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 Chapter 4901:1-19 of the Ohio Administrative Code.	**)** **)** **)** **)** **)**	**Case No. 11-5590-GA-ORD**

REPLY 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.). On December 12, 2011, the Commission issued an entry extending the due date for initial comments to January 23, 2012, and for reply comments to February 23, 2012.

Columbia Gas of Ohio, Inc. ("Columbia") filed its Initial Comments on the proposed changes on January 23, 2012. Columbia now files its responses to the other initial comments submitted in this proceeding, organized according to Rule.

2. COMMENTS

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

2.1.1. Proposed Additions

The Commission has proposed defining the terms "choice-eligible consumer," "choice-ineligible consumer," "competitive retail auction," "default commodity sales service," and "PIPP-enrolled customer." Proposed Rule 4901:1-19-01(E), (F), (I), (L), and (P), O.A.C.

Ohio Partners for Affordable Energy ("OPAE") proposes to change the proposed term "competitive retail auction" (Proposed Rule 4901:1-19-01(I)) to "standard service offer auction" and the proposed term "default commodity sales service" (Proposed Rule 4901:1-19-01(L)) to "standard service offer." Notably, despite its criticisms that the definitions are complex and confusing, OPAE does not propose any changes to the actual language of the definitions, but only suggests that the Commission change the names of the defined terms. Columbia disagrees with OPAE's proposed changes. Proposed Rules 4901:1-19-01(I) and (L) are clearly worded and will be understandable by the general public. Indeed, "commodity sales service," which is included in the proposed term "default commodity sales service," is already a defined term in the existing Rule 4901:1-19-01. Moreover, OPAE's proposed terms do not reflect their definitions. The Commission's proposed definition of "default commodity sales service" (Proposed Rule 4901:1-19-01(L)) would include commodity sales service supplied through standard choice offers, not just standard service offers. And, the Commission's proposed definition of "default commodity sales service" does not match the Commission's previous definitions of "standard service offer." *See*, *e.g.*, Rule 4901:1-35-01(L), O.A.C. Thus, the more descriptive term "default commodity sales service" is more appropriate. Similarly, the language contained in Proposed Rule 4901:1-19-01(I) describes exactly what Staff has proposed it be labeled – a competitive retail auction. OPAE's suggestions are unnecessary, would serve only to create confusion, and should be disregarded.

OPAE also proposes to include an additional definition of "willing buyer" to Proposed Rule 4901:1-19-01. OPAE does not, however, explain why such a definition is necessary. Columbia thus does not support OPAE's proposed addition of that definition.

The Office of the Ohio Consumers' Counsel ("OCC") proposes changes to the definitions of "choice-eligible customer," "default commodity sales service," and "exit-the-merchant function." OCC's proposed revisions, however, are not definitional changes, but substantive additions to the requirements to be imposed upon a natural gas company. For instance, OCC asks the Commission to redefine "choice-eligible customer" in a manner that would give the customer the right to affirmatively choose to be served by the natural gas company's default commodity sales services. (*See* OCC Comments at 6.) It would be inappropriate for the Commission to effect such drastic changes to the regulatory framework by way of definition. OCC's proposals, if adopted, should be included in a separate substantive section of the rules. Because Columbia believes, however, that allowing customers to affirmatively opt-in to a natural

gas company's default commodity sales service would lead to unfavorable uncertainty for natural gas companies, Columbia disagrees with the inclusion of OCC's proposals in any form.

2.1.2. Proposed Deletions

The Commission also has proposed to delete from Rule 4901:1-19-01 the definitions "four firm concentration ratio," previously defined in subsection (J), "Herfindahl Hirchman index (HHI)," previously defined in subsection (K), and "Lerner index," previously defined in subsection (L), because Staff no longer uses those measures to determine whether a competitive market exists.

OPAE and OCC argue that the Commission should retain the definitions and the measures themselves. Those specific measures, however, are not required by statute. And, some of the measures have fallen out of favor for use to determine market competition. Staff's proposal to delete those measures allows Staff to maintain flexibility by relying upon evidence presented by an applicant, rather than fixed formulae, to determine whether a competitive market exists. Columbia believes this is the correct approach. Columbia, therefore, continues to support Staff's decision not to utilize those measures any longer and supports their deletion from the Rule.

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.

OPAE opposes the proposed subsection because, it argues, the Commission has no authority to consider an application by a natural gas company to "exit the function of supplying natural gas to customers." Although Columbia suggests that the Commission clarify the statutory authority for its proposed exit-the-merchant-function rules, Columbia disagrees with OPAE's characterization of the exit-the-merchant function and the Commission's authority. Columbia reiterates that it supports the proposed subsection, provided that the new rules make clear that only a natural gas company may file such an application.

