

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**OHIO PARTNERS FOR AFFORDABLE ENERGY'S  
MEMORANDUM CONTRA  
THE APPLICATION FOR REHEARING**

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**I. Introduction**

Ohio Partners for Affordable Energy ("OPAE") hereby submits to the Public Utilities Commission of Ohio ("Commission") this memorandum contra the application for rehearing filed January 11, 2013 by Columbia Gas of Ohio, Inc. ("Columbia") in this docket to review the alternative rate plan and exemption rules contained in Chapter 4901:1-19 of the Ohio Administrative Code ("O.A.C."). In its application for rehearing, Columbia alleges that the Commission's December 12, 2012, Finding and Order is unlawful because, according to Columbia, certain of the new rules contradict the revisions to Revised Code Section 4929.05 made by Am. Sub. House Bill 95 ("HB 9"). Specifically, because HB 9 eliminated the reference to Revised Code Section 4909.15 from Revised Code Section 4929.05, Columbia alleges that the new rules cannot require certain filings and procedures. Application for Rehearing at 6.

Columbia's allegations are without merit. The Commission should deny Columbia's application for rehearing for the reasons set forth below in this memorandum contra Columbia's application for rehearing.

**II. Nothing in the new Rules 4901:1-19-06(C)(1), (C)(2), and (C)(3) and Rules 4901:1-19-07(C) and (D) contradicts Revised Code Section 4929.05.**

Columbia argues that because HB 9 deleted the reference to Revised Code Section 4909.15 from Revised Code Section 4929.05 for consideration of an alternative rate plan, no filing requirements and procedures applicable to an increase in rates are allowed in the new rules. Application for Rehearing at 6.

Columbia is wrong. Columbia is ignoring Revised Code Section 4929.05's still existing requirements that the alternative rate plan application is filed under Revised Code 4909.18, must comply with Revised Code Section 4905.35, must be in substantial compliance with the policy of the state of Ohio at Revised Code Section 4929.02, and must be just and reasonable. The applicant for an alternative rate plan also has the burden of proof under Revised Code Section 4929.05. Thus, Revised Code 4929.05 requires the filings and procedures that the Commission's new rules set forth.

This Commission so found in its Finding and Order. In the December 12, 2012 Finding and Order, the Commission supported its Proposed Rules 4901:19-06(C) and 4901:1-19-07(C) and (D) by finding that Revised Code Section 4929.05 requires that an alternative rate plan applicant must demonstrate that the plan is just and reasonable. Finding and Order (December 12, 2012) at 30-31. The applicant files the alternative rate plan under Revised Code Section 4909.18. Ohio Revised Code Section 4929.05(A). The Commission found that the information set forth in the proposed rules was appropriate to a filing made under Revised Code Section 4909.18. Finding and Order at 33.

In addition, the Commission correctly dismissed Columbia's argument that the reference to Revised Code Section 4909.15 be deleted from the proposed Rule 4901:19-07(C) because, as the Commission stated, Revised Code Section 4929.05 still provides for the possibility that an alternative rate case may be filed as part of an application to increase rates. Finding and Order at 34; Ohio Revised Code Section 4929.05(A). Therefore, the Commission agreed that the Staff's written report addressing the reasonableness of the current rates, pursuant to Section 4909.15, should be filed by the Staff. Finding and Order at 34.

It is impossible to determine whether an alternative rate plan under Section 4929.05, Revised Code, is just and reasonable without the basic information required by the new rules that is necessary to analyze the plan. It is not uncommon for utilities to wait decades before filing a base rate case. Without the information required by the new rules, parties may be limited to trying to determine whether a plan is just and reasonable by comparing it to a situation last visited more than ten years previously. That is why it is necessary for relevant information to be provided. Certainly, if a utility has recently completed a rate case and the information provided as a part of that rate case filing is an accurate reflection of the current financial situation of the utility, the requirement to file this information would not be burdensome.

The passage of HB 95 did not eliminate the requirement in Revised Code Section 4929.05 that the alternative rate plan must be found to be just and reasonable. Just and reasonable rates remain a condition precedent for an

alternative rate plan. Prior to HB 95, the reasonableness of rates was assured by requiring that an application for an alternative rate plan be filed in conjunction with a base rate case. Even if HB 95 eliminated the requirement of a simultaneous base rate case, even under HB 95, it remains necessary that the applicant prove its existing rates are just and reasonable, given that the existing rates will continue if there is no filing for an increase in rates. The filing requirements of the new rules provide the necessary information on which the Commission can make that judgment that the current rates are just and reasonable if the application does not request an increase in rates; therefore, the filing requirements of the new rules and the staff report are both lawful and necessary.

Finally, with regard to Rule 4901:19-07(D), Columbia had suggested in its prior comments that HB 95 did not intend that public hearings be held for alternative rate plan applications that are not for an increase in rates. Columbia had argued for the deletion of the reference in the rules to hearings in accordance with Revised Code Section 4903.083. Finding and Order at 35. The Commission correctly rejected Columbia's suggestion. The Commission agreed with the Staff recommendation that the rule was to employ the hearing and notification procedural parameters set forth in Section 4903.083, Revised Code, when setting hearings in a case.

### **III. Conclusion**

Revised Code Section 4929.05 specifies that the alternative rate plan be filed under Revised Code Section 4909.18 regardless of whether the application is for an increase in rates. It also specifies that the Commission determine if the alternative rate plan is just and reasonable and in substantial compliance with the policy of the state of Ohio set forth in Revised Code Section 4929.02, which also refers to reasonably-priced natural gas services at Revised Code Section 4929.02(A)(1). The utility applicant bears the burden of proof. Revised Code Section 4929.05(B). The utility cannot meet that burden without filing the appropriate information. Utilities must provide this information lest their application for an alternative rate plan be dismissed for failure to meet their burden of proof.

The application for rehearing filed by Columbia is without merit. The Commission's proposed rules do not contradict Revised Code Section 4929.05 even upon the enactment of HB 95. The rules correctly allow the Commission to implement the statute by providing for the filing by the applicant of the information needed by the Commission to implement the statute. Columbia's application for rehearing should be denied in its entirety.

Respectfully submitted,

/s/Colleen L. Mooney

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra the Application for Rehearing was served electronically upon the persons identified below on this 22nd day of January 2013.

/s/Colleen L. Mooney  
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Summary: Memorandum Contra Application for Rehearing of Columbia Gas of Ohio, Inc.  
electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy