

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Amendment of)
 Chapter 4901:1-13, Ohio Administrative) Case No. 05-602-GA-ORD
 Code, to Establish Minimum Gas)
 Service Standards.)

ENTRY ON REHEARING

The Commission finds:

- (1) By entry dated May 11, 2005, the Commission issued for public notice and comment proposed rules, prepared by its staff, to establish minimum service standards for gas and natural gas companies. The Commission received numerous comments and reply comments in response to this entry. On January 18, 2006, having carefully weighed the comments filed by interested persons, the Commission adopted rules which would amend Chapter 4901:1-13, Ohio Administrative Code (O.A.C.), and establish Minimum Gas Service Standards (MGSS).
- (2) On February 16, 2006, the Commission received an application for rehearing from the Ohio Gas Association (OGA). On February 17, 2006, the Commission received applications for rehearing from Columbia Gas of Ohio, Inc. (Columbia), Ohio Consumers' Counsel (OCC), Vectren Energy Delivery of Ohio, Inc. (VEDO), Ohio Home Builders Association, Inc. (OHBA), and The East Ohio Gas Company, d.b.a. Dominion East Ohio (DEO). The Commission also received a joint application for rehearing from Pike Natural Gas Company, Eastern Natural Gas Company and Southeastern Natural Gas Company (Joint Applicants). Ohio Gas Company (Ohio Gas) filed a request for clarification or, in the alternative, an application for rehearing and request for waivers on February 17, 2006. In addition, the Commission received correspondence from 34 builders in support of the applications for rehearing filed by Columbia and OHBA and from eight organizations in support of the application for rehearing filed by OCC.
- (3) On February 27, 2006, the Commission received memoranda contra the applications for rehearing from DEO, Columbia and OCC. On February 28, 2006, the Commission received a

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
 Technician RJH Date Processed 5/16/06

memorandum contra the applications for rehearing from Ohio Partners for Affordable Energy (OPAE). On March 15, 2006, the Commission granted rehearing to further consider the matters specified in the applications for rehearing.¹

- (4) The parties seeking rehearing raised a number of assignments of error associated with the rules adopted by the Commission. We will address the assignments of error relating to the Commission's statutory authority and the rulemaking process first and then address the assignments of error relating to specific rules in the order of the various rules. To the extent that an allegation of error is raised that is not directly addressed herein or not incorporated in modifications to the rules adopted in this entry on rehearing, that assignment of error has been rejected.

Statutory Authority, Jurisdiction and Need

- (5) OGA, Columbia, VEDO, DEO, and the Joint Applicants all raised assignments of error, arguing that the Commission lacks statutory authority to promulgate the MGSS.

VEDO and the Joint Applicants argue that the Commission's finding that it has statutory authority to promulgate the MGSS is contrary to law and Ohio Supreme Court precedent. The OGA and DEO note that the Commission is a creature of statute and has only the authority granted by its authorizing statutes. OGA states that the General Assembly has not enacted laws explicitly authorizing or directing the Commission to promulgate minimum service standards for the gas industry. OGA argues that the statutes relied upon by the Commission in the Opinion and Order in this case merely define the Commission's power to regulate but do not specify the scope of its supervisory power.

- (6) DEO further argues that the General Assembly has not evinced an intent to regulate in the area of minimum service standards for the gas industry. DEO states that nothing in Title 49 of the Revised Code reflects an intent by the General Assembly to

¹ The Commission notes that the entry on rehearing inadvertently failed to specify that the application for rehearing submitted by Columbia was granted. The Commission therefore clarifies that the application submitted by Columbia was, in fact, granted.

establish minimum gas service standards; moreover, DEO notes that, when the General Assembly has perceived a need for minimum service standards, it has done so explicitly. Relying upon the maxim *expressio unius est exclusio alterius* (the expression of one thing implies the exclusion of another), DEO argues that, given that the General Assembly has recognized a need for service standards in other industries, but not in the gas industry, the Commission cannot rely upon general supervisory powers to promulgate the MGSS.

