

**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.

**APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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January 11, 2013

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The Office of the Ohio Consumers’ Counsel (“OCC”) applies for rehearing of the December 12, 2012 Finding and Order (“Order”) issued by the Public Utilities Commission of Ohio (“Commission” or “PUCO”). In the Order, the PUCO adopted rules applicable to requests by public utilities to eliminate their standard offers for sale of natural gas to customers including residential customers,¹ to apply for exemption (to transition to an auction from the gas cost recovery regulation),² or to request alternative regulation³

Through this Application for Rehearing, OCC seeks to protect all the residential natural gas utility customers by assuring the Amended Rules include sufficient due process protections and procedural safeguards that assure an appropriate review of natural gas utility’s application filed pursuant to R.C. 4929.04 and R.C. 4929.05. In the Order, the PUCO rejected requests to provide due process rights beyond what was decided.

¹ Amended Rule 4901-1-19-05.

² Amended Rule 4901-1-19-04.

³ Amended Rule 4901-1-19-06.

Pursuant to R.C. 4903.10 and Ohio Adm. Code 4901-1-35, the Entry was unjust, unreasonable and unlawful in the following regards:

- A. The Commission erred by failing to assure due process rights are adequately protected under the Amended Rules in cases involving an application to exit the merchant function.
 - 1. The proposed procedural rules for exit cases should be improved to require sufficient due process protections for consumers.
 - 2. The Amended Rules contain due process protections for an exemption application that are not included for an Exit application, such inconsistency in the Amended Rules is unreasonable
 - 3. It was unreasonable for the Commission not to adopt OCC's recommended modifications to the Amended Rules

The reasons for granting this Application for Rehearing are set forth in the attached Memorandum in Support. Consistent with R.C. 4903.10 and the OCC's claims of error, the PUCO should modify its Order.

Respectfully submitted,

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/s/ Larry S. Sauer

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Commission’s rules under review would determine the process in a case involving how consumers will be provided natural gas commodity service upon the transfer of the obligation to supply default commodity sales service for choice-eligible customers. Such a case would involve eliminating the customers’ option of purchasing their natural gas commodity from a natural gas company to competitive retail natural gas suppliers without the occurrence of a competitive retail auction -- or an exit from the merchant function (“Exit”). Such an Exit is one of the most important consumer issues to be decided by the Commission in the natural gas industry, and as such it is imperative that any Exit rules provide customers with reasonable and appropriate safeguards.

II. PROCEDURAL HISTORY

On November 22, 2011, the Public Utilities Commission of Ohio (“Commission” or “PUCO”) issued an Entry that included the PUCO Staff’s recommended amendments to the rules (“Proposed Rules”) contained in Ohio Adm. Code Chapter 4901:1-19 and

initially sought Comments and Reply on December 22, 2011 and January 23, 2012, respectively.⁴

On December 12, 2011, the Commission issued an Entry and provided the opportunity to file Comments and Reply Comments concerning the Proposed Rules contained in Ohio Adm. Code Chapter 4901:1-19 on January 23, 2012 and February 23, 2012, respectively.⁵

On January 23, 2012, OCC, Ohio Partners for Affordable Energy (“OPAE”), Vectren and Dominion (Jointly), Columbia, Duke, the Ohio Gas Marketers Group (“OGMG”) filed Comments. On February 23, 2012, the same parties filed Reply Comments.

On July 2, 2012, the Commission issued its Entry in this proceeding. The Commission’s Entry contains three distinct sections: Attachment A: Staff’s Recommendations and Summary of Comments; Attachment B: Staff’s Proposed Rules; and Attachment C: Business Impact Analysis.⁶ On August 22, 2012, the Commission issued an Entry denying the Utilities’ Joint Application for Rehearing.⁷ However, the Commission found the Utilities had filed Comments and set up a procedural schedule to allow other interested parties the opportunity to file Comments and Reply Comments.⁸

⁴ Entry at 2 (November 22, 2011). This Entry extended the procedural schedule established in the Entry of November 22, 2011, by thirty days.

⁵ Entry at 2 (December 12, 2011). This Entry extended the procedural schedule established in the Entry of November 22, 2011, by thirty days.

