

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission's)	
Review of the Alternative Rate Plan)	
and Exemption Rules Contained in)	Case No. 11-5590-GA-ORD
Chapter 4901:1-19 of the)	
Ohio Administrative Code.)	

**INITIAL COMMENTS OF
COLUMBIA GAS OF OHIO, INC.**

1. INTRODUCTION

By entry dated November 22, 2011, the Commission proposed extensive amendments and rescissions to Chapter 4901:1-19, Ohio Administrative Code (O.A.C.). Columbia Gas of Ohio, Inc. ("Columbia"), The East Ohio Gas Company d/b/a Dominion East Ohio, and Duke Energy Ohio, Inc. filed motions to extend the time to file initial and reply comments. The Commission granted the motions on December 12, 2011. Under the Commission's December 12, 2011 Entry, initial comments are due on January 23, 2012, and reply comments are due on February 23, 2012. Columbia hereby offers its initial comments on the proposed amendments and rescissions, organized according to Rule.

2. COMMENTS

2.1. Proposed Revisions to Rule 4901:1-19-01

Proposed Rule 4901:1-19-01(E), (F), (I), (L), and (P) respectively define the terms "choice-eligible consumer," "choice-ineligible consumer," "competitive retail auction," "default commodity sales service," and "PIPP-enrolled customer." Columbia supports these proposed additions. Staff also proposes to delete from Rule 4901:1-19-01 the definitions "four firm concentration ratio," previously defined in subsection (J), "Herfindahl Hirschman index (HHI)," previously defined in subsection (K), and "Lerner index," previously defined in subsection (L). Columbia supports these proposed deletions.

It is important, however, that the new rules make clear that *only* a natural gas company may file an application to exit the merchant function. R.C. 4929.04 permits only a natural gas company to file an exemption application. If the exit-the-merchant-function rules are intended to amplify that section of the Revised Code, then it is necessary for consistency to clarify that only a natural gas company may file an application to exit the merchant function.¹ A natural gas company's decision to exit the merchant function should be completely voluntary. Columbia therefore proposes that the additional term "applicant" be included in Rule 4901:1-19-01 and that "applicant" be defined as "a natural gas company that files any application described in Rule 4901:1-19-02." Columbia believes that this additional definition will clarify that only a natural gas company, and not a marketer or competitive retail natural gas supplier, may file an application seeking to transfer a natural gas company's obligation to supply default commodity sales service for choice-eligible customers from the natural gas company to competitive retail natural gas suppliers without a competitive retail auction.

Columbia also respectfully proposes the following revision to Proposed Rule 4901:1-19-01(N):

"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 to retail natural gas suppliers without the occurrence of a competitive retail auction.

Columbia believes that if the Commission adopts the proposed exit-the-merchant-function rules, those rules should apply to both a natural gas company's choice-eligible and choice-ineligible customers.

¹ Columbia would note that the proposed exit-the-merchant-function rules do not appear to amplify any existing statutory provision. Columbia respectfully requests that the Commission clarify the statutory authority for these rules. To the extent the exit-the-merchant-function rules are intended to amplify R.C. 4929.04, regarding exemption applications, Columbia proposes that the proposed exit-the-merchant-function rules be included with the rules relating to exemptions and should not be set forth in a separate set of rules.

2.2. Proposed Additions to Rule 4901:1-19-02

2.2.1. Subsection (B)

This subsection would provide that the rules contained in Chapter 4901:1-19, O.A.C., would also govern the filing and consideration of an application by a natural gas company to exit the merchant function. Columbia supports this provision, provided that the new rules make clear that a natural gas company is the only entity that could file an application to exit the merchant function.