In its comments, the OGA relies upon the Supreme Court's holding in *Burger Brewing Company v. Thomas*, (1975) 42 Ohio St. 2d 377, in which the Supreme Court invalidated a rule promulgated by the Liquor Control Commission. OGA claims that the Commission's action in this proceeding parallels the Liquor Control Commission's action invalidated by the Supreme Court in *Burger*. Likewise, DEO states that, under *Burger*, the test for determining whether an agency has authority to issue a particular rule is whether the General Assembly has manifested an intention to regulate in the area reached by the regulation; DEO concludes that the General Assembly has not evidenced an intent to regulate in the area of minimum service standards for the gas industry. VEDO and the Joint Applicants also argue that the Supreme Court held in *Burger* that implied authority in statutes setting forth general agency powers is limited to such power as may be reasonably necessary to make the express power effective.

DEO argues that the General Assembly has not delegated authority to the Commission to issue minimum service standards for the gas industry. DEO claims that, although a statute may grant authority implicitly, an implied grant of authority is merely incidental to, and is not a substitute for, an express grant. Thus, DEO concludes that the Commission cannot credibly argue that the MGSS are "reasonably necessary" to give effect to express powers in any existing statutes.

Finally, DEO argues that the Commission's interpretation of its authorizing statutes would render those statutes unconstitutional. DEO contends that any claim that existing statutes provide implied authority for minimum service standards for the gas industry would violate the nondelegation

doctrine, which prevents the General Assembly from delegating legislative authority to administrative agencies.

- (7) In OCC's memorandum contra the applications for rehearing submitted by OGA, Columbia, VEDO, DEO, and the Joint Applicants, OCC argues that the Commission has statutory authority to adopt the MGSS and that the applications for rehearing ignore numerous provisions in the Revised Code that grant the Commission the power to ensure the quality and adequacy of utility service. OCC argues that, contrary to the claims of the OGA, the express language of Section 4905.28, Revised Code, does not limit the Commission to the adoption of technical standards of measurement.

Moreover, OCC argues that *Burger* does not apply to this proceeding. OCC distinguishes *Burger* by arguing that, while the Supreme Court held that the statutes at issue in *Burger* did not provide any express authority in the area of pricing, various provisions of the Revised Code provide the Commission with implicit and express authority to regulate service quality.

OCC argues that, in relying upon the maxim *expressio unius est exclusio alterius* (the expression of one thing implies the exclusion of another), DEO ignored a specific exception to the general rule. OCC cites *Springer v. Government of Philippine Islands*, 277 U.S. 189, 206 (1928), for the proposition that general grants of power should be given effect if a specific power falls under the general grant of authority. OCC concludes that the general grants of authority provided by Sections 4905.04, 4905.05, and 4905.06, Revised Code, clearly permit the Commission to take the necessary steps to regulate public utilities and supervise the activities of utilities with respect to the adequacy of service provided to consumers.

Finally, OCC argues that the unsubstantiated costs of implementing the MGSS alleged by some of the natural gas companies should not provide the basis for rehearing. OCC notes that the applications for rehearing contained, for the first time, estimates of the costs for implementing the MGSS. OCC urges the Commission to ignore these estimates as unreasonable and unsubstantiated. OCC further argues that any costs incurred by the natural gas companies should only be recovered

through a rate proceeding under Chapter 4909 of the Revised Code.

- (8) The Commission finds that rehearing on these assignments of error should be denied. Sections 4905.04, 4905.06, 4905.22, and 4905.28, Revised Code, grant the Commission broad authority to supervise and regulate all public utilities within its jurisdiction, and these statutes provide sufficient statutory authority to promulgate minimum service standards for the gas industry, particularly when viewed in the context of the Commission's express authority to regulate service quality. A review of the language of these statutes demonstrates the broad authority granted the Commission by the General Assembly. First, Section 4905.04, Revised Code, states in pertinent part:

The public utilities commission is hereby vested with the power and jurisdiction to supervise and regulate public utilities and railroads, to require all public utilities to furnish their products and render all services exacted by the commission or by law