⁶ The Common Sense Initiative was established by Executive Order 2011-01K, see <http://www.governor.ohio.gov/Portals/0/pdf/CSI/011011%20-%20Executive%20Order%202011-01K%20Establishing%20the%20Common%20Sense%20Initiative.pdf>.

⁷ Entry at 4 (August 22, 2012).

⁸ Id.

On September 4, 2012 OCC filed Supplemental Comments,⁹ and September 11, 2012, OCC filed Supplemental Reply Comments.¹⁰

On December 11, 2012, the Commission issued a Finding and Order in this proceeding, and from this Order OCC herein files its Application for Rehearing.

III. STANDARD OF REVIEW

Applications for Rehearing are governed by R.C. 4903.10 and Ohio Adm. Code 4901-1-35. This statute provides that, within thirty (30) days after issuance of an order from the Commission, “any party who has entered an appearance in person or by counsel in the proceeding may apply for rehearing in respect to any matters determined in the proceeding.”¹¹ Furthermore, the application for rehearing must be “in writing and shall set forth specifically the ground or grounds on which the applicant considers the order to be unreasonable or unlawful.”¹²

In considering an application for rehearing, Ohio law provides that the Commission “may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefore is made to appear.”¹³ Furthermore, if the Commission grants a rehearing and determines that “the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the Commission may abrogate or modify the same * * *.”¹⁴

⁹ Comments were also filed by OPAE, Columbia and jointly by Dominion and Vectren on September 4, 2012,

¹⁰ Reply Comments were also filed by OGMG and jointly by Duke, Dominion and Vectren on September 11, 2012.

¹¹ R.C. 4903.10.

¹² Id.

¹³ Id.

¹⁴ Id.

OCC meets the statutory conditions applicable to an applicant for rehearing pursuant to R.C. 4903.10. Accordingly, OCC respectfully requests that the Commission grant rehearing on the matters specified below.

IV. ARGUMENT

A. The Commission erred by failing to assure due process rights are adequately protected under the Amended Rules in cases involving an application to exit the merchant function.

The PUCO has described due process as “a meaningful opportunity to be heard.”¹⁵ In most Commission proceedings, in addition to notice and a hearing, this also includes parties and intervenors being given “ample rights of discovery.”¹⁶ The PUCO noted this statutory obligation in a review of Ohio Administrative Code 4901-1-16:

The statute [R.C.4903.082] places an obligation on the Commission to ensure ample rights of discovery whereas the rule [O.A.C. 4901-1-16(A)] expresses the Commission’s intent that discovery be conducted promptly and expeditiously.¹⁷

Unfortunately, the PUCO, in denying requests for due process protections,¹⁸ is not ensuring the aforementioned “meaningful opportunity to be heard.” Under the Amended Rules, when the Commission is faced with an application from a natural gas utility seeking to exit the merchant function, interested parties are not guaranteed adequate due

¹⁵ *In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Gas Rates in Its Service Area; In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Electric Rates in Its Service Area; In the Matter of the Application of The Cincinnati Gas & Electric Company for Authority to Change Depreciation Accrual Rates for Gas Distribution Facilities*, Case No. 92-1463-GA-AIR, et al, Opinion and Order at 38 (August 26, 1993).

¹⁶ R.C. 4903.082.

¹⁷ *In the Matter of the Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, Case No. 06-685-AU-ORD, Finding and Order at 48 (December 6, 2006).

¹⁸ Finding and Order at 28-29 (December 12, 2012).

process protections, but rather must rely on “such procedures [the Commission] deems necessary.”¹⁹

An application to exit-the-merchant-function will result in a dramatic and complex change to the way that customers, in Ohio, purchase their natural gas.²⁰ The change, if allowed by the PUCO, will mean that consumers will no longer have a standard service offer (“SSO”) or standard choice offer (“SCO”) auction to determine the commodity price from the natural gas company.

The importance of an exit the merchant function case cannot be over-stated. For example, since the inception of customer choice for natural gas suppliers in Columbia’s area, Ohioans have paid marketers more than \$885 million²¹ above Columbia’s default rate (Gas Cost Recovery/Standard Service Offer/Standard Choice Offer). To protect consumers, it is important that the Amended Rules include adequate due process protections. Therefore, the Commission should consider the following OCC arguments, and grant OCC’s Application for Rehearing to assure adequate due process protections are included in the Amended Rules that will apply in exit the merchant function cases.

