BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Review of the Minimum Gas Service Standards in Chapter 4901:1-13 of the Ohio Adm. Code	)))	Case No. 19-1429-GA-ORD

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

In accordance with the Commission's December 18, 2019 Entry in this case, The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO) and Vectren Energy Delivery of Ohio, Inc. (VEDO), a CenterPoint Energy Company (collectively, the Companies) file their reply comments to the initial comments filed in this docket on January 17, 2020 concerning Staff's recommended amendments to the Minimum Gas Service Standards (MGSS), Chapter 4901:1-13 of the Ohio Administrative Code (OAC).[1] The failure of the Companies to address any specific proposal or assertion in any party's initial comments is neither an endorsement nor a rejection of a position taken by any party.

I. REPLY COMMENTS

A. Rule 4901:1-13-01, Definitions

1. Reply to OCC

New Paragraph. OCC recommends that the Commission create a new definition for "commodity charge" in light of Staff's proposed new rule, 4901:1-13-11(K), which seeks to limit

[1] In addition to the Companies, the following parties filed initial comments: Duke Energy Ohio, Inc. (Duke), Columbia Gas of Ohio, Inc. (Columbia), Suburban Natural Gas Co. (Suburban), Ohio Gas Co. (Ohio Gas), the Retail Energy Supply Association (RESA), Interstate Gas Supply, Inc. (IGS), Direct Energy Services, LLC and Direct Energy Business, LLC (Direct Energy), Infinite Energy, Inc. (Infinite Energy), Northeast Ohio Public Energy Council (NOPEC), Ohio Farm Bureau Federation (Farm Bureau), HomeServe USA Corp. (HomeServe), Pivotal Home Solutions (Pivotal), and the Office of the Ohio Consumers' Counsel (OCC).

the charges on the natural gas residential bill. (OCC Cmts. at 11.) In their initial comments, the Companies opposed Staff's recommended prohibition as unnecessary, overly broad, and potentially contrary to customers' wishes. (Joint Cmts. at 7.) But even if the Commission adopts Staff's proposal, the Companies recommend that the Commission not adopt OCC's proposed new definition. For starters, the necessity of the new term is questionable at best. OCC offers no support for its claim that Staff's new rule would lead to "marketplace uncertainty," unless commodity charge was a defined term. In addition, OCC's definition ambiguously equates the "commodity charge" to the "the cost of the actual natural gas." The commodity charge reflects a number of upstream costs and charges. It is overly simplistic to identify it as "the cost of actual natural gas."

2. Reply to Farm Bureau

Paragraph (G). The Farm Bureau recommends that the Commission amend Staff's proposed new definition of "contract portability." (Farm Bureau Cmts. at 3.) In their initial comments, the Companies expressed a number of concerns with the Staff's proposed provisions regarding contract portability. (Joint Cmts. at 8-9.) If the Commission does not accept Staff's proposed new paragraph H for 4901:1-13-12, then Staff's proposed definition for "contract portability" is unnecessary and can be excluded and the Farm Bureau's comments would be moot.

But even if the Commission adopts 4901:1-13-12(H), the Companies recommend that the Commission not adopt the Farm Bureau's proposed amendments to Staff's definition. The Farm Bureau's added language raises unrelated customer-specific service issues, such as account changes or changes in quality of service, which do not necessarily pertain to contract portability per se. For this reason, they are not appropriate topics to be addressed in any definition for contract portability.

B. Rule 4901:1-13-04, Metering

1. Reply to OCC

Paragraph (D)(4). For at least the fourth consecutive rulemaking, OCC proposes that the Commission's rules dictate a "free test" for natural gas meters, which would allow a customer to request one free test during a continuous 36-month or three-year period. (OCC Cmts. at 14.) OCC claims that customers "may be reluctant" to request a test, if they will be charged for the test, when the accuracy of the meter is within the variation specified in R.C. 4933.09. (*Id*. at 12.) The Commission, however, has consistently dismissed OCC's prior attempts to require a free test for natural gas meters in the Commission's rules.

In Case No. 09-0326-GA-ORD, the Commission rejected an identical proposal offered by OCC, finding that "there is specific statutory language set forth in Section 4933.09, Revised Code, which determines when the companies may charge a fee for meter testing." Finding and Order (July 29, 2010) at 14. The Commission held that "it would not be appropriate for the rules to give customers the right to a meter test every three years upon request without allowing the companies to assess a charge if the meter is within the tolerance levels set forth in Section 4933.09." *Id*.; *see also* Case No. 05-602-GA-ORD, Opin. and Order (Jan. 18, 2006) at 7 (rejecting the same OCC proposal). In Case No. 13-2225-GA-ORD, OCC again proposed the same "free test," and the Commission again rejected it, finding that "[t]he process of testing a gas meter involves considerably more time and expense than is required to test an electric meter." Finding and Order (July 30, 2014) at 7. The Commission, thus, declined to "impose an undue financial and administrative burden on the gas and natural gas companies" *Id*.