2.2.2. Subsection (C)

This subsection would impose an additional requirement on a natural gas company that makes an application for an alternative rate plan to document and demonstrate “that the alternative rate plan is just and reasonable.” Columbia respectfully requests that the following sentence be added to the end of proposed Rule 4901:1-19-02(C): “The requirement that an applicant document and demonstrate that the alternative rate plan is just and reasonable does not, however, require the applicant to make the demonstrations required in R.C. 4909.15(A)-(D) and Appendix A to O.A.C. 4901-7-01 for base rate proceedings.”

Columbia seeks to add the proposed language to clarify that, after the enactment of Am. Sub. H.B. 95, which became effective on September 9, 2011, a natural gas company that makes an application for an alternative rate plan is not required to make the showings required in a base rate proceeding under R.C. 4909.15(A)-(D) and Appendix A to O.A.C. 4901-7-01. Columbia believes that the proposed language comports with the spirit and intent of Am. Sub. H.B. 95 to streamline alternative rate plan proceedings and specifically permit natural gas companies to file certain alternative rate plan applications without also filing a base rate case.

2.2.3. Subsection (D)

The proposed subsection states that the Commission may, upon application or motion filed by any party, waive any requirement of this chapter that is not mandated by statute. Columbia supports this addition.

2.3. Proposed Revisions to Rule 4901:1-19-03

The proposed revisions to Rule 4901:1-19-03 delete the existing rules regarding waiver and modify slightly the filing requirements for exemption applications filed pursuant to R.C. 4929.04, which are currently found in Rule 4901:1-19-04. Columbia supports these revisions.

2.4. Proposed Revisions to Rule 4901:1-19-04

Proposed Rule 4901:1-19-04 sets forth what would be the procedures for an exemption application filed pursuant to R.C. 4929.04. Much of the content of the proposed rule is presently contained in Rules 4901:1-19-06, -08, and -09. Columbia therefore supports these provisions.

2.5. Proposed Rule 4901:1-19-05

This proposed rule contains filing requirements and procedures that applicants seeking to exit the merchant function would be required to follow. Subparagraph (F)(1) of the Proposed Rule is duplicative of Subparagraph (C)(5) and should be omitted. Columbia supports the remaining provisions. However, Columbia is concerned, as discussed above in relation to Proposed Rule 4901:1-19-01, that the new rule make clear that only a natural gas company, and not a marketer or retail natural gas supplier, may file an application to exit the merchant function.

As it explained above, Columbia believes that this clarification could be accomplished simply by defining the term “applicant” in Rule 4901:1-19-01. Should the Commission decline to add that suggested definition to Rule 4901:1-19-01, Columbia respectfully proposes that the term “applicant” be replaced with “natural gas company” throughout Proposed Rule 4901:1-19-05.

Columbia also requests that this Proposed Rule make clear that a natural gas company’s decision to exit the merchant function is completely voluntary. Columbia accordingly proposes that the following subparagraph be added to Proposed Rule 4901:1-19-05:

(G) Nothing in this rule shall be construed to place any obligation or requirement upon a natural gas company to exit the merchant function or to authorize the commission or any other company or entity to seek to compel or require the natural gas company to apply to exit the merchant function or actually exit the merchant function.

2.6. Proposed Revisions to Rule 4901:1-19-06

Proposed Rule 4901:1-19-06 sets forth the proposed filing requirements for an alternative rate plan application filed pursuant to Section 4929.05 of the Revised Code. Subparagraph (C)(1) of the proposed rule, in particular, describes some of the exhibits that must be submitted when filing an alternative rate case. This subparagraph overlooks several changes to existing law, however, stemming from Am. Sub. H.B. 95.

First, subparagraph (C)(1) of Proposed Rule 4901:1-19-06 indicates that the Commission must “determine just and reasonable rates under section 4909.15 of the Revised Code” in an alternative rate case. However, Am. Sub. H.B. 95 eliminated the requirement, previously contained in Section 4929.05, that the Commission determine just and reasonable rates and charges for a natural gas company pursuant to Section 4909.15 of the Revised Code when a natural gas company files an application for an alternative rate plan. *See* 2011 Am.Sub.H.B. No. 95 at 19.

