

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**SUPPLEMENTAL REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") submits these Supplemental Reply Comments on Proposed Rules that would establish one possible way that consumers will be provided with natural gas commodity service in the future. The Proposed Rules address applications for alternative regulation, for exempting commodity sales service from other rate provisions and for exit-the-merchant-function cases. An exit-the-merchant function case, in particular, would eliminate a consumer option to purchase natural gas through the utility.

On August 1, 2012, Columbia Gas of Ohio, Inc. ("Columbia"), Dominion East Ohio ("Dominion"), Duke Energy Ohio, Inc. ("Duke") and Vectren Energy Delivery of Ohio ("Vectren") (collectively the "Utilities") jointly filed an Application for Rehearing. On August 10, 2012, OCC and OPAE filed a Memorandum Contra Application for Rehearing. On August 22, 2012, the Commission issued an Entry denying the Utilities' Application for Rehearing,¹ but accepting their filing as Comments on the revised Staff's

¹ Entry at 4 (August 22, 2012).

recommended changes to the Commission's rules.² In addition, the Commission offered other interested parties the opportunity to file additional comments on September 4, 2012, and reply comments on September 11, 2012.³ OCC hereby replies to the Application for Rehearing ("Comments") filed by the Utilities in this proceeding on August 1, 2012.

II. REPLY COMMENTS

The Utilities took exception to the following of the PUCO Staff's Proposed Rules: 4901:1-19-06(C)(1), 4901:1-19-06(C)(2), 4901:1-19-06(C)(3) and 4901:1-19-07(C). The reason given by the Utilities is that the Proposed Rules conflict with the law. The Utilities state:

The rules in question (4901:1-19-06(C)(1), -06(C)(2), -06(C)(3), and -07(C)) would essentially require utilities to prepare and file a base rate case as a condition of filing an alternative rate plan. Not only is this contrary to the procedures established by law, but the substantial costs imposed by these rules will discourage utilities from even availing themselves of the opportunities the legislature plainly desired to afford them under the statute.⁴

The Staff has appropriately drafted the Proposed Rules. The Utilities' claim that the Staff has proposed rules that are in conflict with the law. But such a conflict does not exist.

The Proposed Rule 4901:1-19-06 pertains to "[f]iling requirements for alternative rate plan applications filed pursuant to section 4929.05 of the revised code." R.C. 4929.05 (A) states: "A natural gas company **may** request approval of an alternative rate plan **by filing an application under section 4990.18 of the revised code** regardless of

² Entry at 4 (August 22, 2012).

³ Entry at 4 (August 22, 2012).

⁴ Comments at 1 (August 1, 2012).

whether the application is for an increase in rates.”⁵ R.C. 4929.051(B) codifies the only circumstance in which an alternative rate plan is considered an application not for an increase in rates. R.C. 4929.051(B) states: “An alternative rate plan filed by a natural gas company under section 4929.05 of the Revised Code and seeking authorization to continue a previously approved alternative rate plan shall be considered an application not for an increase in rates.” Under that circumstance, and only that circumstance, should a utility be able to avoid the filing of an application for an increase in rates under R.C. 4909.18. and avoid the requirement to submit as part of its application the contemplated materials under R.C. 4909.18 (A) through (D) as mandated by Staff’s Proposed Rule 4901:1-19-06(C)(1).

In all other circumstances, when a utility files an alternative rate plan, under R.C. 4909.18, as required by R.C. 4929.05, that filing is considered to be an application for an increase in rates. Furthermore, the Proposed Rule 4901:1-19-06(C)(1) appropriately establishes the necessary filing requirements for Staff and other interested parties to review such an application. The Staff Comments defend the Staff’s Proposed Rule by stating: “Alternative rate applications filed pursuant to Section 4929.05, Revised Code, must be filed pursuant to Section 4909.18, Revised Code, and the applicant must show that the plan is just and reasonable. Therefore, the information set forth in the rule is appropriate * * *.”⁶

Moreover, the Staff’s Proposed Rules are not inflexible. In the event the Utility is seeking reauthorization of an existing alternative rate plan pursuant to R.C. 4929.051, and the application is deemed to be not for an increase in rates, Staff’s Comments accurately

⁵ Emphasis added.

⁶ Entry at 25 (July 2, 2012).

point out that “if an applicant believes the information is not necessary for a particular filing, the applicant may file a request for waiver of the requirement pursuant to Rule 4901:1-19-02(D), O.A.C.”⁷ For these reasons, the Commission should reject the Utilities’ recommendation to change the Staff’s Proposed Rule 4901:1-19-06(C)(1).

The Staff’s Proposed Rules 4901:1-19-06(C)(2) and 4901:1-19-06(C)(3) are not impacted by the law, and should not be modified as the Utilities suggest. The requirements of Staff’s Proposed Rule 4901:1-19-06(C)(2) are specific filing requirements that the Staff proposes for an alternative rate plan recognizing that the applicant has the burden of proof to “document, justify, and support its plan.”⁸ The Staff’s Proposed Rule requires the following filing requirements for an alternative regulation plan:

(a) The applicant shall provide a detailed alternative rate plan, which states the facts and grounds upon which the application is based, and which sets forth the plan's elements, transition plans, and other matters as required by these rules. This exhibit shall also state and support the rationale for the initial proposed tariff changes for all impacted natural gas services.