The situation has not changed. Although a utility may choose to forgo its right to collect the fees and expenses provided by law, the Commission does not have legal authority to revise the Ohio Revised Code, and R.C. 4933.09 mandates that the party requesting the test pay a fee and expenses if the meter is within prescribed tolerances. Moreover, even if it were lawful to mandate "free" tests, testing a gas meter continues to require considerable time and expense, and unnecessarily encouraging such tests could be a costly and unjustified policy decision. Meter testing cannot be done in the field; it is done using a machine that is several hundred pounds, about the size of a phone booth, and must be carried out in a consistent, climate-controlled environment. Thus, to test a meter, it must be disconnected, changed out, and tested remotely. The labor costs associated both with changing out and testing meters, as well as the costs of carrying additional meters in inventory to prepare for testing-related change outs, could be significant. Again, while a utility may agree to forgo collection of such costs, this cannot lawfully be mandated.

In Case No. 09-0326-GA-ORD, the Commission did revise paragraph (D)(4) to add language to require that, "if a company charges for meter testing, the charges must be approved by the Commission and set forth in the company's tariff." Finding and Order (July 29, 2010) at 14. The Companies believe that the approved tariff for the respective natural gas companies is the appropriate place to address how a company assesses charges for meter test. Allowing the distinct tariffs for the individual natural gas companies to set forth the procedures and any charges for meter testing is consistent with both R.C. 4933.09 and the Commission's prior decisions. OCC's latest attempt to graft a free test onto the Commission's rules should be rejected once again.

<u>Paragraph (F)(1)</u>. The current rule, as presently written, requires natural gas utilities to keep specific meter test records "for two years or until the next superseding test, whichever is longer." OCC proposes that the paragraph be revised to "at least three" years. (OCC Cmts. at 14-15.) The Commission, however, adopted the two-year requirement in its last rulemaking, finding

that "Staff's proposed language is consistent with the records retention requirements set forth in the appendix to Ohio Adm.Code 4901:1-9-06, which provides that records of gas meter tests must be retained until a superseding test occurs, but not less than two years." Case No. 13-2225-GA-ORD, Finding and Order (July 30, 2014) at 9; *see also* App. to Ohio Adm.Code 4901:1-9-06 at 12.

OCC argues that there are "conflicting" and "confus[ing]" meter testing records retention provisions, pointing to the general three-year requirement in Rule 4901:1-13-03(C). (OCC Cmts. at 14.) There is no conflict. The three-year requirement cited by OCC in 4901:1-13-03(C) is the default period "unless otherwise specified in this chapter." And the existing two-year period for meter test retention *is* specified elsewhere in the chapter, in Rule 4901:1-13-04(F)(1), and it is also specified in the appendix to rule 4901:1-9-06 of the Administrative Code. Here, OCC's proposed change would create an inconsistency with the explicit two-year requirement for meter testing records set forth appendix to Ohio Adm.Code 4901:1-9-06, which is what the Commission sought to avoid in its last rulemaking. Following OCC's logic, to avoid confusion every single record-retention requirement should match the default three-year period. OCC's rationale is overbroad and unpersuasive and its proposal to change Paragraph (F)(1) to read "at least three" years thus should be rejected.

<u>Paragraph (G)(2)</u>. OCC proposes that the Commission amend this paragraph to expressly prohibit utilities from assessing interest charges on billing adjustments for undercharges. (OCC Cmts. at 15-16.) OCC further argues that the paragraph should be amended to permit payment terms longer than 12 months. (*Id.*) OCC claims these changes need to be made to "provide at least as much protection to consumers" as R.C. 4933.28. (*Id*. at 16.)

Neither of these changes is necessary. As OCC notes, Ohio law already prohibits the utility's collection of any interest charges on billing adjustments for undercharges. There is no need to also embed that restriction in the rule. As for the "at least" language, it would be inconsistent with R.C. 4933.28(A). That statute provides that "[s]ubject to division (C) of this section, the time period over which the undercharge may be collected *shall be* twelve consecutive months." (emphasis added). Granted, as OCC points out, paragraph (C) provides that a utility has the option to collect the amount owed for unmetered gas over a longer period than 12 months. But 12 months remains the default period. OCC's proposed change thus introduces words inconsistent with the statutory language.

Finally, the Commission previously rejected OCC's proposal to include "at least" language in Paragraph (G)(2). Case No. 13-2225-GA-ORD, Finding and Order (July 30, 2014) at 10. OCC offers no basis for treating the issue differently this time around. The Commission should reject the same proposal again in this proceeding.

<u>Paragraph (G)(9)</u>. OCC proposes amendments to Paragraph (G)(9) to prohibit the natural gas company from billing the tenant for "estimated or actual usage occurring after the termination date requested by the tenant," if the tenant "has requested that service be terminated on a certain date" or "is unable to provide the natural gas company with access to the meter for any reason." (OCC Cmts. at 17.) OCC's proposal is that such estimated or actual usage in these instances "*shall* be billed to the landlord." (*Id*. (emphasis added).) OCC argues that tenants "should not be penalized," if they "have no control over the utility's access to the meter." (*Id*.)

The Commission recognizes elsewhere that "there shall be a rebuttable presumption that the person in possession or control of the meter, conduit, or attachment at the time the tampering or reconnection occurred *is the party obligated to pay* for the service rendered through the meter, conduit, or attachment." OAC 4901:1-18-07(E) (emphasis added). OCC's proposal here introduces a similar rebuttable presumption, namely that the landlord shall be responsible for any usage, if a tenant no longer has possession or control over the meter. In Case No. 09-326-GA-ORD however, the Commission rejected a similar OCC amendment to this paragraph that would have required natural gas companies to collect from the costs for obtaining reasonable access to the meter from the landlord in all instances, and not the customer. Finding and Order (July 29, 2010) at 26. The Commission in that prior rulemaking did not consider OCC's proposal to be a workable solution to the meter access issue, acknowledging that the utilities' contracts are with the customer, and oftentimes the customer is not the landlord. *Id*.

Based on continued experience dealing with the meter access issue in landlord-tenant situation, the Companies have modified their position from the previous rulemaking. It is true that OCC's current proposal may suffer the same flaw in trying to hold a landlord strictly liable in every instance for usage at a premises after a tenant moves out. The utility may not have a record of the landlord or a copy of the tenant's lease. Nevertheless, the Companies have encountered numerous situations in which only the landlord can provide access, but the landlord refuses either to cooperate or accept responsibility for service. Complicating matters, in some of these situations it is not possible to disconnect service at the curb (*e.g.*, where there are multiple inside meters off of a single service line). In such situations, the Companies believe that it is fair to pass costs onto the landlord—the landlord is the beneficiary of service, and the party best positioned to avoid the continued incurrence of costs. OCC's proposal would address this problem. The Companies would propose, however, that rather than mandating billing to the landlord, the rule should merely define when such billing is permitted, to account for situations where it may not be fair or practicable to assign the charges to the landlord. The Companies also believe it fair to provide the landlord or owner of the premises notice and an opportunity to provide access before becoming responsible for charges.

The Companies would support OCC's proposal with the following revisions (with OCC's proposed edits "accepted"):

> (9) Where there is a landlord/tenant relationship and neither the gas or natural gas company nor the tenant has access to the meter, the gas or natural gas company shall render notice by mail to both the landlord, when the address is available, and the tenant, summarizing its inability to obtain access to the meter for any of the provisions of this rule. In instances where a tenant has requested that service be terminated ~~on a certain date or~~ and the tenant is unable to provide the natural gas company with access to the meter for any reason, the natural gas company ~~shall not bill the tenant for~~may bill the landlord or owner of the premises the estimated or actual usage if the landlord or owner is provided at least 10 days' notice but fails to reasonably cooperate in providing access to the meter~~occurring after the termination date requested by the tenant. Such estimated or actual usage shall be billed to the landlord~~.

C. Rule 4901:1-13-05, Minimum customer service levels

1. Reply to Columbia

Paragraph (C)(4). Columbia requests that the Commission revise Paragraph (C)(4) to provide that scheduled appointments with customers that the utility does not complete "due to an emergency or priority order that requires immediate response" "shall not be considered a missed appointment" when calculating whether the natural gas company meets its monthly 95 percent compliance threshold for scheduled appointments. (Columbia Cmts. at 1-2.) Columbia argues that the compliance threshold should take into account situations where safety of customers is the utility's priority. (*Id.*)

The Companies are supportive of the intention behind Columbia's proposal. They would suggest, however, that the rule not be mandatory, but rather be phrased as being at the utility's option, given that some utilities may not have the current ability to track missed appointments in this way. The Companies thus suggest that Columbia's proposed language be amended to read "then the gas or natural gas company has the option of not considering the rescheduled appointment to be a missed appointment" and urge the Commission to adopt the proposal as revised.

D. Rule 4901:1-13-06, Provision of customer rights and obligations

1. Reply to OCC

Paragraph (C)(8). OCC seeks to broadly expand the minimum information that natural gas companies must provide in written summary of customers' rights and obligations concerning gas choice programs to include information on "contract portability, the ability to block an unwanted service provider switch, selecting the lowest cost supply for natural gas, known scams (including spoofing), and potentially adverse contract provisions such as automatic renewals and teaser rates." (OCC Cmts. at 6.) The Companies oppose these recommendations.

In prior orders, the Commission has tried to minimize the costs incurred by companies concerning the written summary, recognizing that they are ultimately passed on to all ratepayers. Case No. 13-2225-GA-ORD, Finding and Order (July 30, 2014) at 18; Case No. 09-0326-GA-ORD, Finding and Order (July 29, 2010) at 40. OCC's proposal, however, would require the natural gas company to provide and continually update information on issues potentially outside the scope of its knowledge and certainly well beyond its neutral role in its customers' choice of a supplier. This requirement would not only cause the natural gas company to incur incremental costs, but also present the utility as an adviser to its customers on their gas choice programs, including on their legal rights under contracts with current and future suppliers. Moreover, continuously updating the summary to identify currently "known scams" is not feasible. The Commission should reject OCC's proposal to expand the information on gas choice programs in the written summary as burdensome, unnecessary costly, and imposing new and improper disclosure obligations on utilities.

E. Rule 4901:1-13-10, Complaints and complaint-handling procedures

1. Reply to Columbia

Paragraph (G). Columbia proposes a revision to this paragraph to mirror the Commission's call center hours and reflect the practice of Columbia's own dedicated phone line. (Columbia Cmts. at 2.) The Companies proposed a similar "business day" revision in their comments and also requested that this paragraph be amended to make clear that the hours listed reflected the relevant time zone of both the Commission and its customers. (Joint Cmts. at 2-3.) The Companies support Columbia's proposal and urge the Commission to adopt revisions that reflect Columbia's and the Companies' comments.