- 1. The proposed procedural rules for exit cases should be improved to require sufficient due process protections for consumers.**

The Staff recommended the PUCO not accept the OCC recommendation stating that “Staff’s proposed organization is appropriate and did not recommend that the

¹⁹ Finding and Order at Attachment A page 8 (December 12, 2012).

²⁰ An exit the merchant function application, under the Amended Rules, will involve 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.

²¹ *In re Columbia Exit Case*, Case No. 12-2637-GA-EXM, OCC Comments at Attachment A (November 5, 2012).(being a discovery response from Columbia with its “shadow-bill” information).

Commission adopt OCC's proposed changes"²² But the Amended Rules under 4901:1-19-05 (F), for exit cases, lack specific requirements addressing due process protections.

The Amended Rule merely states:

The commission shall order such procedures as it deems necessary, consistent with these rules, in its consideration of an application to exit the merchant function.²³

As evidenced by the recent Columbia Exit Case, the existence of non-mandatory procedural rules elsewhere in the administrative code, as the PUCO Staff references,²⁴ will not ensure due process protection in the face of a utility's application to exit the merchant function. Furthermore, the Proposed Rules provide the Commission with the right to waive any requirement under the rules not mandated by statute.²⁵ This level of discretion leaves consumers vulnerable in proceedings where their due process rights can be compromised.

Despite the fact that the Commission's rules governing an Exit case are not finalized, there have been two proceedings that could result in two Utilities being authorized to Exit for non-residential customers.²⁶ As an example of opportunities for improving due process, in a recent case involving the subject of an exit, among other issues, the public was not provided a specific public notice, or explanation in a public notice, of the opportunity to present public testimony on a day that was originally

²² Finding and Order at 29 (December 12, 2012).

²³ Finding and Order at Attachment A page 8 of 17 -- Rule 4901-1-19-05(F) (emphasis added).

²⁴ Entry at 24 (July 2, 2012).

²⁵ Finding and Order at Attachment A Page 4 of 17 (December 12, 2012) Amended Rule 4901-1-19-02 (D) "The Commission may, upon an application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute."

²⁶ *In re Dominion East Ohio Exit Case* ("Dominion Exit Case"), Case No. 12-1842-GA-EXM Commission Decision Pending; See also *In re Columbia Gas of Ohio, Inc. Exit Case* ("Columbia Exit Case"), Case No. 12-2637-GA-EXM, Commission Decision Pending.

scheduled for the first day of an evidentiary hearing at the PUCO's offices in Columbus.²⁷

The Amended Rules as drafted do not provide necessary protection for customers in Exit cases. In the event the Commission is deciding a utility application to exit the merchant function for residential customers, it is important for the Amended Rules to provide adequate due process protections for the utility's residential customers.

The Amended Rules as drafted do not contain protections for customers in Exit cases. Including within the Amended Rules basic, non-discriminatory and uniform due process provisions will guarantee that interested parties are not treated differently in exit cases than in other cases before the Commission.

OCC's Initial Comments and Supplemental Comments advocated for adequate due process protections and procedural safeguards in a case where a natural gas utility filed an exit-the-merchant-function application.²⁸ OCC's proposed modifications to the Proposed Rules governing the procedures for an exit the merchant function application recommended including the identical procedures as the Staff Proposed Rule 4901:1-19-04 (Procedures for exemption applications). Those procedures require notice, hearing and provide for ample discovery.

However, in the Amended Rules, the Commission did not accept OCC's recommendations.

The Finding and Order states:

Paragraph (F). Staff recommended language providing that the Commission shall order such procedures as it deems necessary in

²⁷ *In re Columbia Exit Case*, Case No. 12-2637-GA-EXM, Entry at 2 (November 26, 2012) ("December 3, 2012, 10:00 a.m. – The hearing will commence for the purpose of taking public testimony.") See also Entry at 5 (October 18, 2012).

²⁸ OCC Comments at 21 (December 22, 2011), see also OCC Supplemental Comments at 5 (September 4, 2012).

its consideration of an application to exit the merchant function. In its comments, OCC stated that the proposed rules should separate the rule for filing requirements and the rule for procedures involving an application to exit the merchant function.

Consequently, OCC recommended deletion of Paragraph (E) from Rule 4901:1-19-05, O.A.C, and the introduction of a separate procedural section in Rule 4901:1-19-06, O.A.C. (OCC at 19-20.)