In addition, Section 4905.06, Revised Code, provides both a broad authority and a specific grant of authority to regulate adequacy of service, stating, in pertinent part:

The public utilities commission has general supervision over all public utilities within its jurisdiction . . . and may examine such public utilities and keep informed as to their general condition, capitalization, and franchises, and as to the manner in which their properties are leased, operated, managed, and *conducted with respect to the adequacy or accommodation afforded by their service*, the safety and security of the public and their employees, and their compliance with all laws, orders of the commission The commission . . . may enter in or upon, for purposes of inspection, any property, equipment, building, plant, factory, office, apparatus, machinery, device, and lines of any public utility. The power to inspect includes the power to prescribe any rule or order that the commission finds necessary for protection of the public safety. . . . [Emphasis added.]

Further, Section 4905.22, Revised Code, requires utilities to provide adequate service, providing, in pertinent part:

Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. [Emphasis added.]

Finally, Section 4905.28, Revised Code, authorizes the Commission to establish measurements for adequate service, stating, in pertinent part:

The public utilities commission may ascertain and fix adequate and serviceable standards for *the measurement of quality, pressure, . . . or other conditions pertaining to the supply or quality of the product furnished or adequacy of service rendered by any public utility* and may prescribe reasonable regulations for examination, testing, and measurement of such product or service. It may establish reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters and appliances for measurements. [Emphasis added.]

- (9) Moreover, it is well established that administrative agencies may have implied authority conferred by the General Assembly. In *Burger*, the Supreme Court noted that administrative agencies have "only such authority, express or implied, as conferred upon it by the General Assembly." *Burger*, 42 Ohio St. 2d at 379 (emphasis added). As the Commission noted in its Opinion and Order, courts have recognized that an administrative agency may promulgate regulations that are consistent with and predicated upon an expressed or implied statutory grant of authority.² *DDDJ, Inc. v. Liquor Control Comm.*, (1990) 64 Ohio App. 3d 828, 831. DEO cites a number of cases in which the Supreme Court has held that the Commission cannot rely on a general grant of authority to enact rules that

² The Commission is not persuaded by some of the rehearing applicants' efforts to distinguish those cases where the courts have recognized the existence of implied grants of rulemaking authority. DEO, for example, simply asserts that no statute confers express or implied authority for the Commission's action but does not address the actual language of the statutes cited by the Commission as having granted it the authority to issue minimum service standards.

exceed the scope of authority granted by specific statutes. However, these cases are not applicable to this proceeding because, in the cases cited by DEO, the Supreme Court held that the Commission's action had *conflicted with* a specific statute. See, *Columbus S. Power Co. v. Pub. Util. Comm.* (1993), 67 Ohio St. 3d 535; and *Consumers' Counsel v. Pub. Util. Comm.* (1981), 67 Ohio St. 2d 153. In this proceeding, DEO cites to no statute with which the Commission's adoption of the MGSS conflicts.

- (10) Further, the Commission finds that the Supreme Court's holding in *Burger* does not preclude the Commission from promulgating the MGSS. In *Burger*, the Court held that the Liquor Control Commission lacked the authority to regulate pricing, the subject-matter of the regulation at issue. In determining that the Liquor Control Commission lacked statutory authority to regulate the area of pricing, the Court held that:

The statute . . . enumerates nine specific areas of regulation, none of which, however, confers any express or specific authority in *the area* of pricing, at any level, of any segment of the liquor industry.

Burger, 42 Ohio St. 2d at 380 (emphasis added).

In this proceeding, however, none of the commenters seriously contend that the Commission lacks authority to regulate *the area* of adequacy of gas service. In fact, as discussed above, Section 4905.06, Revised Code, contains a specific grant of authority regarding adequacy of service provided by the regulated natural gas companies. Therefore, because the Commission has specific statutory authority for the area of adequacy of gas service, the Commission finds that the Court's holding in *Burger* does not apply in this proceeding and does not preclude the adoption of the MGSS.