(b) The applicant shall fully justify any proposal to deviate from traditional rate of return regulation. Such justification shall include the applicant's rationale for its proposed alternative rate plan, including how it better matches actual experience or performance of the company in terms of costs and quality of service to its regulated customers.

(c) If the alternative rate plan proposes a severing of costs and rates, the applicant shall compare how its proposed alternative rate plan would have impacted actual performance measures (operating and financial) during the most recent five calendar years. Include comparisons of the results during the previous five years if the alternative rate plan had been in effect with the rate or provision that otherwise was in effect.

⁷ Entry at 25 (July 2, 2012).

⁸ Staff’s Proposed Rules 4901-1-19-06(C)(2).

(d) If the applicant has been authorized to exempt any services, the applicant shall provide a listing of the services which have been exempted, the case number authorizing such exemption, a copy of the approved separation plan(s), and a copy of the approved code(s) of conduct.

(e) The applicant shall provide a detailed discussion of how potential issues concerning cross-subsidization of services have been addressed in the plan.

(f) The applicant shall provide a detailed discussion of how the applicant is in compliance with section 4905.35 of the Revised Code, and is in substantial compliance with the policies of the state of Ohio specified in section 4929.02 of the Revised Code. In addition, the applicant shall also provide a detailed discussion of how it expects to continue to be in substantial compliance with the policies of the state specified in section 4929.02 of the Revised Code, after implementation of the alternative rate plan. Finally, the applicant shall demonstrate that the alternative rate plan is just and reasonable.

(g) The applicant shall submit a list of witnesses sponsoring each of the exhibits in its application.

There is nothing in the Staff's Proposed Rule that imposes rate case filing requirements or could be considered to have been eliminated by the statute (R.C. 4929.05) as the Utilities argue.⁹ Therefore, the Commission should reject the Utilities' recommended changes to Staff's Proposed Rule 4901:1-19-06(C)(2).

The same argument holds true for Staff's Proposed Rule 4901:1-19-06(C)(3).

This rule states:

To the extent the applicant is seeking alternative forms of rate setting than that found in section 4909.15 of the Revised Code, the applicant should detail those commitments to customers it is willing to make to promote the policy of the state specified in section 4929.02 of the Revised Code. The extent of commitments specified should be dependent upon the degree of freedom from section 4909.15 of the Revised Code requested by the applicant

⁹ Comments at 2 (August 1, 2012).

There is nothing in the Staff's Proposed Rule that imposes rate case filing requirements or could be considered to have been eliminated by the statute (R.C. 4929.05) as the Utilities argue.¹⁰ The Staff is insisting upon commitments from the utility that will benefit customers in exchange for the utility's relief from regulations the Utilities deem to be: "costly, time-consuming, and burdensome to comply with."¹¹ Per the Staff's Proposed Rule, the extent of the commitment is dependent upon the extent to which the utility is free from the regulations under R.C. 4909.15.¹² Therefore, the Commission should reject the Utilities' recommended changes to Staff's Proposed Rule 4901:1-19-06(C)(3).

III. CONCLUSION

For all the reasons stated above, the Commission should reject the Utilities' recommended changes to the Staff's Proposed Rules.

¹⁰ Comments at 2 (August 1, 2012).

¹¹ Comments at 2 (August 1, 2012).

¹² Staff's Proposed Rule 4901:1-19-06(C)(3).

Respectfully submitted,

BRUCE J. WESTON
CONSUMERS' COUNSEL

/s/ Larry S. Sauer

Larry S. Sauer, Counsel of Record

Joseph P. Serio

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, 18th Floor

Columbus, Ohio 43215

(614) 466-1312 (Sauer)

(614) 466-9565 (Serio)

sauer@occ.state.oh.us

serio@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of these *Supplemental Reply Comments* have been served on the persons stated below via electronic service this 11th day of September, 2012.

/s/ Larry S. Sauer

Larry S. Sauer
Assistant Consumers' Counsel

PARTIES OF RECORD

Brooke E. Leslie
Stephen B. Seiple
Columbia Gas of Ohio, Inc.
200 Civic Center Drive
P.O. Box 117
Columbus, Ohio 43216-0117
bleslie@nisource.com
sseiple@nisource.com

Amy B. Spiller
Jeanne W. Kingery
Duke Energy Ohio, Inc.
139 East Fourth Street 1301-Main
P.O. Box 960
Cincinnati, Ohio 45201-0960
Amy.spiller@duke-energy.com

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45840
Cmooney2@columbus.rr.com

Mark A. Whitt
Andrew J. Campbell
Whitt Sturtevant LLP
PNC Plaza, Suite 2020
155 East Broad Street
Columbus, Ohio 43215
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com

William Wright
Chief, Public Utilities Section
Public Utilities Commission of Ohio
180 East Broad Street 6th Floor
Columbus, Ohio 43215
William.wright@puc.state.oh.us

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/11/2012 4:15:15 PM

in

Case No(s). 11-5590-GA-ORD

Summary: Comments Supplemental Reply Comments by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Sauer, Larry S.