2.2.2. 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. OCC recommends that the Commission incorporate the "good cause shown" standard and associated factors presently included in Rule 4901:1-19-03, with the addition of a sixth requirement that "[t]he request for waiver does not involve a requirement mandated by statute." Columbia agrees with Staff's proposal to simplify the standard the Commission utilizes to decide whether to waive a requirement of Chapter 4901:1-19, O.A.C. Accordingly, Columbia opposes OCC's proposed amendments to this subsection.

2.2.3. OCC's Proposed Subsections (E), (F), and (G)

OCC also proposes to include a number of additional procedural requirements that an applicant seeking a waiver must satisfy, including a deadline by which a natural gas company filing an alternative rate plan must request waivers. OCC's proposals would unnecessarily complicate and burden the waiver process. Moreover, OCC's proposals do not comport with the spirit of Am. Sub. H.B. 95, which sought to streamline and simplify the alternative rate plan application process. Columbia respectfully requests that the Commission reject OCC's proposed additions.

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.

OCC proposes to incorporate requirements from the Commission's existing rules that would obligate Staff to use measures like the HHI, Four Firm Concentration Ratio, and the Lerner Index in assessing whether a competitive market exists. For the reasons discussed in Section 2.1.2, *supra*, OCC's proposal should be rejected. Commission Staff appropriately recommended that the Commission be allowed to consider other empirical data in making its market competitiveness determination. OCC's proposed addition would only serve to make the Commission's determination more burdensome and less efficient.

2.3.1. Subsection (C)(2)

OPAE proposes that Proposed Rule 4901:1-19-03(C)(2) contain language that the phrase "the Commission's previous precedent" does not include Opinions and Orders or Findings and Orders in which the Commission ruled on stipulations and recommendations. Columbia disagrees with OPAE's blanket proposal. Parties to a stipulation are free to decide whether or not to include language in a stipulation prohibiting the later use of a stipulation, or a ruling on a stipulation, as precedent. The Commission recognizes and upholds such provisions when they are included in an agreement. Where the parties to a stipulation do not include such language, that stipulation should be permitted to be considered as Commission precedent. Thus, a blanket rule prohibiting consideration of any stipulation as precedent is inappropriate.

2.3.2. Subsection (C)(4)

OPAE suggests to revise the rule such that a natural gas company that files an exemption application would be required to include "data on the reduction in costs provided to customers through market-based offers compared to regulated rates or rates set through a standard service offer during the prior five years * * *." (OPAE Comments at 5.) Columbia does not support this suggestion because such a showing may not be feasible. After a market rate is adopted, there may no longer be a regulated rate with which the market rate can be compared. And, even if a regulated rate did exist, it might not be a fair comparison because the regulated rate may be influenced by the existence of the market-based rate. In other words, the regulated rate may be affected by the smaller number of customers paying the rate due to the existence of a market-based rate. OPAE's suggestion, therefore, should not be incorporated into the rule.

2.3.3. Subsection (C)(6).

OPAE proposes to add a rule to subsection (C)(6) that would prohibit affiliated retail natural gas suppliers from using any portion of a regulated entity's name and would prohibit a non-affiliated supplier from licensing a regulated entity's name. OPAE's proposal is beyond the scope of this rulemaking. Indeed, the issues OPAE's proposal attempts to address are the subject of a pending complaint proceeding. *See Office of Consumers' Counsel v. Interstate Gas Supply dba Columbia Retail Energy*, Case No. 10-2395-GA-CSS. These

issues are better dealt with in that proceeding, and by ensuring that retail natural gas suppliers provide customers with clear and adequate disclaimers.

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

Proposed Rule 4901:1-19-04 sets forth suggested 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.

OPAE contends that subsection (B) should make hearing on an exemption application mandatory regardless of the size of the utility or the number of customers it serves. This is contrary to statute, *see* R.C. 4929.04, and also a waste of resources in those instances where the Commission, in its discretion, determines that it can develop an adequate record without a costly and time-consuming hearing. Columbia, therefore, does not support OPAE's suggestion.

2.5. Proposed Rule 4901:1-19-05

Proposed Rule 4901:1-19-05 contains filing requirements and procedures that applicants seeking to exit the merchant function would be required to follow.

