BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of its Rules for Competitive Retail Natural Gas Service Contained in Chapters 4901:1-27 Through 4901:1-34 of the Ohio Administrative Code	)))))	Case No. 12-925-GA-ORD

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

In accordance with the Commission's November 7, 2012 Entry in this case, The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") and Vectren Energy Delivery of Ohio, Inc. ("VEDO") (collectively, "the Companies") file their initial comments to Staff's proposed revisions of Ohio Adm. Code Chapters 4901:1-27 through 4901:1-34.

I. COMMENTS

A. Rule 4901:1-27 Certification of Governmental Aggregators and Retail Natural Gas Suppliers.

1. 4901:1-27-03 General prohibitions

Paragraph (A): The Companies believe that the Commission should consider limiting CRNGS certificates to one participant/affiliate per company unless the separate certificates apply to distinct residential and non-residential customer classes. Doing so will reduce customer confusion, provide greater transparency in the marketplace, and avoid the duplicative costs of administering the customer choice program through multiple suppliers that could operate as one.

2. 4901:1-27-05 Application content

Paragraph (B)(2): The Companies believe that section (B)(2), which pertains to retail aggregators and brokers, should contain requirements similar to (B)(1)(f), requiring the

disclosure of prior and regulatory or legal actions; previous termination, revocation or suspension; and pending legal action.

The Companies also propose that sub-headings (a), (b), and (c) should be in the same order in both (B)(1) and (B)(2).

3. 4901:1-27-07 Motions

Paragraph (B): The Companies would note that the provisions regarding pro hac vice admission could be rendered obsolete if the referenced rule is renumbered. To avoid this problem, the Companies propose that the rule could merely require that motions "include all the information and documents required by the applicable Supreme Court Rules for the Government of the Bar of Ohio."

4. 4901:1-27-11 Material changes in business

Paragraph (A): The Companies propose that a competitive retail natural gas supplier ("CRNGS") should notify the Commission *and* the incumbent utility no less than 30 days *prior to* the effective date of a material change, not within 30 days after it occurs. CRNGS changes can impact customers and create customer-relations issues, and without notice, this potentially leaves the LDC (who frequently must serve as a *de facto* mediator between CRNGS and their customers) in a position of ignorance regarding the actual status of the CRNGS.

Paragraph (B)(10): To avoid similar customer confusion as that discussed in the preceding paragraph, suppliers should also be required to notify customers of any change in name and to provide this notice to the incumbent utility in advance.

5. 4901:1-27-12 Transfer or abandonment of a certificate

Paragraph (B)(4): The Companies agree with this paragraph that the incumbent utility is *not* obligated to provide CRNGS notices on utility billing statements. The rule correctly provides that the supplier or aggregator "may negotiate with the incumbent utility" to do so.

6. 4901:1-27-13 Certification suspension, rescission, or conditional rescission

Paragraphs (B) and (D): The Commission should also notify the incumbent utility of any suspension or rescission action because the utility will need adequate time to make appropriate changes in its billing system.

Paragraph (B)(2): In addition to other obligations, suspended suppliers or aggregators should also be obligated to continue to comply with all agreements with the incumbent utility.

Paragraph (B)(4): The Companies believe that it is vital for the utility have the ability to recall capacity from a defaulting supplier in order to deliver supplies to meet the customers' demand as soon as possible to protect the integrity of the system. This is particularly the case for companies, like VEDO, that do not balance their own systems. For example, because VEDO holds none of its own capacity, if a given supplier defaults, it will automatically begin placing burdens on the capacity reserved by other suppliers and withdrawing directly from those suppliers' accounts. This creates the possibility of both system operational issues and financial disputes. For these reasons, the Companies propose reducing the applicable time periods in this rule from "five business days" and the "sixth business day" to "three business days" and "the fourth business day," respectively.

Paragraph (B)(6): The Companies propose that the Commission provide a single, central physical and email address for the notice required under this paragraph. The current rule requires individual notice upon ten individuals. A single address would provide for more efficient notification.

Paragraph (F)(5): It is not clear, but the Companies note that the cross-reference to paragraphs (F)(2) and (3) may be incorrect. It seems possible that the cross-reference should be to paragraphs (F)(3) and (4).

7. 4901:1-27-14 Financial security

Paragraph (D): DEO's Commission-approved Energy Choice Pooling Service ("ECPS") agreement addresses creditworthiness (and other default) issues. Natural gas companies should be allowed to terminate pooling service under the terms of such agreements *without* applying to the Commission for relief if the supplier fails to maintain sufficient financial security. The proposed rules (paragraph (C)) appear to allow a CRNGS to seek pre-enforcement review of those requirements. That being the case, DEO believes that the rules should allow LDCs to enforce these requirements without application to the Commission and instead should put the burden on the CRNGS to apply for relief if it is aggrieved.

B. 4901:1-28 Aggregation with prior consent

1. 4901:1-28-01 Definitions

Paragraph (C)(2): With respect to the definition of "eligible customer," the Companies agree with the decision to remove the reference to "the effective date of the ordinance or resolution authorizing the aggregation." LDCs have no practicable way to know whether a customer was receiving CRNG service on that date.

2. 4901:1-28-04 Opt-out disclosure requirements

Paragraph (A)(1): The Companies would note that the word "envelope" is misspelled "envelop."

Paragraph (D): It appears that the word "unless" needs to be added before the word "pursuant"; otherwise, the rule appears to prohibit the release of customer information under a court or Commission order, which would seem to be an unintended result.

Paragraph (D)(2)(b): The word "that" appears to be missing between the words "text" and "shall."

3. 4901:1-28-05 Cooperation between natural gas companies and certified governmental aggregators

Paragraph (D): A new paragraph (D) should be added stating that governmental aggregators should be required to notify the incumbent utility of any change in suppliers at least 30 days prior to the change and to provide it with copies of any notices sent to customers informing them of the change. This will ensure that any such change in supplier is implemented in a timely and efficient manner and with the customers' prior knowledge thereby reducing customer confusion.

C. 4901:1-29 Minimum Standards for Competitive Natural Gas Service

1. 4901:1-29-01 Definitions

Paragraph (F): The Companies recommend that the definition of "Complaint" should be expanded or clarified to include contacts that require follow-up by a natural gas company as well. CRNGS complaints are frequently initiated with the incumbent utility rather than the Commission or the CRNGS. Relatedly, the term "retail natural gas company" used in this definition is itself undefined and hence vague. It is not clear whether it refers to (what is elsewhere defined as) a "natural gas company," a "retail natural gas supplier," or both.

Paragraph (N)(2): With respect to the definition of "eligible customer," as noted above, the Companies agree with the decision to remove the reference to "the effective date of the ordinance or resolution authorizing the aggregation." LDCs have no practicable way to know whether a customer was receiving CRNG service on that date.

2. 4901:1-29-02 Purpose and scope

Paragraph (A)(3)(c): The Commission should include "misleading" in the list of prohibited practices as it has elsewhere in the proposed rules. *See, e.g.*, Proposed Rule 4901:1-29-03(A) & 4901:1-29-10(A).

3. 4901:1-29-03 General provisions

Paragraph (E): The Companies recommend that this rule should require the CRNGS to provide the incumbent natural gas company with the contact information for the individual who responds to Commission concerns pertaining to consumer complaints. The Companies have at times found it difficult to obtain this information, which has delayed or hindered the investigation of customer complaints. The rule should be amended to require service of any change in contact information to the LDC.

4. 4901:1-29-05 Marketing and solicitation

Paragraph (A)(2)(a): Based on their own review of several past CRNGS agreements, the Companies question whether all suppliers are consistently including "a clear and understandable explanation of the factors that will cause the price to vary." The Companies recommend that the Commission should either enforce this provision or delete it. The Companies also believe that the Commission should clarify whether this provision applies to competitive MVR prices.

Paragraph (C): Complaints received by the Companies indicate that certain suppliers occasionally exert undue pressure on customers to sign up or use other questionable tactics. The Companies agree with the amendment to the rule that specifically prohibits implying or stating that a CRNGS is an agent or soliciting on behalf of an incumbent natural gas company. In addition, based on complaints it has received, the Companies recommend that the Commission should consider including the following additional acts in its list of prohibited practices:

- Implying or stating that the CRNGS is affiliated with the LDC.
- Implying or stating that the LDC endorses the supplier's advertising or marketing offer to customers.
- Demanding to see the customer's gas bill.
- Continuing solicitation after the customer has stated that they wish to end the conversation.

- Requesting to enter a customer's home.

5. 4901:1-29-06 Customer enrollment

Paragraph (B): The cross-reference to paragraphs (D), (E), and (F) should now be to (C), (D), and (E) due to the elimination of the former paragraph (C).

Paragraph (C)(6): The Companies recommend that an amendment to this rule require the supplier to terminate the solicitation and not contact the customer again for another 90 days, or similar period, upon being informed that the customer is not interested in receiving the supplier's CRNG service.

Paragraph (C)(6)(b): The Companies support the proposed change to require third-party verification for 100 percent of enrollments instead of 50 percent as required under the prior version.

Paragraph (C)(6)(d): The Companies note that the sub-heading for this rule would more appropriately be entitled "Identification," rather than "Uniform." Alternatively, the rule could be stated without a sub-heading.