- (11) Finally, the Commission notes that we have previously held that Sections 4905.04, 4905.05, and 4905.06, Revised Code, provide authority to promulgate service standards for the industries subject to the Commission's jurisdiction. As discussed in the Opinion and Order in this proceeding, the Commission addressed this question when it first promulgated

the Electric Service and Safety Standards, Chapter 4901:1-10, O.A.C. (ESSS). In that proceeding, the Commission held that Sections 4905.04, 4905.06, 4905.22, and 4905.28, Revised Code, provided the basis for the adoption of the ESSS. *In the Matter of the Adoption of Electric Service and Safety Standards as Set Forth in Chapter 4901:1-10, Ohio Administrative Code*, Case No. 97-1578-EL-ORD, Entry on Rehearing (September 24, 1998) at 2-3.

The OGA and DEO seek to minimize this precedent on the theory that the General Assembly, in its massive restructuring of the electric industry, directed the Commission to promulgate minimum service standards for both competitive and noncompetitive retail electric service. These arguments by OGA and DEO are not persuasive. Section 4928.10, Revised Code, directed the Commission to promulgate minimum standards for competitive retail electric service, which was not previously subject to the jurisdiction of the Commission. Section 4928.11, Revised Code, directed the Commission to expand the scope of its previously adopted ESSS rules and established a deadline for completing that action. There is nothing in Section 4928.11, Revised Code, which appears to limit the Commission's inherent authority in Chapter 4905 of the Revised Code to promulgate ESSS rules, nor is there any indication that the General Assembly believed that the Commission exceeded its statutory authority in initially promulgating the ESSS.³

Moreover, the Commission has previously ruled that Sections 4905.04, 4905.05, and 4905.06, Revised Code, provide a basis for promulgating rules applicable to natural gas companies. When the Commission adopted standards for competitive retail natural gas service, the Commission specifically addressed Columbia's argument that the Commission lacked statutory authority to adopt standards applicable to natural gas companies:

Columbia argues that the Commission lacks statutory authority under HB9 [Am. Sub. House Bill 9, which authorized the Commission to regulate competitive retail natural gas service providers] to promulgate minimum

³ These arguments would be more persuasive if the General Assembly had prohibited the Commission from promulgating minimum electric service standards rather than directing the Commission to expand the scope of its previously promulgated rules.

service standards that apply to natural gas companies . . . The Commission disagrees. The natural gas companies are being required to comply with the rules of [Chapter 4901:1-29, O.A.C.] that are necessary to implement the provisions of HB9. Sections 4905.04, 4905.05, and 4905.06, Revised Code, provide the Commission with broad authority to regulate public utilities, including natural gas companies. Nothing in HB9 lessens that authority. Therefore, we are well within our statutory authority to require natural gas companies to comply with [Chapter 4901:1-29, O.A.C.].

In the Matter of the Commission's Promulgation of Rules for Competitive Retail Natural Gas Service and its Providers Pursuant to Chapter 4929, Revised Code, Case No. 01-1371-GA-ORD, Entry on Rehearing (April 9, 2002) at 10.

It is important to note that, contrary to the arguments presented by the OGA in this proceeding, the Commission did *not* determine that the provisions of Am. Sub. House Bill 9 provided the authority to promulgate standards applicable to natural gas companies; the Commission determined that it had *existing* statutory authority under Section 4905.04, 4905.05, and 4905.06, Revised Code, to promulgate standards applicable to natural gas companies and that the enactment of Am. Sub. House Bill 9 did not affect that existing statutory authority.

- (12) Based upon the above, we conclude that the Commission has the necessary statutory authority to adopt the MGSS. Therefore, the assignments of error raised by OGA, Columbia, VEDO, DEO, and the Joint Applicants, which argue that the Commission lacks statutory authority to promulgate the MGSS, should be denied.
- (13) DEO also argues that the Commission has not met its burden of proving that the rules are reasonable and lawful. DEO argues that the record is devoid of any evidence to support the reasonableness or necessity of the MGSS. DEO further notes that the Commission has not held a hearing or received evidence into the record of this proceeding.

Likewise, OGA argues that the Commission established no reasonable need for the rules adopted by the Commission. In addition, OGA also argues that the Opinion and Order is unreasonable because the record is devoid of any analysis of the costs of implementing the rules and or the benefits to customers and consumers to be obtained by the rules. VEDO contends that the Commission has failed to perform a proper financial analysis of the costs of implementing the MGSS.

- (14) With respect to the process followed by the Commission in this rulemaking proceeding, the Commission notes that, when the proposed rules were issued for public notice and comment, the Commission Staff conducted an informal workshop to answer questions interested persons had regarding the rules as proposed by the Staff. This workshop was followed by a sixty-day comment period and a thirty-day reply comment period. The Commission received nine sets of comments and seven sets of reply comments during the comment periods, as well as correspondence from numerous other interested persons.⁴

DEO observes that the Commission did not hold an evidentiary hearing or otherwise take evidence into the record in this proceeding. However, DEO is aware, from its participation in numerous other rulemaking proceedings before this Commission,⁵ that the Commission does not generally hold evidentiary hearings in rulemaking proceedings; and DEO cites to no statute or case which requires the Commission to hold an evidentiary hearing in a rulemaking proceeding. The Commission notes that, occasionally, the Commission will hold public hearings in rulemaking proceedings for the purpose of taking public testimony regarding proposed rules. However, the Commission determined that it was not necessary to hold

⁴ Initial comments were filed by OP&E, VEDO, OCC, The Cincinnati Gas & Electric Company (CG&E), Columbia, OGA, DEO, and Ohio Gas Marketers Group. Joint Comments were timely filed by Ohio Gas, Pike Natural Gas Company, Eastern Natural Gas Company and Southeastern Natural Gas Company. Comments and correspondence in support of OCC's comments were filed by AARP Ohio; El Barrio; Horn of Africa Community Center, Inc.; the Council for Older Adults of Delaware County; Serving our Seniors; Tri-County Independent Living Center, Inc.; and Licking County Aging Programs, Inc.

⁵ For example, DEO filed comments, reply comments and an application for rehearing in Case No. 01-1371-GA-ORD, in which the Commission promulgated standards for competitive retail natural gas service. DEO also filed initial and reply comments and a memorandum contra applications for rehearing in Case No. 03-1384-GA-ORD, in which the Commission conducted a five-year review of its gas cost recovery rules.

public hearings in this proceeding, and in light of the extensive participation of interested persons in this proceeding, the Commission reaffirms its conclusion that public hearings were not necessary.

- (15) Thus, the Commission finds that the record in this proceeding supports the adoption of the MGSS. As discussed in the Opinion and Order, the Commission has concluded that customers of natural gas companies are entitled to minimum service standards to the same extent as customers of other industries regulated by the Commission.

The Commission has extensive experience in understanding minimum service expectations because of our consideration and application of standards to the other regulated industries. Plus, we have already established some standards for the natural gas industry in certain specific areas (e.g., natural gas pipeline safety, establishing credit for residential natural gas services, and disconnecting residential natural gas service). Moreover, we and our staff receive daily inquiries and complaints from the public about the provision of service by the regulated industries. We make these statements to point out that we have volumes of knowledge and experience with which to evaluate the needs of the public served by the natural gas industry. We relied upon that institutional information as well in evaluating the need for minimum service standards for the natural gas industry.

We do not accept that it is unreasonable or unlawful to develop minimum standards relating to fundamental aspects of providing natural gas service such as meter reading and installation of natural gas service, for instance. We have required the utilities for many years to actually read meters at least once every 12 months.⁶ This particular standard in adopted rule 4901:1-13-04(G)(1) is not a new type of standard and yet DEO, Columbia and OGA have repeatedly argued in this case that it is not reasonable or necessary to adopt that particular standard. Similarly, Columbia alleges that we are

⁶ See, *Sharp v. Columbia Gas of Ohio Inc.*, Case No. 02-647-GA-CSS, Opinion and Order (December 19, 2002); *Vitek v. Columbia Gas of Ohio Inc.*, Case No. 03-2511-GA-CSS, Opinion and Order (November 10, 2004); *Fallucco v. The East Ohio Gas Company*, Case No. 84-361-GA-CSS, Finding and Order (June 4, 1985); and Rule 4901:1-10-05(I)(1), O.A.C.