F. Rule 4901:1-13-11, Gas or natural gas company customer billing and payments

1. Reply to OCC

Paragraph (B)(13). OCC "applauds" Staff's proposal to include a "price to compare" (PTC) on natural gas bills, but offers little to no support for its adoption. (OCC Cmts. at 2-3.) OCC argues that the PTC will help consumers find the "best deal," but does not address anywhere in its minimal comments whether the statement is accurate, legally permissible, or cost-effective. Instead, OCC recommends further subjective, predictive revisions to the Staff's PTC about savings that utilities cannot verify and customers may not understand.

The Companies opposed new Paragraph (B)(13) in its initial comments, as not necessarily true, potentially contrary to the state energy policy concerning competitive markets and company-specific codes of conduct, and imposing burdensome implementation costs and programming challenges. (Joint Cmts. at 3-6.) Many other parties opposed the adoption of a PTC for similar reasons. Only OCC filed comments in support, and OCC provides no demonstration that this additional statement on natural gas bills will educate and benefit consumers.

The Commission has rejected this same proposal in the last two rulemakings. (*See* Joint Cmts. at 5.) OCC has not offered any basis to depart from those decisions. The Commission should reject the proposal to add a price-to-compare to utility bills.

<u>Paragraph (B)(14) & (15)</u>. OCC also proposes new paragraphs (B)(14) and (15) that would require all natural gas companies to conduct and inform shopping customers of "shadow-billing," which OCC claims is "the difference between what shopping customers paid for natural gas through marketers and what the customers would have paid had they been served through the utility standard choice offer or gas cost recovery rate." (OCC Cmts. at 3-4.) The Companies oppose this proposal.

In Case No. 09-0326-GA-ORD, the Commission rejected a similar proposal offered by OCC to add a section to Paragraph (B) that would require natural gas companies to include "choice comparison information" on customers' bills. Finding and Order (July 29, 2010) at 48. The Commission found that "there are options already available for customers to refer to in order to detect that there are competitive choice opportunities" and "it would not be appropriate to require the companies to provide this information on the bill, especially in light of the costs that they would potentially incur and that would potentially be passed on to their customers." *Id*. at 48-49.

OCC's shadow-billing proposal continues to suffer from the same fatal flaws: other publicly available information allows customers to understand the differences with marketers' programs and rates (e.g., Apples to Apples); and OCC has not shown that the benefits of shadow-billing to customers would outweigh the costly billing system changes necessary to prepare the annual report and monthly statements. OCC's proposal offers no concrete details on the necessity, reasonableness, or benefits of shadow-billing. Additionally, this is yet another change that would seem to position the utility as the customer's energy advisory, which the Companies do not believe is their role. The Commission should reject this proposal.

Paragraph (C). OCC proposes that the Commission amend this paragraph to provide that, for residential bills issued from outside the state of Ohio, the due date shall be no less than "twenty-one" days from the date on the actual bill. (OCC Cmts. at 18.) The Companies oppose this proposal.

The current rule reads "seventeen" days. OCC claims that this change is necessary to "avoid customer confusion and unfairness" between the minimum gas and electric service standards (4901: 1-10-22(B)(10)), which have the 21-day requirement. (*Id.*) OCC cites no evidence, such as consumer complaints, that corroborates these due dates have resulted in even alleged confusion or unfairness. The Commission, moreover, adopted the 17-day requirement in its prior rulemaking, rejecting a 21-day proposal. On rehearing in Case No. 13-2225-GA-ORD, the Commission found the 17-day requirement to be a "reasonable compromise," given the cost savings for using out-of-state printers and the significant reprogramming costs for billing and collection systems that natural gas companies would have to incur to accommodate the 21-day requirement. Second Entry on Rehearing (Nov. 12, 2014) at 6-7.

Although the Commission reserved the right to adopt a 21-day requirement in the future, *id*. at 7, the same factors as before counsel maintaining the current, 17-day requirement. Cost is still a significant issue. There would be additional programming costs for updating billing systems and for revamping other processes that would have to be changed such as credit schedules and PIPP processes and credits. In addition, a change to a 21-day requirement would affect the timing of account receivables, not just for the natural gas companies, but also for third-party suppliers who charge for services and products through the utility bill. The costs of moving from a 17-day requirement to a 21-day requirement thus would continue to be significant, and there has been no showing that the benefits would outweigh the costs. Indeed, the Companies have not heard any complaints from our customers receiving or paying their bills with the 17-day timeframe. The 17-day requirement has proven feasible and will continue to provide an adequate amount of time for natural gas customers to pay their bills. The Companies thus urge the Commission to maintain the status quo for the natural gas utilities and reject OCC's proposal.

Paragraph (K). OCC supports Staff's proposed new Paragraph (K), which would prohibit the inclusion of non-commodity charges on residential natural gas bills. (OCC Cmts. at 19.) OCC, however, provides no explanation or support for its claim that Staff's proposal is "an important consumer protection." (*Id*.) Many other parties offered detailed comments in opposition and the Companies' opposition to the position also continues. OCC is the only party backing the Staff proposal, and fails to offer any evidence to support its adoption. This billing option should not be eliminated for customers. The inclusion of non-commodity charges on residential bills should remain subject to the reasonable discretion and technical capabilities of the individual utilities.