Paragraph (I): The provision for customers to request an actual meter reading should be consistent with the minimum gas service standards, and it may be necessary to update the cross-reference in the excerpt below, from Rule 4901:1-13-04:

> (5) Upon the customer's request, and in addition to the requirements of paragraph (G)(1) of this rule, the gas or natural gas company shall provide two actual meter readings, without charge, per calendar year. 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 cycles consecutively or if the customer has reasonable grounds to believe that the meter is malfunctioning. *Nothing in the preceding sentence is intended to limit a customer's ability to obtain a meter reading prior to transferring service to a new retail natural gas supplier or governmental aggregator as provided by paragraph (J) of rule 4901:1-29-06 of the Administrative Code.*

(6) Each gas or natural gas company is required to do an actual meter reading at the initiation and/or the termination of service if the meter has not been read within the immediately preceding seventy days and access to the meter is provided.

6. 4901:1-29-08 Customer access and complaint handling

Paragraph (B): The Companies propose that this rule include a provision, either as part of (B)(6) or as a new paragraph (B)(7), that states that Staff shall inform the incumbent utility about the resolution of any CRNGS-related complaints where it has reason to believe that doing so may help the utility respond to similar customer inquiries or complaints. Such a rule would enable the incumbent utility both to have greater awareness of CRNGS issues that may arise involving its customers and to help resolve those issues in a manner consistent with Staff.

Paragraph (C)(3): The Companies recommend that this rule clarify that the incumbent utility may refer complaints to Staff where appropriate, *e.g.*, if the CRNGS is not cooperative with the resolution process.

Paragraph (D)(5): This rule provides that a customer who was switched without authorization and is then switched back to its previous supplier may not be charged a penalty. The Companies recommend that this provision also require that the previous supplier not charge an early termination fee.

7. 4901:1-29-09 Customer information

Paragraph (C)(5): The Companies recommend that natural gas companies should only be required to inform customers of their right to opt-off of customer lists twice per year instead of the current four times per year. Provision of these notices as separate mailings is costly and providing such notices on bills can interfere with the provision of other notices. The Companies do not believe that the benefits match the costs. Because the customer choice programs have been in existence for numerous years, providing the notice twice per year should be sufficient to

ensure that customers are aware that they may choose to be excluded from such lists. Among other things, the Companies have not observed any uptick in opt-outs following the provision of quarterly notices.

Moreover, the Companies also note that the rule requires issuance of a notice "[p]rior to issuing any eligible-customer lists." The Companies would note that, for some LDCs at least, eligible-customer lists are issued *on request*, and it is possible that numerous requests could be received in any particular year (or even month). Requiring a systemwide notice each time such a request is received would only increase the financial and opportunity costs, and it seems certain that the benefits of such a repetitive, formulaic notice would be far outweighed by those costs.

In addition to these cost-benefit concerns, the Companies find that the meaning of this rule is not clear—specifically, *when* the "prior to issuance" notice would be required and whether the quarterly or biannual notice would satisfy this requirement. For example, if a scheduled notice were provided in February, and a company issued a list on request in March (or April, May, etc.), would the scheduled notice satisfy the "prior to issuance" requirement? Given the significant costs and questionable benefits provided by this requirement, the Companies strongly suggest limiting the notice requirement to twice per year.

8. 4901:1-29-10 Contract administration and renewals

Paragraph (D)(1)(a): The current rule requires 14 days' notice to the service monitoring and enforcement department before an assignment may be valid. The Companies recommend that notice of contract assignment should also be provided to the incumbent utility and should be given at least 30 days prior to the assignment becoming effective.

Paragraph (D)(1)(b): Any prior written notice to be sent to a customer should also be sent to the incumbent utility so that the utility may be prepared to respond to customer inquiries.

9. 4901:1-29-11 Contract disclosure

Paragraph (J)(2)(b): The Companies note that this section now deletes the requirement that certain statements be "clear and understandable," although the "clear and understandable" requirement still applies under 4901:1-29-05(A)(2)(a). The Companies are not certain whether this difference is intentional. As noted before, based on its own review of several past CRNGS agreements, the Companies question whether all suppliers are consistently including "a clear and understandable explanation of the factors that will cause the price to vary." The Companies recommend that the Commission should either enforce this provision or delete it. The Companies also believe that the Commission should clarify whether this provision applies to competitive MVR prices.

10. 4901:1-29-12 Customer billing and payments

Paragraph (A): This rule requires a CRNGS or aggregator to make certain demonstrations to the incumbent utility and to the Commission before it may bill for consolidated services. In addition to this requirement, the Companies believe that this rule should expressly clarify that an incumbent utility is not obligated to allow a supplier to bill for consolidated services absent a requirement that the supplier assume the entire receivable risk with no authority to arrange for a disconnection.