In its June 27, 2012, recommendation. Staff stated that its proposed organization is appropriate and did not recommend that the Commission adopt OCC's proposed changes. The Commission agrees with Staff's recommendation and declines to adopt OCC's proposed changes.²⁹

However, in OCC's Supplemental Comments, OCC revised its proposal to make the procedural requirements for exemption applications under Staff's Proposed Rule 4901:1-19-04 also applicable to exit the merchant function applications, thereby eliminating the proposed separate procedural rule for exit the merchant function applications.³⁰ OCC's proposal alleviated the need to propose a separate procedural section under the rules that Staff found objectionable, and is consistent with Establishing the Common Sense Initiative under Executive Order 2011-01K..

The Amended Rules were reviewed by the Commission in conjunction with Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative."³¹ The Common Sense Initiative sets forth several factors to be considered in the promulgation of rules and the review of existing rules.³² The Common Sense Initiative provides the following:

²⁹ Finding and Order at 28-29 (December 12, 2012) (emphasis added).

³⁰ OCC Supplemental Comments at 10 (September 4, 2012).

³¹ Finding and Order at 1 (December 12, 2012).

³² Id. at 1-2.

WHEREAS, regulations play an important role in promoting fair competition, protecting the public health, and implementing the intent of the General Assembly. All of Ohio benefits from regulations that are in the public interest and are enforced properly. Protecting the public is always first and foremost, * * *.³³

WHEREAS, Ohio's regulatory process should be built on the foundations of transparency, accountability, and performance. * * *. Agencies should develop regulations in the full light of public scrutiny, and the public should have an opportunity to help shape those regulations and to challenge any that are unfair, overly burdensome, or ineffective.³⁴

WHEREAS, an open, accountable process will promote a regulatory environment that serves the public interest * * *.³⁵

OCC's proposal to establish due process protections in Exit Cases is intended to protect the public, designed to promote transparency and accountability in the performance of the PUCO's legal process thereby promoting a regulatory environment that serves the public interest, consistent with the Common Sense Initiative included in Executive Order 2011-01K.

Arguably, an exit-the-merchant-function application will present new complex issues for the Commission to consider with expansive and significant impacts on the manner in which the natural gas company's customers acquire default commodity sales service. Therefore, it is imperative that due process rights are adequately protected under the Amended Rules. There is no justification for the Amended Rules to include different procedures for an exit-the-merchant-function case (4901:1-19-05) from the procedures

³³ <http://www.governor.ohio.gov/Portals/0/pdf/CSI/011011%20-%20Executive%20Order%202011-01K%20Establishing%20the%20Common%20Sense%20Initiative.pdf>. See Executive Order 2011-01K at 1.

³⁴ Id.

³⁵ Id at 2.

proposed for exemption cases (4901:1-19-04). Therefore, the Commission should grant rehearing on this issue.

2. The Amended Rules contain due process protections for an exemption application that are not included for an Exit application, such inconsistency in the Amended Rules is unreasonable.

The Amended Rules address two types of applications that could be filed pursuant to R.C. 4929.04. The first is an exemption application (“Exemption Case”) covered by 4901:1-19-03.³⁶ The second type of application that could be filed pursuant to R.C. 4929.04 is for an exit-the-merchant-function case (“Exit Case”), and such application is addressed under Amended Rule 4901:1-19-05. Inexplicably, the Amended Rules call for different procedures under these two types of applications.

The Amended Rules for procedures governing an Exemption Case are found in 4901:1-19-04. The Amended Rules state:

- (A) During the processing of the application, the commission may dismiss any application which does not substantially comply with the filing requirements of rule 4901:1-19-03 of the Administrative Code.
- (B) After notice and a period for public comment, **the commission shall conduct a hearing upon an application by a natural gas company with fifteen thousand or more customers** for an exemption of any commodity sales service or ancillary service. The commission may, upon its own motion, conduct a hearing upon such an application by a natural gas company with fewer than fifteen thousand customers.
- (C) **Discovery shall be served no later than twenty calendar days prior to hearing unless a different deadline has been specified**

³⁶ Finding and Order at Attachment A Page 3 of 17 4901:1-19-02 Purpose and Scope (“to exempt any commodity sales service or ancillary service of a natural gas company from all provisions of :Chapter 4905. of the Revised Code with the exception of section 4905.10; Chapter 4909. and Chapter 4935, with the exception of sections 4935.01 and 4935.03; sections 4933.08, 4933.09,4933.11,4933.123,4933.17,4933.28, and 4933.32 of the Revised Code; and from any rule or order issued under those chapters or sections, * * *.”) (December 12, 2012).

in an order of the commission for the purposes of a specific proceeding.³⁷

The Amended Rules for an Exemption Case require notice and an evidentiary hearing and ample discovery rights.