2. Reply to RESA and Direct Energy

Paragraph (K). RESA urges the Commission not to adopt Staff's proposed Paragraph (K). (RESA Cmts. at 4-6.) RESA, however, recommends a revised Paragraph K:

> (K) If the gas or natural gas company allows any nontariffed or nonregulated services on the gas or natural gas company bills, the provider may be a competitive retail natural gas service supplier, an affiliate of the gas or natural gas company, or another third party. The gas or natural gas company shall: (1) Provide the same access to include non-commodity charges on the bill to any non-affiliate service provider as an affiliate of the gas or natural gas company. (2) Apply any charges for access to the bill uniformly.

(*Id*. at 6.) Direct Energy, like RESA, also urges the Commission not to adopt Staff's proposed Paragraph (K). (Direct Energy Cmts. at 13-14.) In the alternative however, Direct Energy proposes that Staff's Paragraph (K), if considered, should be revised "so that suppliers are permitted to include all their charges on the natural gas residential bill." (*Id*. at 13.)

As stated in their Joint Comments, the Companies believe that charges for nontariffed or nonregulated service should be permitted on bills, subject to the utility's reasonable discretion, with consideration for technical limits like bill spacing and programming requirements. (Joint Cmts. at 7.) Some utilities may decide not to permit any such charges. Issues regarding third-party access are already specifically addressed in the Companies' respective standards of conducts. (DEO Gen. Terms & Condition of Energy Choice Pooling Service, § 24.4(c); VEDO Gen. Terms & Conditions of Gas Service, Affiliate Code of Conduct, § 12.3.) Since not all gas companies have "choice" programs, and given that billing issues can vary by utility, the Companies believe it is better to address these issues in company-specific tariffs, rather than in the rules.

3. Reply to IGS

Paragraph (K). IGS also opposes the Staff's proposed Paragraph K, noting that "[a]bsent a compelling reason, there is no basis to disrupt the status quo and harm businesses that have relied upon the existing framework to invest in this state." (IGS Cmts. at 2.) The Companies agree. IGS further points out the customers' preference for consolidated billing, the existing consumer protections already available concerning nontariffed and nonregulated services, and the potential harm for customers and small businesses, if Staff's proposal is adopted to eliminate a current business practice. (*Id*. at 2-9.) The Companies also agree in general with these positions and concerns.

IGS, however, proposes as a "reasonable alternative" that the Commission adopt additional consumer protections and highlight, as examples, statements currently presented on Columbia's billing statements. The Companies appreciate the spirit of IGS's proposed alternative to the Staff Paragraph (K), but do not believe it would be prudent to require all natural gas companies to include the same, additional or revised bill messaging concerning nontariffed and nonregulated services. The Companies believes that each natural gas utility should be permitted to manage the limited available space on its bill, tailor the bill messaging to its customers, and propose bill format changes that are both cost-effective and appropriate for its service territory. The Commission and Staff will still have the opportunity to review bill format changes and bill messages on a case-by-case basis in the context of the utility's applications and other regulatory filings.

4. Reply to Infinite Energy

Paragraph (B)(20). Infinite Energy proposes "the formation of a workshop" to discuss changes to current paragraph 4901:1-13-11(B)(20) to allow for a supplier's non-commodity charges to be included in utility consolidated billing (UCB). (Infinite Energy Cmts. at 4.) It is unclear whether Infinite Energy considered Staff's proposed changes to this paragraph, which would make it apply only to "nontariffed or nonregulated" charges for a service on "*non residential bills*." (*See* RESA Cmts. at 4 (emphasis added).) Given parties' generally scarce resources, and the utility-specific nature of billing issues, the Companies do not believe a workshop on these issues is necessary or would be productive at this time. The Companies also note that the Commission's decision on Staff's proposed new Paragraph (K) would affect the scope of any workshop or forum that the Commission initiated to examine the issue of non-commodity charges on natural gas utilities' UCB invoices.

5. Reply to NOPEC

Paragraph (B)(28). Staff proposes to amend this paragraph to require bills for natural gas customers to include a notice of the Commission's "energy choice website to view the gas or natural gas company's standard choice offer (SCO) rate or gas cost recovery (GCR) rate and other CRNGS offers," if the company has a choice program. NOPEC proposes to further amend the paragraph to allow for "a listing of governmental aggregators' websites" on the Commission's energy choice website. (NOPEC Cmts. at 5.)

The Companies take no position on whether this proposed rule change is necessary to achieve NOPEC's desired result. While the Companies do not object in principle to NOPEC's request that information regarding governmental aggregators be displayed on the Commission's energy choice website, they do believe it is important that such inclusion does not lead to customer confusion. By their nature, aggregation programs are location specific, and not available to all customers, so any disclosure of aggregation rates on a general informational website should clearly address customer eligibility.