attempting to micro-mange the industry. The need to require actual meter reads is quite obvious to us and it is entirely reasonable today to include such a standard in the Administrative Code. Likewise, we have, for years, required the utilities to investigate complaints when made directly to the utility or referred to the utility by the Commission staff. These particular standards in adopted rule 4901:1-13-10 are not conceptually new and yet DEO and OGA contend that the Commission has not proved that the rule is reasonable or lawful. Again, we find that the need for the standard was established long ago through actual cases and controversies before the Commission. The Commission finds it is reasonable to take the premise of a requirement resulting from past cases and ensure the rules capture the same concept. To categorically argue that all of the involved rules are unreasonable and unlawful simply ignores many existing practices and policies of the Commission, based on both Commission experience and prior litigated cases. We do not accept that sweeping argument.

We find that the specific standards are individually and collectively warranted and reasonable. By virtue of this proceeding, we are establishing minimums by which all regulated natural gas companies will operate and provide service to the public in Ohio so that the public is uniformly and fairly treated. Additionally, these standards will allow us to continue monitoring the activities of the natural gas companies.

The Commission has carefully considered all of the arguments submitted by interested parties in the comments, in the reply comments and in the applications for rehearing. Based upon these arguments, the Commission has made appropriate further modifications to the standards for the special nature of the natural gas industry.⁷ However, the Commission has concluded that it is appropriate and necessary to require at least a minimum level of information and reliable service be provided to consumers in Ohio served by regulated gas and natural gas companies. With respect to the costs of

⁷ The Commission notes that, although the ESSS were an initial starting point for developing the Staff's proposed rules, the MGSS, as modified by this entry, have significant differences from the ESSS. In fact, the rehearing applicants have made opposing arguments on the basis that the MGSS are improperly identical to ESSS and on the basis that the MGSS improperly differ from ESSS. We conclude that the rules adopted today are appropriate and reasonable.

implementing the MGSS, the Commission has reviewed the costs of implementation provided by the utilities in their applications for rehearing. The Commission does not find that these costs outweigh the need for minimum standards. Moreover, as the Commission noted in its Opinion and Order, the costs of implementing the MGSS, to the extent that such costs are reasonable and prudently incurred, could be recoverable by a natural gas company through a rate proceeding under Chapter 4909 of the Revised Code.

- (16) Therefore, the assignments of error raised by OGA, DEO and VEDO, which argue that the Commission lacked a proper record for the adoption of the MGSS, should be denied.
- (17) The Commission now will address the various assignments of error and requests for clarification raised with respect to the individual rules in the MGSS as adopted by the Commission. To the extent any assignments of error are not addressed below or otherwise addressed in the adopted rules, they are denied.

Rule 4901:1-13-01 Definitions and
Rule 4901:1-13-02 Purpose and Scope

- (18) Columbia points out that, in the Opinion and Order, the Commission adopted its recommendation that the scope of the rules be limited to small commercial customers rather than all nonresidential customers. Therefore, Columbia requests that the Commission eliminate the definition of "nonresidential gas service" contained in adopted Rule 4901:1-13-01(P). The Commission will note that, although the Commission limited the scope of many individual rules to only residential and small commercial gas service, Columbia overstates the scope of the Commission's holding in the Opinion and Order. Unless otherwise indicated in each individual rule, the rules apply to all gas and natural gas service regulated by the Commission. For example, the rules for recordkeeping and for complaint-handling apply to all regulated gas service, not just for residential and small commercial gas service. To clarify this point, the Commission added language to Rule 4901:1-13-02(A). The addition points out that, unless a rule specifically enumerates that it is limited to a set of customers, the rule applies to all gas and natural gas customers, residential and

nonresidential. Since the clarification includes the term "nonresidential," the Commission is keeping the definition for "nonresidential in adopted Rule 4901:1-13-01.