The procedural requirements of an Exemption Case are different than those provided for in the Amended Rules for an Exit Case.³⁸ The procedures provided for in the Amended Rules for an Exit Case are stated as follows:

The commission shall order such procedures as it deems necessary, consistent with these rules, in its consideration of an application to exit the merchant function.³⁹

The Amended Rules omit notice requirements and an evidentiary hearing in an Exit Case thereby lacking protections for customers. There is no rationale provided by the Commission for the inconsistency that exists between the procedures for Exemption Cases and Exit Cases. As argued previously, OCC's proposal alleviated the need to propose a separate procedural section under the rules that Staff found objectionable, and is consistent with Establishing the Common Sense Initiative under Executive Order 2011-01K.⁴⁰ Therefore, the Commission should grant OCC's rehearing request.

³⁷ Finding and Order at Attachment A pages 6-7 (December 12, 2012). (Emphasis added.)

³⁸ Id. at Attachment A, Pages 6-8.

³⁹ Id. at Attachment A Page 8 (emphasis added).

⁴⁰ <http://www.governor.ohio.gov/Portals/0/pdf/CSI/011011%20-%20Executive%20Order%202011-01K%20Establishing%20the%20Common%20Sense%20Initiative.pdf>

3. It was unreasonable for the Commission not to adopt OCC's recommended modifications to the Amended Rules.⁴¹

In its Initial Comments, OCC had proposed inserting additional language in the Staff's Proposed Rules to address the procedural deficiencies in the Proposed Rules for an exit-the-merchant-function application.⁴² Staff did not accept OCC's proposal by stating: "[f]urther, as set forth in Staff's June 27, 2012, recommendation regarding Rule 4901:1-19-05(E), O.A.C, Staff does not recommend OCC's proposal that a separate procedural rule be implemented in Rule 4901:1-19-06 for applications to exit the merchant function."⁴³

To alleviate Staff's concern, OCC made the following modified proposal to remedy the procedural deficiencies in the Staff's Proposed Rules in OCC's Supplemental Comments filed on September 4, 2012.⁴⁴ However, the Commission did not address OCC's proposal in the December 12, 2012 Finding and Order. Therefore, OCC restates its position that specific due process procedural requirements are imperative to assure customers are protected in the event the Commission is confronted with an exit the merchant function application. The necessary modification to the Amended Rules can be accomplished by making the exemption case procedural rule (Amended Rule 4901:1-19-04) also applicable to a case involving an application to exit the merchant function as follows:

4901:1-19-04 Procedures for exemption applications and exit the merchant function applications filed pursuant to section 4929.04 of the Revised Code.

⁴¹ Additions are denoted by under-lining and deletions are denoted by strikethrough.

⁴² OCC Comments at 21 (December 22, 2011).

⁴³ Entry at 24 (July 2, 2012). (Emphasis added).

⁴⁴ OCC Supplemental Comments at 10-12 (September 4, 2012).

- (A) During the processing of the application, the commission may dismiss any application which does not substantially comply with the filing requirements of rules 4901:1-19-03 and 4901:1-19-05 of the Administrative Code.
- (B) After notice and a period for public comment, the commission shall conduct a hearing upon an application by a natural gas company with fifteen thousand or more customers for an exemption of any commodity sales service or ancillary service, or an application by a natural gas company to exit-the-merchant-function. The commission may, upon its own motion, conduct a hearing upon such an application by a natural gas company with fewer than fifteen thousand customers.
- (C) Discovery shall be served no later than twenty calendar days prior to hearing unless a different deadline has been specified in an order of the commission for the purposes of a specific proceeding.

4901:1-19-05 Filing requirements ~~and procedures~~ for applications to exit the merchant function filed pursuant to section 4929.04 of the Revised Code.