G. Rule 4901:1-13-12, Consumer safeguards and information

1. Reply to OCC

Paragraph (E). Staff proposes that this Paragraph be amended to provide that natural gas companies shall timely provide 12 months of a customer's usage history and 24 months of a customer's payment history to the customer "without charge." OCC proposes to further amend the Paragraph to extend the period for usage and payment history to 36 months. (OCC Cmts. at 19-20.) OCC argues that customers should have access to at least three-years of usage and payment history since the natural gas companies must maintain these records for that long.

The Companies do not support this proposal. In Case No. 09-0326-GA-ORD, the Commission rejected this same OCC proposal, finding that "the requirement that a company provide 12 months of the customer's usage history and 24 months of the customer's payment history meets the needs of the majority of the customers." Finding and Order (July 29, 2010) at 64. The Commission specifically rejected OCC's argument that the default 36-month record retention period in 4901:1-13-03(C) was a valid basis for amending Paragraph (E). *Id*. at 63-64. The Commission also noted that it would be unduly burdensome and costly to require the Companies to reprogram its system to provide for customers with longer periods of usage and payment history.

OCC has not offered a compelling reason for the Commission to reverse its prior decision, and the reasons cited in that order remain true today. For the reasons cited in its 09-0326 Order, the Commission should reject OCC's proposed change again here.

Paragraph (G). OCC urges the Commission to adopt Staff's proposed Paragraph (G), which would require natural gas companies to put a supplier "block" on a customer's account, if requested by the customer. (OCC Cmts. at 7.) OCC claims this "switching block" requirement is "an important anti-slamming consumer protection" that will give customers "peace of mind." (*Id*.)

The Companies opposed Staff's proposed Paragraph in their joint comments, given the programming and business-process costs that would be required to implement Paragraph (G)'s new requirement, and the potential obstacles to shopping the requirement might cause. (Joint Cmts at 7-8.) OCC does not address these potential costs and inefficiencies. Nor does OCC identify any specific customer issue that would justify this new requirement. As stated in its joint comments, the Companies believe that any issues with switching should be dealt with directly—addressing either the actor or the practice—not by universally imposing a new tracking requirement on all natural gas companies.

Paragraph (H). This new paragraph addressing contract-portability issues was proposed by Staff, and OCC proposes a number of additional changes. In their initial comments, the Companies expressed a number of concerns with Staff's new section, and OCC's recommendations only add to those concerns.

One of the concerns DEO expressed was that the Staff's recommendation would position the Companies as energy advisor, which is not the role of the utility. OCC would only exacerbate these concerns by requiring the utility to go through detailed past rate comparisons with the customer. (*See* OCC Cmts. at 9 ("the gas utility will inform customers about the rate they paid for natural gas through the supplier for each of the previous twelve months compared to the utility standard choice offer (SCO) or gas cost recovery (GCR) rate").) The Companies explained the problems with a bare comparison of CRNG rates with past SCO rates in their initial comments, and there is no need to restate those concerns again. Even without those concerns, this is not the proper role of the utility. DEO supports market education and engagement, but the utility should not be put in the role of guiding individual customers in making supply decisions.

DEO also expressed concerns with the fact that Staff's recommendation could potentially interfere with the orderly transfer of customer accounts, even though such transfers may be required under contract. Once again, OCC takes the potential concern and amplifies it even further. First, OCC would have the utility advise the customer that it has "the right to determine whether to retain the current supplier" post-move. (*Id*.) But that is not necessarily true. Whether a customer has that right, and what conditions attach to that right (e.g., early termination fees), will depend on the specifics of the contract. The utility should not be required to advise a customer of the existence of a right that may not actually exist.

Second, OCC would condition the transfer of service on the customer's "affirmative consent to the transfer." (*Id*.) If the customer has signed a contract under which the contract ports, the utility should not be put in a position of potentially interfering with that arrangement. Even more concerning, it will add severe difficulties to the administration of a customer's gas supply to add yet another layer of affirmative consent to what would otherwise be a routine transfer of the account.

Finally, OCC implies that portability issues should be addressed in the tariff, proposing to add the phrase "pursuant to an approved tariff." OCC does not appear to provide any support for this recommendation, and it is not well taken. Contract portability varies by utility and by supplier. It does not appear feasible, and at any rate there is no need, to address portability in tariffs.

The Companies do not support OCC's changes and continue to hold to the position expressed on this section in their original comments.

2. Reply to RESA

Section (D)(1). Staff proposes to amend Paragraph (D) to expand the existing rule prohibiting the disclosure of customer-specific information to include "any customer information not provided on the eligible-customer lists prescribed in paragraph (C) of rule 4901:1-13-14." RESA believes that Staff's proposed additional language is overly broad and would prohibit the disclosure of information previously approved by the Commission and also preclude the natural gas companies from disclosing customer information for safety-related matters. approved by prior Commission orders. (RESA Cmts. at 6-7.) RESA proposes further amending Paragraph (D) to identify two other exceptions to the rule's blanket disclosure: (i) for operational, safety, and dispute-resolution purposes; and (ii) when authorized by Commission decision or Ohio law.

The Companies have no objections to RESA's proposal. These are proper situations in which customer information could be disclosed, and the Companies recommend that the Commission adopt RESA's proposed language, if it adopts Staff's proposed revision.

