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 THE OHIO GAS MARKETERS GROUP AND THE RETAIL ENERGY SUPPLY ASSOCIATION[1]

These reply comments are provided pursuant to the Public Utilities Commission of Ohio's ("PUCO" or "Commission") August 22, 2012 Entry in Case No. 11-5590-GA-ORD inviting comments from interested persons on Staff's revised recommended changes to the Alternative Rate Plan and Exemption Rules of the Ohio Administrative Code ("OAC").

Every five years Section 119.032, Revised Code, requires all state agencies to conduct a review of their rules and determine whether the rules duplicate, overlap with, or conflict with other rules, and whether the rules should be rescinded or amended in order to provide flexibility and eliminate unnecessary paperwork. Additionally, the Governor of the state of Ohio has issued Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative," which sets forth several factors to be considered in the review including a cost-benefit analysis of the rules and their effect on business growth.

In accordance with these directives, the Commission set forth deletions, amendments and additions to OAC 4901:1-19 which the Staff of the Commission believes are required to meet the

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[1] RESA's members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

mandates of Section 119.032, Revised Code and the Executive Order. On January 23, 2012, interested parties filed initial comments on the Staff's proposed changes, including Ohio Partners for Affordable Energy ("OPAE"), Office of the Ohio Consumers' Counsel ("OCC"), Duke Energy Ohio, Inc. ("Duke"), Columbia Gas of Ohio, Inc. ("Columbia"), and Vectren Energy Delivery of Ohio and The East Ohio Gas Company d/b/a Dominion East Ohio ("Vectren/DEO").

Pursuant to the Commission's November 22, 2011 Entry, the Ohio Gas Marketers Group[2] and the Retail Energy Supply Association ("Suppliers") presented their reply comments along with the reply comments filed by Vectren/DEO, Duke, Columbia, OCC and OPAE.

By Entry of July 2, 2012, the Commission directed the Staff to send its comment summary, revised recommended changes, and BIA evaluation to the Common Sense Initiative Office ("CSI") for review and recommendations in accordance with Section 121.82, Revised Code. On August 1, 2012, Columbia, Duke, Vectren/DEO filed a joint application for rehearing of the July 2 Entry. On August 10, 2012, OCC and OPAE filed a joint memorandum contra.

On August 22, 2012, the Commission issued an Entry indicating that it had not adopted the Staff's revised recommended changes and that the July 2, 2012 Entry was not a final appealable order. The Commission found that the joint application for rehearing was premature and therefore should be denied. However, the Commission found, in the interest of fairness, that it was appropriate to allow other interested parties to file comments on Staff's revised recommended changes to the rules, and, thereafter, to permit all parties to file reply comments.

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[2] The OGMG includes Commerce Energy of Ohio, Inc. d/b/a Just Energy; Constellation NewEnergy - Gas Division, LLC; Direct Energy Services, LLC; Hess Corporation; Interstate Gas Supply Inc.; Integrys Energy Services, Inc.; and SouthStar Energy Services LLC d/b/a Ohio Natural Gas. The comments provided by the OGMG represent the consensus of the suppliers, but does not necessarily reflect the opinion of each individual member as to each individual item addressed in these comments.

Comments on Staff's revised recommended changes were to be filed by September 4, 2012 with reply comments due by September 11, 2012.

Many of the members of the Ohio Gas Marketers Group and the Retail Energy Supply Association are certificated as Competitive Retail Natural Gas Service suppliers ("CRNGS") and they also conduct supply operations for non-Choice customers in the Ohio retail natural gas market. The Suppliers did not supplement their initial comments filed on January 23rd, but did review the four sets of supplemental comments that were filed by the Office of the Consumers' Counsel ("OCC"), Ohio Partners for Affordable Energy (OPAE), Columbia Gas of Ohio, and East Ohio/Vectren. The following reply comments are a consensus position of the Suppliers as to comments filed by OPAE and OCC, and as such do not necessarily represent the view of any particular member as to any particular rule.

I. ARGUMENT

A. Ohio law allows natural gas utilities to "exit the merchant function".

Suppliers wish to address initially the policy arguments asserted by OPAE against the Commission's authority to permit a natural gas company to exit the merchant function. The Commission's authority in this respect is clearly provided for in Section 4929.04, Revised Code which states that a natural gas company may exempt "all of a natural gas company's commodity sale service" from certain regulation by the Commission, provided that "all such customers reasonably may acquire commodity sale services from suppliers other than the natural gas company."[3] The General Assembly has made it clear that it is the policy of this state to promote "an expeditious transition to the provision of natural gas services and goods that achieves effective competition and transactions between willing buyers and willing sellers to reduce or

[3] R.C. §4929.04(D).

eliminate the need for regulation of natural gas services and goods…"[4] The "exit the merchant function" as provided for by the Commission's rules represents the fulfillment of the state policy by providing a defined path towards fully transitioning the obligation to supply default commodity sale service for Choice-eligible customers from the natural gas company to the competitive retail natural gas suppliers. OPAE's argument is out of step with the legislation passed by the General Assembly. To the extent that OPAE wishes to challenge existing statutes, the appropriate forum is the General Assembly, not an administrative agency rule-making intended to fulfill an existing legislative mandate.