Second, the first paragraph of Subparagraph (C)(1) of the Proposed Rule contains unnecessary commas before and after “(SFRs)” and mistakenly references the current rule allowing for waiver of alternative rate plan application filing requirements, Rule 4901:1-19-03, O.A.C., rather than the new proposed waiver rule, Proposed Rule 4901:1-19-02(D).

Third, subparagraph (C)(1) requires applicants filing an alternative rate case to “submit the exhibits described in divisions (A) to (D) of section 4909.18 of the Revised Code and the standard filing requirements pursuant to rule 4901-7-01 of the Administrative Code * * *.” At a minimum, this is contrary to statute for applications that are not for an increase in rates. The exhibits described in Section 4909.18(A)-(D) are only required “[i]f the commission determines that said application is for an increase in any rate * * *.” Section 4909.18, Revised Code. Similarly, the exhibits described in the appendix to Rule 4901-7-01 of the Administrative Code are required only for “applications for an increase in rates * * *.” Rule 4901-7-01, O.A.C. Not all alternative rate plan applications are applications for in-

creases in rates. Am. Sub. H.B. 95 modified R.C. 4929.051, for example, to state that an alternative rate plan proposing to initiate or continue a revenue decoupling mechanism, under certain circumstances, and alternative rate plan applications seeking to continue a previously approved alternative rate plan, shall be considered applications *not* for an increase in rates.

Even for alternative rate plan applications that are applications for increases in rates, requiring applicants to submit the exhibits described in Section 4909.18(A) through (D) and in the Commission's standard filing requirements for rate increases disregards the intent of Am. Sub. H.B. 95. As the Office of the Ohio Consumers' Counsel recognized in its testimony before the House Public Utilities Committee, H.B. 95 "fundamentally change[s] the process by permitting the gas companies to apply to increase rates under alternative regulation without also filing a traditional rate case." Janine L. Migden-Ostrander, Consumers' Counsel, Opponent Testimony Before House Public Utilities Committee, House Bill 95, at 4 (Mar. 23, 2011), *available at* <http://www.pickocc.org/lservices/testimony/2011-03-23.pdf>; *see also* Janine L. Migden-Ostrander, Consumers' Counsel, Opponent Testimony Before the Senate Energy & Public Utilities Committee, Substitute House Bill 95, at 4 (May 18, 2011), *available at* <http://www.pickocc.org/lservices/testimony/2011-05-18.pdf>. Because the Commission is no longer required to determine "just and reasonable" base rates under Section 4909.15 of the Revised Code as part of an alternative rate plan application, there is no longer a need to file the exhibits described in divisions (A) to (D) of Section 4909.18 or any of the exhibits in Appendix A to Rule 4901-7-01, O.A.C. that support a base rate proceeding. Providing this information would serve no purpose in evaluating an alternative rate plan application.

For these reasons, Columbia respectfully proposes that Subparagraph (C)(1) of Proposed Rule 4901:1-19-06 be deleted in its entirety to reflect the changes made by Am. Sub. H.B. 95 and proposes the following revisions to Proposed Rule 4901:1-19-06(C)(2):

(2) ~~In addition to the requirements of Appendix A to rule 4901-7-01 of the Administrative Code,~~ ~~†~~The applicant shall provide the following information with its alternative rate plan application. This ~~additional~~ information shall be considered to be part of the standard filing requirements for a natural gas company filing an alternative rate plan. The applicant shall have the burden of proof to document, justify, and support its plan.

2.7. Proposed Revisions to Rule 4901:1-19-07

Columbia respectfully proposes the following revision to Proposed Rule 4901:1-19-07(C):

The commission staff will file a written report which addresses, at a minimum, the reasonableness of the current rates ~~pursuant to section 4909.15 of the Revised Code.~~

Columbia believes its proposed revision is necessary and appropriate in light of the fact that Am. Sub. H.B. 95 eliminated the requirement that the Commission determine just and reasonable rates and charges for a natural gas company pursuant to section 4909.15 of the Revised Code when a natural gas company files an application for an alternative rate plan.