Paragraph (G)(1): The Companies recommend that this rule clarify that an incumbent utility, billing on behalf of a supplier, must be permitted to impose reasonable limits on the maximum number of rates per supplier and the minimum number of customers to be billed under a rate.

D. 4901:1-32 Determination of Allowable Capacity and Commodity Costs

1. General comment.

The Companies believe that this rule should make clear that nothing in the rule precludes a natural gas company from mandatorily assigning capacity to retail gas suppliers pursuant to a Commission-approved tariff or agreement.

2. 4901:1-32-03 Filing and contents of requests for recovery of capacity and commodity costs

Paragraph (B): The Companies believe that the requirement of "a fully documented" analysis is vague and potentially overbroad, particularly given that it is in addition to other "documentation" requirements in the rule (*e.g.*, requiring workpapers, testimony). The Companies suggest that replacing this phrase with the phrase "an appropriately supported" would be more reasonable and would remain accurate to the rule's apparent intent.

E. 4901:1-33 Not-for-Profit Customer Declarations of Mercantile Status

1. 4901:1-33-01 Not-for-profit customer declarations of nonmercantile status

Paragraph (A): The Commission should consider whether this section is needed any longer. For example, in the five years since its effective date, DEO had only one customer refer to this section during the very first NOPEC aggregation. That customer did not file a declaration of NMS.

II. RESPONSES TO QUESTIONS POSED BY THE COMMISSION

1. Among other things, the Commission asked: Would sales agents be less incentivized if they were employees of the seller and/or provided with some level of base salary?

The Companies believe that when agents are compensated primarily or exclusively on a commission basis, it would seem to increase the likelihood that those agents will find incentive to take unfair advantage of potential customers through deceptive sales practices. Thus, it is

possible that sales agents would be less incentivized if they were employees of the seller and/or provided with some level of base salary.

2. Should aggregation incentives, such as financial contributions to the community, be disclosed in these opt-out notices or is media coverage of aggregation incentives adequate?

The Companies have no comments at this time.

3. Should the Commission's rules regulate the availability of certain lengths and types of contracts for certain customer classes. Should the Commission's rules require a supplier to disclose all inducements to contract?

The Companies have no comments at this time.

4. Should Rule 4901:1-29-06(E) require the sales-pitch segment of marketer calls to be recorded? Should the rules be clarified to require greater customer protections?

Yes. The Companies believe that the rule should require the sales pitch segment of the call to also be recorded. Recording of the sales pitch would provide the means to verify customers' complaints of being misled or of unduly aggressive sale tactics.

5. Are there best practices from other states that should be incorporated in the rules to facilitate the promotion of adequate, reliable, and reasonably priced natural gas services and goods? Should normalized supplier complaint data be added to the Apples to Apples chart, identifying the numbers and types of consumer complaints received by the commission's call center?

The Companies have no comments at this time.

6. Rule 4901:l-29-05(A)(2), O.A.C, identifies the information that must be included in variable-rate offers. In addition to or in substitution for this rule requirement, should "variable rate" be a defined term and include reference to the indices that the supplier is using as the basis for price, such as the NYMEX?

The Companies believe that both "variable rate" and "monthly variable rate" should be defined terms and should include reference to the indices that the supplier is using as the basis for the price if the supplier is using such indices as the basis for the price.

7. In issuing these rules for comment, there has been an attempt to harmonize the rules governing gas and electric suppliers. Are there additional revisions necessary?

The Companies have no comments at this time.

8. Are additional rules necessary to protect customers as local distribution companies begin to exit the merchant function?

The Companies agree that customers should be well-educated on the effects of local distribution companies exiting the merchant function, comparative commodity prices, and the options they have to choose their gas supplier. But the Companies do not believe that additional rules are necessary, beyond the revisions proposed above. The current rules, combined with the availability of complaint procedures, provide sufficient protection at this time. If specific issues come up following any exits (*e.g.*, are identified through recurrent complaints), that would be an appropriate time to consider additional regulations. Imposing additional rules in the absence of such a showing seems likely to multiply the amount of regulations and time and costs necessary to assure compliance, with little assurance that the rules will in fact mitigate or prevent any actual harms.

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Respectfully submitted,

/s/ Andrew J. Campbell

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Initial Comments was served by electronic mail this 7th day of January, 2013 to the following:

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Summary: Comments Joint Initial Comments on Behalf of The East Ohio Gas Company d/b/a Dominion East Ohio and Vectren Energy Delivery Ohio, Inc. electronically filed by Mr. Andrew J Campbell on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio and Vectren Energy Delivery of Ohio