OCC again proposes to add additional requirements and showings an applicant would have to satisfy to demonstrate its entitlement to exit the merchant function. Columbia believes OCC's proposed requirements unnecessarily complicate and burden the process and conflict with the intent of Am. Sub. H.B. 95 to streamline and reduce the paperwork necessary to file an alternative rate plan application. For this reason, Columbia does not support OCC's proposed changes.

OPAE proposes to revise Proposed Rule 4901:1-19-05(C)(3) to require an application to "identify all costs associated with providing the existing standard service offer, which offset any cost associated with implementing the new plan," and states that such language will "ensure that customers do not continue to pay in rates for processes that will no longer exist." (OPAE Comments at 8.) This proposal, however, is inappropriate. Natural gas companies necessarily incur costs that they must recover over a number of years, sometimes even after the process for which they incurred the cost ceases to exist. Such costs are appropriate and are incurred for the benefit of customers; accordingly, they

should be recoverable. Columbia therefore disagrees with OPAE's proposed revision.

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

Proposed Rule 4901:1-19-07 sets forth proposed alternative rate plan application procedures. Columbia reiterates that the proposed procedures should conform to Am. Sub. H.B. 95.

OPAE proposes that subsection (D) of the proposed rule be modified to require a mandatory hearing on all alternative rate plan applications. For the reasons discussed in Section 2.4, *supra*, this proposal should be rejected.

2.7. 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.

The Ohio Gas Marketers Group ("OGMG") proposes to shorten the time allowed for an applicant to withdraw its application after the Commission issues its Final Order from one month to one week. A one-week period would not allow a natural gas company sufficient time to meaningfully consider and analyze a Final Order to determine whether withdrawal is necessary. For this reason, Columbia disagrees with OGMG's proposal.

2.8. 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.

OPAE proposes to delete Proposed Rule 4901:1-19-09 entirely because, in OPAE's view, it will incentivize a customer who does not want to shop to not

pay their bill so that they become "choice-ineligible." Columbia believes that this concern will be resolved if, as Columbia proposes in its Initial Comments, the Commission removes the distinction between choice-eligible and choice-ineligible customers and makes the exit-the-merchant-function rules applicable to both types of customers. (*See* Columbia Comments at 2.)

OCC again proposes to unnecessarily complicate and burden the alternative rate plan process by proposing to impose the procedural requirements of a base rate proceeding on an alternative rate plan application proceeding. As Columbia has stated a number of times throughout these reply comments, OCC's proposals contravene the intention of Am. Sub. H.B. 95 and the very purpose of the alternative rate plan process. Thus, OCC's proposed procedural requirements should be rejected. Columbia also notes that OCC's proposed requirements relate to alternative rate plan applications generally, not only to applications to exit the merchant function, and, therefore, are not appropriate for inclusion in Proposed Rule 4901:1-19-09 on that basis.

2.9. 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 rate plan.

OCC contends, *inter alia*, that the Proposed Rule's eight-year limitation for seeking modification or abrogation of an exemption order is "arbitrary." That limit, however, is specified by statute. *See* R.C. 4929.08. OCC's proposal to delete subsection (A)(2) of the proposed rule should therefore be denied.

OCC also proposes, in numerous places throughout its initial comments, that discovery should be permitted to be served to other parties in an alternative rate plan proceeding until the day the hearing begins. (*See* OCC Comments at 22, 27, 36.) Columbia believes that there is no need for a special discovery rule in alternative rate plan cases. In fact, Columbia suggests that discovery should not be permitted unless and until the Commission determines that a hearing will be conducted in any given proceeding. "[T]he full discovery process [is] normally reserved for cases where a hearing is required." *In the Matter of the Implementation of the Federal Communication Commission's Triennial Review Regarding Local Circuit Switching in the Mass Market*, Case No. 03-2040-TP-COI, Entry on Rehearing, ¶8 (Oct. 28, 2003). Regardless, the Commission's normal procedural rules are more than sufficient and allow parties more than enough time to conduct thorough discovery. Hearings will proceed more smoothly and efficiently if the parties are

not harassed by having to respond to discovery requests while they contemporaneously adjudicate alternative rate plan applications.

3. CONCLUSION

For all of these reasons, as well as the reasons set forth in its Initial Comments, Columbia respectfully requests that the Commission consider its comments and adopt the amendments Columbia suggests.

Respectfully submitted by
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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of February, 2012, true and accurate copies of the foregoing Reply 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 Reply Comments of Columbia Gas of Ohio, Inc. electronically filed by Ms. Christen M Moore on behalf of Columbia Gas of Ohio, Inc.