Columbia also respectfully proposes the following revision to Proposed Rule 4901:1-19-07(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 criteria set forth in section 4903.083 of the Revised Code.~~

Columbia believes this revision is necessary in light of the fact that R.C. 4903.083 relates to public hearings on rate increases. Again, Am. Sub. H.B. 95 modified R.C. 4929.051 to specify that certain alternative rate plan applications shall be considered applications *not* for an increase in rates. The bill also allows gas companies to apply to increase rates under alternative regulation without also filing a traditional rate case. Accordingly, Columbia believes it would be contrary to statute and legislative intent to hold public hearings for alternative rate plan applications.

2.8. Proposed Revisions to Rule 4901:1-19-08

This proposed rule contains the proposed requirements that an applicant seeking to implement an exemption, an exit-the-merchant-function plan, or an alternative rate plan must satisfy and states that the failure to file a required notice of intent will be deemed a withdrawal of the applicant's application. Much of the content of the proposed rule is presently contained in Rule 4901:1-19-10. Columbia supports the proposed rule but respectfully proposes the following revision to proposed subsection (C):

(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 will be deemed a withdrawal of the exemption application, exit-the-merchant-function plan, or alternative rate plan.

Columbia believes that its proposed revision will make clear that subsection (C), like the rest of Proposed Rule 4901:1-19-08, is meant to apply not only to exemptions, but also to exit-the-merchant-function plans and alternative rate plans.

2.9. Proposed Rule 4901:1-19-09

Proposed Rule 4901:1-19-09 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 after the company's choice-eligible customers were transferred to retail natural gas suppliers pursuant to the plan. Subsection (B) further provides that the company would retain its distribution and balancing functions, including safety, but would not be responsible for supplying default commodity sales service to any choice-eligible customer. Columbia supports the proposed rule.

2.10. Proposed Rule 4901:1-19-10

This proposed rule would impose consumer protection-related obligations upon retail natural gas suppliers that are assigned a choice-eligible customer. Columbia supports this proposed rule. Columbia proposes, however, the following revisions to subsection (A) of the proposed rule:

Not charge that customer any more than the ~~company's retail natural gas supplier's~~ posted standard variable rate, which the ~~company retail natural gas supplier~~ shall submit to the commission and which the commission shall post on its web site.

Columbia believes that its proposed modification provides greater clarity.

2.11. Proposed Revisions to Rule 4901:1-19-11

Proposed Rule 4901:1-19-11 sets forth rules regarding abrogation and modification of an order granting an exemption or an alternative regulation plan. Columbia respectfully proposes that this rule be amended to also include exit-the-merchant-function plans. Columbia proposes that the title of the proposed rule be amended as follows: “Abrogation or modification of an order granting an exemption, ~~or~~ alternative regulation plan, or exit-the-merchant-function plan.” Columbia believes that the following revisions also are necessary for consistency.

2.11.1. Subsection (A)

Columbia proposes the following revisions to Rule 4901:1-19-11(A) in order to make the proposed rule consistent with the rest of O.A.C. Chapter 4901:1-19-11:

The commission may, upon its own motion or upon the motion of any person adversely affected by such exemption, ~~or~~ alternative rate regulation authority, or exit-the-merchant-function plan, including the natural gas company operating under the plan, and after notice of hearing pursuant to division (A) of section 4929.08 of the Revised Code, modify or abrogate any order granting an exemption, ~~or~~ authority, or exit-the-merchant-function plan under section 4929.04 and 4929.05 of the Revised Code, or under O.A.C. 4901:1-19-05, where both of the following conditions exist: * * *

2.11.2. Subsection (B)

Columbia proposes the following revisions to subsection (B) of the proposed rule:

The commission shall order such procedures as it deems necessary, consistent with these rules, in its consideration for modifying or abrogating an order granting an exemption, ~~and~~ alternative rate plan, or exit-the-merchant-function plan.