Paragraph (H). As noted above, the Companies object to Staff's new Paragraph (H) concerning contract portability and do not believe that there is a strong basis for adopting Staff's revisions. (Joint Cmts. at 8-10.) RESA also identifies problems with Staff's proposal, but offers revisions to the rule that would require the natural gas company to (i) transfer a customer to the customer's current supplier or give the customer the supplier's contact number, if the customer asks about his or her current supplier; and (ii) provide the customer with the Commission's energy choice website address, if the customer asks about other supply options.

Although the Companies do not object in principle to RESA's first recommendation (that inquiring customers be transferred or referred to suppliers), they believe that the processes for call transfers and providing customers with information on their suppliers and other supply options should be governed by the Companies' respective policies, procedures, and tariff provisions, and should not be restricted or mandated by a Commission rule.

The Companies do not object to the second recommendation, i.e., that customers be referred to generally available resources if they inquire regarding supply options. If the Commission chooses to adopt Staff's proposal, the Companies agree with RESA that revisions must be made to ensure that the natural gas companies are not advising customers on their choice program or the competitive market.

Paragraph (F)(3). Staff proposed new Paragraph (F)(3), which mirrors language that has been in effect and applicable to natural gas companies in Rule 490:1-29-09(C)(5) concerning the written notice that natural gas companies must provide to customers of their right to object to being included on eligible-customer lists. RESA, however, proposes significant revisions to the content for the written customer list notice currently required by the rule. (RESA Cmts. at 9.) RESA also proposes that the natural gas companies display on their websites the list of customer specific information listed on the eligible-customer list. (*Id.*) RESA says that its revisions will make the written customer list notice for natural gas companies more consistent with Staff's proposed notice in the current rulemaking for minimum electric service standards. (*Id.*)

There is nothing inappropriate in RESA's concern for consistency across the written customer list notices for the electric and natural gas companies. But the Companies do not believe the benefits of such consistency would outweigh the costs. RESA's proposal adds considerably more text to the notice required by the current rule, which would require the Companies to revise and lengthen their existing written notices. The proposal also adds to the information that the Companies would need to display on their websites. The Companies have programming cost and bill space concerns with the additional content that the Companies might have to include in their written customer list notices and on their websites under RESA's proposal, depending on the requirements in any final rule, if this proposal is adopted. The Companies do not believe that the benefits of consistency outweigh the costs that RESA's proposal would cause to be incurred. For this reason, the Companies do not support RESA's proposal.

H. Rule 4901:1-13-14, Coordination between gas or natural gas companies and retail natural gas suppliers or governmental aggregators

1. Reply to Columbia

Paragraph (B). Staff proposed an amendment to this paragraph to require a current copy of the supplier agreement to be filed with the natural gas company's tariff. Columbia proposes a minor revision to add "docket" to the end of this paragraph. This proposal is similar to the revision that the Companies proposed in their initial comments, which would add "or tariff docket" to the end of the paragraph. (Joint Cmts. at 10.) Although both revisions could be interpreted to the same effect, the Companies believe that their proposed change more expressly provides flexibility in how such agreements may be filed, and for that reason recommend that the Commission adopt their revision.

Paragraph (F) & (I). Columbia also proposes minor revisions to these paragraphs to incorporate the use of electronic notification as an option for receiving notices of an enrollment or cancellation with a supplier. The Companies support Columbia's minor revisions to these paragraphs and recommend their adoption by the Commission.

2. Reply to Infinite Energy

Paragraph (C). Infinite Energy proposes revisions to this paragraph that would require natural gas companies to (i) segment eligible-customer lists upon request pursuant to the CRNGS's instructions for no more than a $100 administrative fee; and (ii) charge no more than $150 per 500,000 customers for the provision of any eligible-customer list. (Infinite Energy Cmts. at 3.)

The Companies have concerns about Infinite Energy's proposed cap on charges for eligible-customer lists and its requirement that the natural gas companies segment the eligible-customer list however the supplier wants it. These are concerns that are better raised in the context of a base-rate proceeding, not a rulemaking. With respect to the $150 per 500,000 customers cap, the only basis for Infinite Energy's proposed charge appears to be Duke's tariff charge. (*Id*. at 2.) This method arbitrarily ignores both the tariffed charges that exist for the other natural gas companies, which would have to be changed if the Commission adopted Infinite Energy's proposal, as well as the fact that each utility's charge reflects company-specific cost structures and pricing approaches. Infinite Energy makes no other effort, besides pointing to

Duke's charge, to demonstrate why its proposed charge is reasonable and should be applied to all natural gas companies. Nor does Infinite Energy take into consideration the significant incremental labor that would be required to provide and also segment the additional eligible-customer lists that would be requested, if the Commission adopted the price cap. Lastly, Infinite Energy does not take into account the related revenues for these services that may be reflected in the natural gas company's base rates. Reducing the revenues associated with list charges, without updating for other associated cost increases or corresponding impacts on other charges, would not be fair to the utility and would violate general ratemaking principles. For all of these reasons, this is an issue better addressed in a base-rate proceeding or similar proceeding affecting the terms and conditions of choice programs.

For these reasons, the Companies recommend that the Commission not adopt this proposal.