- (19) Ohio Gas notes that the definitions of "small gas company" and "small natural gas company" do not include Ohio Gas and seeks clarification whether the Commission intended to define companies with 50,000 customers as small companies. In the alternative, Ohio Gas seeks rehearing on this issue and requests that the Commission define small companies as those serving less than 100,000 customers rather than 15,000 customers as specified by adopted Rule 4901:1-13-01(W) and (X). Rehearing on this issue should be granted. The Commission finds that the two definitions should be changed to small companies serving less than 75,000 customers.

Rule 4901:1-13-03 Retention of Records and Access to Records and Business Activities

- (20) Columbia notes that it routinely records customer calls for quality assurance purposes and argues that it would be overly burdensome to require that such recordings be retained for three years. Therefore, Columbia seeks clarification that such recordings are not required to be retained for three years pursuant to adopted Rule 4901:1-13-03(D). To eliminate any confusion, the Commission has modified the provisions of paragraph (D) to eliminate the phrase "maintenance and retention of records and" in order to further clarify that, because utilities are not required to record customer calls, such recordings are not required to be kept for three years to demonstrate compliance with the minimum standards, provided that other records are retained for three years which do demonstrate compliance with the standards.
- (21) Ohio Gas requests a one-year waiver from the provisions of paragraph (D) of this adopted rule, as it does not currently have the technical ability to allow the Staff to monitor telephone calls without the knowledge of the customer service representative. The Commission's adjustment of the number of customers served in the definition of a small gas or natural gas company alleviates the need for this request. Therefore, the waiver request is denied as moot.

Rule 4901:1-13-04 Metering

- (22) The Joint Applicants seek rehearing of paragraph (E) requiring natural gas companies to mark each meter with the company name and a serial or assigned meter number. The Commission finds that the company name is not necessary and has modified the rule accordingly. However, the Commission believes that it is necessary and appropriate to require natural gas companies to assign a serial number or other unique identifier for tracking purposes.
- (23) Columbia seeks rehearing on the placement of the qualifiers "reasonably" and "approximate" in paragraph (D)(5)(c) of this rule, which requires utilities to credit customers who have been overcharged as the result of a meter inaccuracy. The Commission will grant rehearing on this issue and modify the rule in the manner recommended by Columbia. Further, based upon our review of this adopted rule, the Commission finds the reference to Section 4933.28, Revised Code, to be unnecessary, and the reference will be deleted.
- (24) DEO seeks rehearing on the requirement contained in paragraph (G)(1) that actual meter reads be obtained once every 12 months. The Commission notes that, fundamentally, this is not a new requirement imposed by the MGSS. Instead, this requirement memorializes in the MGSS a long-held Commission precedent based upon decisions in complaint cases brought under Section 4905.26, Revised Code. The Commission first established that the failure to perform an actual meter read once every 12 months constitutes unreasonable service in *Fallucco v. East Ohio Gas Co.*, Case No. 84-361-GA-CSS, Opinion and Order (June 4, 1985). In that case, the Commission held that the failure to obtain an actual meter read over four years was not reasonable, and the Commission directed The East Ohio Gas Company to amend its tariffs "to provide for periodic, actual company readings of customers' meters, on at least an annual basis." *Fallucco*, at 16. More recently, the Commission addressed this issue again, confirming that the failure to actually read a customer's meter for over a 12-month period was unreasonable service. *Sharp v. Columbia Gas of Ohio, Inc.*, Case No. 02-647-GA-CSS, Opinion and Order (December 19, 2002) at 7. See also, *Vitek v. Columbia Gas of Ohio, Inc.*, Case No.

03-2511-GA-CSS, Opinion and Order (November 10, 2004) (failure to actually read meter for 33-month period is unreasonable service). In its application for rehearing in those proceeding, DEO fails to address these cases, relying instead on detailing the differences between the gas and electric industries. However, as to this provision, those differences are not relevant. The Commission required DEO to perform actual reads of meters every 12 months long before it included a similar requirement in the ESSS and MGSS.⁸

Nonetheless, the Commission will clarify one point raised indirectly by DEO. DEO notes that it provides customers the option of performing the reads themselves and providing this information to DEO. The Commission will clarify that customer reads of meters can be included as "other arrangements" provided for in paragraph (G)(1). However, customer reads cannot take the place of at least one actual read, performed by the utility, every 12 months. This is consistent with the Commission's holding in *Fallucco* that "the Commission does not think it is reasonable to rely on customer provided and computed readings for extended and indefinite periods of time" *Fallucco*, at 15.