At page 5 of its September 4, 2012 comments, OPAE asserts that allowing a utility to assign a customer to a retail supplier contravenes Section 4929.02(A)(7), Revised Code as that subsection permits only a "willing buyer" to be assigned. OPAE the expresses the belief that a customer that has not shopped should not be considered a "willing buyer" since the that customer had the opportunity to shop and did not. This analysis fails for two reasons. First, the phrase "willing buyer and willing seller" in Section 4929.02(A)(7), Revised Code is being used to define what constitutes a market transactions. It is not as OPAE implies a criteria to permit a utility to exit the merchant function. Second, the fact that a customer has neither shopped nor asked for the utility alone to be its supplier is not evidence that the customer opposes a supplier directly providing default natural gas supplies as opposed to the utility buying natural gas from a supplier and reselling such gas to the default customer.

What is clear in Section 4292.02(A)(7) is that the General Assembly has directed the Commission to "promote an expeditious" transition from a price regulated default natural gas supply to a market priced default natural gas supply. Thus, the major issue to be addressed in this

[4] R.C. §4929.02(A)(7).

proceeding is the mechanics of establishing rules on the Exit the Merchant Function which will produce the most efficient and cost effective method of transferring the outsourcing of gas supplies for the default service to reduce or eliminate the need for regulation of natural gas services and goods .

For local distribution service areas in which there is only a small percentage of the load still taking default natural gas commodity service, it is more cost effective and efficient to match default customers directly to suppliers who will provide them natural gas at a market price rather than implementing an elaborate and costly supply auction.[5] Exiting a merchant function promotes the state natural gas policy in a way that is cost efficient for customers who have not made an affirmative election to leave default service by removing costs for auctions, administration of auctions and subsidies that flow to support the process for a non-market based offer. OPAE's attempt to characterize these customers as potentially "unwilling" customers and to create an option to allow customers to "opt-in" to default service should be rejected as it undermines the state policy of promoting a competitive de-regulated natural gas market. Finally OPAE's characterization as "unwilling" is factually inaccurate. None of the customers affected by the rule affirmatively selected or enrolled for default service the nature of default service itself is to provide service to customers who made no choice. The purpose of an exit is to maintain default service through a market based means. The characterization of the default customers is they have not acted but have a fundamental right to receive service.

Finally, it should be recognized that OPAE's argument runs counter to existing Commission decisions. Whether or not a default service customer must affirmatively elect to receive natural gas from a supplier other than the utility has already been resolved in each of the

[5] To the extent any default customer does not wish to purchase from the supplier they are matched with, they are able to transfer to a new supplier at the next billing cycle.

three utilities (East Ohio Gas Company, Vectren Energy Delivery Ohio and Columbia Gas of Ohio who have moved to assignment of customers through an SCO.

B. The Ohio Consumers' Counsel's (OCC's) proposed amendments to Rules 4901:1-19-04 and 4901:1-19-05 are unnecessary and contrary to the Commission's goal in this rule-making proceeding.

OCC, throughout its September 4, 2012 supplemental comments, attempts to make applications to exit the merchant function and applications for exemptions more burdensome by amending the rules to add additional procedural steps and evidentiary requirements. The Commission's ultimate goal in reviewing Chapter 4901:1-19 of the Ohio Administrative Code is to eliminate or amend overly burdensome, costly and redundant rules.[6] It is the policy of this state to promote the expeditious transition to a fully competitive retail natural gas market.[7] Instead of promoting these goals, the OCC's proposed amendments would discourage the process of exiting the merchant function by increasing the cost and expense for all parties involved. Suppliers, on the other hand, encourage the Commission to implement a more skeletal structure of the rules in Chapter 4901:1-19 of the Ohio Administrative Code in order to reduce unnecessary expense, decrease the burden on the applicant, and allow the Commission flexibility in applying state law and policy. To the extent additional procedural safeguards or evidentiary requirements are necessary, the Commission retains the flexibility to implement additional procedures on a case-by-case basis.

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[6] See R.C. §Section 119.032(C) and Executive Order 2011-01K.

[7] R.C. §4929.02(A)(7).

II. CONCLUSION

For the foregoing reasons, the Suppliers respectfully request that the Commission reject the OPAE position set forth in its September 4, Additional Comments at pages 2-6 and the OCC position set forth in its September 4, 2012 Supplemental Comments at pages 4-13.

Respectfully submitted,

M. Howard Petricoff

Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
614-464-5414
mhpetricoff@vorys.com

Attorneys for the Ohio Gas Marketers Group and the Retail Energy Supply Association

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served via electronic mail this 11th day of September, 2012.

M. Howard Petricoff

Amy.spiller@duke-energy.com
Jeanne.kingery@duke-energy.com
Carys.cochern@duke-energy.com
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com
sauer@occ.state.oh.us
bingham@occ.state.oh.us
mallarnee@occ.state.oh.us
sseiple@nisource.com
bleslie@nisource.com
bmoss@nisource.com
cmacdonald@nisource.com
Cmooney2@columbus.rr.com
William.wright@puc.state.oh.us
cmoore@porterwright.com
mandy.willey@puc.state.oh.us