3. Reply to OCC

Paragraph (H))(1). OCC proposes changes to Paragraph (H)(1) to provide that customers being transferred back to the natural gas company's commodity service "will not be liable for any costs associated with the switch," if the transfer is due to non-payment of competitive supplier charges or enrollment in PIPP. Since the Companies do not charge customer switching fees, OCC's proposal is not necessary as to them. It is not clear to the Companies, however, that these rules are the appropriate place to address this issue.

4. Reply to NOPEC

Paragraph (G). NOPEC recommends that the Commission require all utilities to adopt a mandatory form "rescission letter." (NOPEC Cmts. at 2.) The Companies agree with the goal of ensuring that customer correspondence is clear and accurate. Although they do not support

NOPEC's recommendation for reasons stated below, the Companies are willing to discuss potential improvements to enrollment letters with governmental aggregators.

The Companies do not support adoption of the proposed form letter *per se*. First, the recommended form letter seems out of step with the rule. The letter required by Rule 4901:1-13-14(G) is one to be issued *after* receiving a request to *rescind* enrollment. The NOPEC letter, however, is postured as "simply a confirmation" that a new supplier has been selected, requiring the customer to make an additional election to rescind. (*See* NOPEC Cmts. at 6, Att. A.) The Companies are concerned this letter could actually lead to additional confusion and customer frustration at the multiplication of red tape.

The Companies are also concerned that the form letter could be read as favoring the aggregator over other suppliers (which the customer may consciously have chosen). As stated elsewhere, the Companies do not believe it is the role of the utility to advise, persuade, or otherwise influence the customer's choice for a supplier.

Finally, leaving aside concerns with the content of the letter, the Companies as a general matter do not believe it is a prudent practice to have the rules dictate the form of customer correspondence in such detail. This area should be left to the reasonable discretion of the utility.

As explained above, however, the Companies are willing to entertain revisions to customer correspondence if there are specific concerns, and are willing to further discuss with governmental aggregators like NOPEC if they are aware of specific verbiage that they believe causes customer confusion.

5. Reply to Direct Energy and RESA

<u>Paragraph (D)</u>. RESA proposes a revision to a Staff proposal to reword this Paragraph, which concerns coordination on customer enrollment. (RESA Cmts. at 13.) Specifically RESA proposes to substitute "in compliance with all applicable requirements" for "as set forth in this

chapter." (*Id.*) RESA believes that its proposed language will ensure that necessary requirements, whether in this chapter or in another part of the Revised Code or Adminstrative Code, are still part of the coordination obligations. (*Id.*)

The Companies agree with RESA that other requirements beyond the cited rule may apply to customer enrollment. For example, such issues may be governed by statute, by other regulations, or by agreements between the utility and the supplier. For these reasons, the Companies support RESA's proposal.

Paragraph (J). Both Direct Energy and RESA propose adding procedural requirements to the rules regarding suspension and termination of certificates. It is not clear to the Companies that the added procedural requirements are necessary and they do not support them at this time. Such cases are relatively rare, and the Companies believe that the Commission can provide adequate due-process protections without codifying additional procedural steps.

The Companies oppose the recommendation to eliminate automatic termination or suspension. Although the Companies appreciate the concerns expressed by Direct and RESA, the reality is that a supplier who fails to meet its obligations can put the entire system at risk. Failure to arrange for adequate deliveries puts reliability at risks, and failure to cover financial obligations places other entities (including not only the utility but other suppliers and customers) under significant financial exposure.

The critical importance of maintaining reliability of the system demands the availability of serious remedies. Rules have a deterrent effect, and the availability of automatic remedies (in particular for non-delivery or underdelivery) emphasizes the importance of suppliers' meeting these obligations. Although it is true that "[n]atural gas companies are prepared to balance loads and do so on a regular basis" (Direct Comments at 3), this should not minimize the part played by suppliers, who bear a first-line role in balancing the system. The Companies are not aware that any supplier has been automatically suspended following a utility's filing. But regardless, should it ever occur that a supplier is putting the system at risk by its actions or inaction, these remedies should remain available to protect the system and customers.

RESA points out that utility tariffs contain "wide latitude" to claim material default. The suggestion seems to be that a supplier could be hauled in over minor issues and then lose its certificate without a hearing. Whether or not one agrees with RESA's reading of the tariffs, RESA does *not* point to a single instance of alleged abuse, *i.e.*, a utility filing an action to suspend or terminate a supplier certificate based on immaterial issues. Much less does RESA identify an issue in which such a filing led to an automatic suspension. The Companies have no desire or incentive to make mountains out of molehills, or otherwise engage in costly legal battles over minor issues. The absence of any allegation of abuse of these rules undermines the proposed change.

The Companies are glad to say that suppliers in Ohio have historically been reliable partners in the important business of providing customers with natural gas service. The Companies are glad to say that the remedies contained in the CRNG rules have rarely been called upon. Indeed, to the Companies' knowledge, the automatic process has not yet been employed. But these rules provide an important backstop in the hopefully rare case that a competitive supplier fails to meet serious obligations. Given the important role played by suppliers, and the absence of any allegation of abuse, the Companies do not support weakening the remedies contained in these rules.

II. CONCLUSION

The Companies appreciate the opportunity to comment on the proposed rules. For the foregoing reasons, the Companies respectfully request that the Commission act in accordance with its comments.

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Respectfully submitted,

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