are several problems with this proposal. For starters, past performance does not guarantee future results. At best, a

historical comparison only shows, with the benefit of hindsight, how a customer would have fared had the customer been served by the LDC instead of a competitive supplier. An abrupt shift in the gas commodity market, such as that which occurred in the second half of 2008, renders historical information useless as a forecasting tool.

Moreover, preparing this comparison each month, for every Choice customer, would require billing system revisions. The cost to do this would far outweigh any benefits, especially considering that customers already have the ability to make cost comparisons with the interactive calculator on the Commission's Apples-to-Apples website and the OCC's website for the Comparing Your Energy Choices analysis. Including information in bills about rates that a customer did not pay (i.e., the LDC's standard service offer rate) is a recipe for confusion.

Rule 4901:1-13-11(C)

Joint Advocates urge the Commission to disallow late payment fees so long as the customer pays its bill before the next bill generates. This proposal effectively eliminates the concept of a due date. Allowing customers additional time to pay their bill without penalty increases the LDCs revenue lag and working capital requirement, resulting in higher rates that are ultimately borne by those customers who choose to honor the due date on the bill. Whether such language should be included in any LDC's tariff should be a matter for consideration of individual utilities and not within the context of this rulemaking.

Rule 4901:1-13-11(E)

This rule establishes certain payment methodologies and parameters. Staff introduced changes to this rule requiring LDCs to post signage at authorized payment centers. As DEO and VEDO explained in their Initial Comments, the rule is unclear because it does not specify what

kind of signage is necessary for compliance. This should be clarified in the final order in this proceeding.

Joint Advocates also argue that processing fees charged by LDCs to customers who pay at an authorized agent should be eliminated. Currently, LDCs are allowed to charge up to twice the cost of a postage stamp ($.90), and Staff proposes to increase the allowable fee to $2.00. There is a cost associated with accepting payments at authorized payment centers, and that cost is most appropriately borne by the customers who impose these costs. Joint Advocates point to no evidence suggesting that a $2.00 fee would discourage customers from using authorized payment centers. And there are still plenty of ways for customers to pay their bill for free.

Joint Advocates propose revisions to subdivision (E)(3) which would require LDCs to post customer payments immediately, without exception. This change should be rejected. The current rule already requires that payments be credited immediately, "where feasible." It is not always feasible to credit payments the same day they are received. Wishful thinking does not make it otherwise; this is how the banking system and electronic commerce work. It is reasonable to allow payments to be credited by the next business for in-person payments, and within two business days for all other payments.

Rule 4901:1-13-11(F)

LDCs are currently allowed to charge a fee to customers for making electronic payments, provided the fee is disclosed. Joint Advocates ask the Commission to ban any such fees. These fees should not be banned. If there are costs incurred by the utility in offering electronic payments, such as costs charged to LDCs by third-party vendors who perform this service, then those who choose to utilize the service offered should bear the associated cost. Ultimately, the

customer has the choice to pay fees associated with electronic payments or to use any of the free payment methods.

Rule 4901:1-13-12(B)

Joint Advocates seek an amendment to this rule that would require LDCs to seek and obtain OCC approval before distributing informational, promotional or educational material to the public. This change should be rejected. OCC does not regulate utilities. The Commission regulates utilities. There is no basis, statutory or otherwise, to require LDCs to surrender their management judgment, or for the Commission to surrender its regulatory responsibilities, to OCC. OCC routinely participates in collaborative processes which include development of customer education and outreach campaigns. Submission of material to OCC has been, and can be, voluntary. There is no need to adopt a proposal which expands regulatory oversight beyond that provided by statute.

Rule 4901:1-13-12(D)

The existing rule limits the circumstances in which an LDC may disclose customer social security numbers. One of the circumstances where disclosure is permitted is for "collections and/or credit reporting activities by a gas or natural gas company, a competitive retail natural gas supplier, or a governmental aggregator." Joint Advocates propose to add, "if the supplier or aggregator is responsible for collections" to the end of the rule. This change is unnecessary. The rule already limits disclosure of social security numbers to competitive suppliers and aggregators for collection and credit reporting activities only.

Rule 4901:1-13-12(E)

This rule requires LDCs to provide to customers, on request, 12 months of usage history and 24 months of payment history. Joint Advocates contend that this rule is inconsistent with

Rule 4901:1-13-03(C), which states that LDCs must maintain records for three years, unless otherwise specified in the MGSS. Joint Advocates thus seek to change Rule 4901:1-13-12(E) to require disclosure of usage and payment history for three years.