2.11.3. Subsection (C)

Proposed Rule 4901:1-19-11(C) would require a natural gas company that received an exemption under R.C. 4929.04 to nonetheless provide default commodity sales service through a purchased gas adjustment clause “upon the commission determines that market conditions are not competitive or that the physical supply of natural gas commodity has been compromised by unforeseen circumstances.” (That sentence contains a typographical error and should be corrected to read, “upon the commission’s determination that market conditions are not competitive * * *.”) In such instances, the Commission would have the authority to impose “temporary measures necessary for the provision of default commodity sales service.”

These provisions are vague and do not specify a process through which the Commission would make such a determination, the criteria that the Commission would consider in making such a determination, or the temporary measures that the Commission would be authorized to impose upon a natural gas company. The rule as proposed would create undesirable uncertainty for natural gas companies that receive exemptions for the provision of default commodity sales service under R.C. 4929.04. Accordingly, Columbia respectfully requests that the Commission revise subsection (C) to provide greater clarity regarding the process through which the Commission would determine whether temporary measures are necessary for the provision of default commodity sales service, the criteria the Commission would apply in making such a determination, and what measures the Commission is authorized to impose upon a natural gas company.

Additionally, the proposed rule does not impose any obligations upon retail natural gas suppliers. Columbia believes that reporting, verification, or other obligations should be imposed on retail natural gas suppliers to demonstrate that market conditions are not competitive or that the supply of natural gas commodity has been compromised by unforeseen circumstances if the Commission plans to base its determination of those issues in whole or in part upon information received from retail natural gas suppliers.

Columbia also proposes the following revision to the final sentence of subsection (C):

~~A natural gas company may request~~ The commission shall authorize a natural gas company’s recovery of all costs reasonably incurred by the company in complying with any temporary measures imposed under this section.

Columbia feels that this change would make it more clear that a natural gas company required to undertake “temporary measures” will be entitled to recover its reasonable costs of compliance.

2.12. Proposed Revisions to Rule 4901:1-19-12

Proposed Rule 4901:1-19-12 provides that the Commission may require an applicant to provide progress reports during the term of its authorized alternative rate plan. This proposed rule appears to presently be contained in O.A.C. 4901:1-19-11. Columbia therefore supports this proposed rule.

2.13. Proposed Revisions to Rule 4901:1-19-13

This proposed rule provides that an alternative rate plan filed by a natural gas company that seeks to continue a previously-approved alternative rate plan will be considered an application not for an increase in rates.

As it stands, the proposed rule simply repeats, with minor modifications, the new subsection (B) to R.C. 4929.051 added by Am. Sub. H.B. 95. The rule does not reflect that other alternative rate plans filed by a natural gas company may also be considered applications not for an increase in rates. Consequently, Columbia respectfully proposes that the Commission broaden the proposed rule to include the remainder of R.C. 4929.051, to wit:

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 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.

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 also shall be considered an application not for an increase in rates.

Moreover, Columbia respectfully proposes that additional language be added to this provision that makes clear that a new alternative rate plan application will not automatically be considered an application for an increase in rates. Columbia believes that this additional language will further clarify the Commission's intent in Rule 4901:1-19-13.

3. CONCLUSION

For all of these reasons, Columbia respectfully requests that the Commission consider the comments and adopt the regulatory amendments suggested above.

Respectfully submitted by
COLUMBIA GAS OF OHIO, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of January, 2012, true and accurate copies of the foregoing Initial Comments of Columbia Gas of Ohio, Inc. were served by regular U.S. mail and electronic mail upon the following parties:

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Summary: Comments Initial Comments of Columbia Gas of Ohio, Inc. electronically filed by Ms. Christen M Moore on behalf of Columbia Gas of Ohio, Inc.