- ~~(A) During the processing of the application, the commission may dismiss any application which does not substantially comply with the filing requirements of rule 4901:1-19-05 of the administrative code.~~
- ~~(B)~~ A Notice of intent
The applicant shall notify the commission staff by letter addressed to the directors of the utilities department and the service monitoring and enforcement department of its intent to file an application at least thirty calendar days prior to the expected date of filing.
- ~~(C)~~ B Form of an application
 - (1) All testimony and exhibits supporting the application shall be filed with the application,
 - (2) The applicant shall provide a copy of its application and supporting testimony to the office of the consumers' counsel and each party of record in its previous exemption proceeding. Such copies may be provided either in hard copy or by electronic service. The applicant shall keep at least one copy of the application at the applicant's principal business office and on its web page for public inspection.
 - (3) The applicant shall provide or cause to be provided a copy of the application to any person upon request.
 - (4) An exit-the-merchant-function application shall be designated by the commission's docketing division using the acronym EMF.

(~~D~~ C) Exhibits to an exit-the-merchant-function application

- (1) The applicant shall demonstrate that the retail natural gas suppliers providing default commodity sales service to the natural gas company's choice-eligible customers have done so reliably for at least two consecutive heating seasons through a competitive retail auction process.
- (2) The applicant shall provide details of the proposed assignment and transfer of choice-eligible customers to retail natural gas suppliers for default commodity sales service.
- (3) The applicant shall provide an accounting of the costs to implement the exit-the-merchant-function plan.
- (4) The applicant shall provide a plan for customer education regarding the exit-the-merchant-function plan, which shall include efforts to encourage customers to choose retail natural gas suppliers before the company fully exits the merchant function.
- (5) The applicant shall demonstrate that the application satisfies section 4929.04 of the Revised Code, and is just and reasonable.

(~~E~~ D) The applicant may request recovery of its reasonable costs of exiting the merchant function.

~~(F) The commission shall order such procedures as it deems necessary, consistent with these rules, in its consideration of an application to exit the merchant function.~~

(~~G~~ E) Review of the application

- (B) The burden of proof shall be on the applicant to show that the application satisfies section 4929.04 of the Revised Code, and is just and reasonable.
- (2) Any party opposing an exit-the-merchant-function plan may present evidence to the Commission that the application to exit the merchant function does not meet the criteria in division (G)(1) of this rule. Any such showing of a failure to meet the criteria shall rebut the presumption that permitting an applicant to exit the merchant function satisfies the requirements of division (G)(1) of this rule, and no exit from the merchant function shall be granted.

OCC's proposal makes Ohio Adm. Code 4901:1-19-04 applicable to both exemption applications (Ohio Adm. Code 4901:1-19-03) and exit-the-merchant-function

applications (Ohio Adm. Code 4901:1-19-05). OCC's recommendation promotes transparency, consistency and predictability under the Amended Rules governing application filed pursuant to R.C. 4929.04 regardless of whether an application is filed for an exemption or an exit-the-merchant-function.

The procedures, as outlined in Ohio Adm. Code 4901:1-19-04 (as modified by OCC), under both types of applications, provides for notice (Provision B), a hearing (Provision B), and ample discovery rights (Provision C) – which are provided for in exemption cases, but are not specifically required under the Amended Rules for an exit-the-merchant-function case. There is no rational basis for such inconsistency in the Amended Rules. Furthermore, OCC's proposed modification to the Amended Rules is consistent with Establishing the Common Sense Initiative under Executive Order 2011-01K.⁴⁵ Therefore, OCC's Application for Rehearing should be granted.

V. CONCLUSION

For all the reasons discussed above, the Commission should grant OCC's Application for Rehearing and assure adequate due process protections are included in the Amended Rules when the PUCO faces an application from a natural gas utility to exit the merchant function.

⁴⁵ <http://www.governor.ohio.gov/Portals/0/pdf/CSI/011011%20-%20Executive%20Order%202011-01K%20Establishing%20the%20Common%20Sense%20Initiative.pdf>

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
Application for Rehearing by the Office of the Ohio Consumers' Counsel has been served
upon the below-named counsel via electronic service this 11th day of January 2013.

/s/ Larry S. Sauer

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

Summary: Application Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Sauer, Larry S.