There is no inconsistency in the rules. Rule 4901:1-13-03(C) is a general rule that provides a default 3 year retention period "unless otherwise specified" elsewhere in the MGSS. Rule 4901:1-13-12(E) is a specific rule pertaining to customer usage and billing information. The latter rule provides a shorter retention period for this information, and for good reason: it is expensive to maintain customer-specific billing and usage information. Although Joint Advocates claim, without support, that "cost for electronic data storage has dropped considerably" since the MGSS were first implemented, the fact remains that, depending on archival retrieval processes, it costs less to store less data for a shorter period than it does to store more data for a longer period. Moreover, DEO and VEDO's computer systems are programmed to comply with the 12 month and 24 month period mandated by the current rule. There are costs associated with reprogramming computers to comply with different requirements. Ratepayers should not be forced to bear these costs, especially considering that Joint Advocates have not pointed to a single incident of customer complaints about the retention period for customer-specific usage and billing data. Nor have Joint Advocates pointed to any data that would support a conclusion that customers would be willing to pay any increased costs associated with a longer retention period for customer-specific information.

Alternative Bill Formats

In the last MGSS rulemaking proceeding, OCC devoted substantial commentary to a proposal to establish rules for alternative bill formats. The Commission rejected OCC's proposal, finding that "this issue is not suitable for a minimum service standard and that further

efforts in this area are best made on a case-by-case and company-by-company basis." (Case No. 05-602-GA-ORD, Entry on Rehearing, p. 28.) Joint Advocates have resurrected this issue in the current rulemaking, but have failed to explain why the Commission should now change its position. The fact remains that DEO and VEDO are currently addressing the needs of customers who require alternative bill formats and translation services. The Commission should continue to address this issue on a case-by case basis, as it has successfully done in the past.

Chapter 4901:1-34

Not content to limit their comments to the rules which are the subject of this proceeding, Joint Advocates also attempt to expand the scope of this proceeding by offering unsolicited comments to Chapter 4901:1-34, which governs enforcement of certain provisions of the MGSS, but is aimed primarily at governmental aggregators and competitive suppliers. The Commission should reject these unsolicited comments. Because these comments are beyond the scope of this proceeding, DEO and VEDO are electing not to respond to their substance, unless and until the Commission rules otherwise.

It is questionable whether the Commission even has the authority to amend rules outside the normal review date. The Commission's rulemaking authority is governed by R.C. 111.15. Under this statute, "An agency that adopts or amends a rule that is subject to division (D) of this section[5] shall assign a review date to the rule that is not later than five years after its effective date." R.C. 111.15(B)(1)(b). With a few exceptions, nothing in R.C. 111.15 expressly provides for an agency to review rules at intervals other than the specified review date. These exceptions include emergency rules, internal management rules and rules that a state agency is required to

[5] R.C. 111.15(D) expressly provides that "commission," for purposes of the statute, "includes the public utilities commission when adopting rules under a federal or state statute."

adopt pursuant to federal law. See R.C. 111.15(D)(1), (4) and (5). None of these exceptions apply here.

The enforcement rules were last reviewed in Case No. 06-423-GA-ORD. The current version of the enforcement rules became effective in April 2007, with a review date in November 2011. OCC participated in the last rulemaking, but chose not comment on any section of Chapter 4901:1-34. It is too late for OCC to comment on that chapter now.

Even if the Commission has the authority to modify its rules earlier than the five year review schedule, exercising that authority should be done with caution. In particular, the Commission should not allow every rulemaking to become a referendum on any and all provisions of the Administrative Code. In a normal rulemaking proceeding, the process starts with a notice from the Commission indicating which rules are subject to comment. Staff comments and proposals are attached to the notice. Interested stakeholders file initial comments to Staff's proposals. Parties then have an opportunity to respond to other parties' comments. None of this has happened here. No party was given notice that the enforcement provisions were within the scope of this proceeding, Staff has not weighed in on the enforcement provisions, and no party will have an opportunity to address other parties' reply comments concerning the enforcement provisions. This is not how rulemaking is normally done.

Joint Advocates had the opportunity to propose amendments to Chapter 4901:1-34 during the 06-423-GA-ORD proceeding and failed to do so. To the extent the Commission wishes to address any of the issues raised by Joint Advocates, it should do so through the normal review process so that all parties have a full and fair opportunity to be heard and to fully develop the record. Should the Commission determine that Chapter 4901:1-34 is properly within the scope

of this proceeding, DEO and VEDO respectfully request leave to respond to Joint Advocates' proposals, pursuant to a schedule as determined by the Commission.

III. CONCLUSION

The purpose of the MGSS is to provide minimum standards for uniform and reasonable practices. Rule 4901:1-13-02(A)(3). Rules that purport to micromanage LDCs run counter to that purpose. DEO and VEDO respectfully request that the Commission adopt amendments to the MGSS that are consistent with the companies' Initial and Reply comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply Comments of The East Ohio Gas Company d/b/a Dominion East Ohio and Vecten Energy Delivery of Ohio, Inc., were E-filed on the Commission's Docketing Information System (DIS) on this 8th day of June, 2009. Parties of Record and other interested parties may access this filing through DIS.

/s Joel E. Sechler
Joel E. Sechler

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