The Commission realizes that there may be some situations where, despite numerous contacts with a consumer perhaps some even involving the threat of disconnection, the company will still be unable to gain access to a meter due to an uncooperative customer. To recognize that fact, the Commission will grant rehearing to add a process for companies to present a plan to the director of the Commission's Service Monitoring and Enforcement Department outlining its procedures to comply with the standard. Plans can include such activities as: means for notifying customers of the need to read the meter, escalating modes of contacting the customers, identification of problem areas/meter groups, use of special arrangements/agreements with customers, installing AMR technology and actions to be taken with equipment upon

⁸ DEO also raises the possibility of introducing automated meter reading (AMR) technology in its service area. The Commission generally supports the introduction of AMR technology by the utilities in Ohio, but the potential introduction of such technology should not delay the promulgation of the MGSS. The Commission encourages all gas and natural gas companies to include the introduction of AMR technology in their plans to comply with this rule.

gaining access and reading the meter. A company not reading meters at least once every 12 months, but complying with its plan to achieve that result, will be considered in compliance with the yearly meter reading requirement. A company complying with its plan shall also have a rebuttable presumption in any complaint hearing that the failure to read the meter was a matter beyond the company's control. However, nothing in this rule alleviates any company from complying with any gas pipeline safety requirements.

- (25) The Joint Applicants, DEO and Columbia request rehearing on the provision of paragraph (G)(1), which provides that remote meter indexes do not qualify as actual meter readings. According to DEO, over 95 percent of remote index meters are found accurate when tested. The Joint Applicants argue that the annual failure rate for 2005 was two percent. The Commission notes that remote index meters as described by DEO are mechanical in nature and subject to a greater risk of error. The Commission takes administrative notice of Case No. 04-1166-GA-ATA, *Application of Columbia Gas of Ohio, Inc. to Revise its Tariffs to Substitute an Automated Meter Reading Charge for the Current Remote Index Charge*, where Columbia presented problems with the outdated remote index meters. In that docket, Columbia highlighted the potential for errors with the remote technology and, recognizing its requirement to obtain an actual read each year (which the remote index meters were not satisfying), Columbia sought to discontinue new installation of the outdated remote index meters and move to automated remote meter readings. The Commission took note of the persuasive arguments made by Columbia and allowed the change. These rules reflect a continuation of that same recognition. Remote index meters might be adequate for the every other month reading, if agreed to by the customer. But, just as Columbia recognized in 2004, a remote index meter is not accurate enough to serve as performance of the one annual actual read already required. Essentially, the Commission continues to believe that it is in the best interest of both the utility and the customer to require an actual meter reading at least once in a 12-month period. This will help prevent significant undercharges and overcharges to the customer and will help ensure that the utility correctly bills for the gas it provided. Therefore, an actual meter read every 12 months is

the minimum necessary to ensure that an installed remote index meter has not failed.

Columbia also argued that, in paragraph (G)(1), the word "applicable" be substituted for "gas cost recovery" because many customers participate in the gas choice programs and the gas cost recovery rate may bear no relationship to the contract price agreed to by the customer and its supplier. The Commission agrees with Columbia and will grant rehearing on this issue and modify the rule accordingly.

- (26) Columbia seeks rehearing regarding the provisions of adopted Rule 4901:1-13-04(G)(2). Columbia disputes the applicability of Section 4933.28, Revised Code, to situations where the customer failed to provide reasonable access to its meter. Columbia makes this argument on rehearing after having argued in its comments that, if a natural gas company undercharges a customer because of the natural gas company's failure to obtain actual meter readings, this underbilling is a continuing problem under the utility's control, subject to Section 4933.28, Revised Code. Comments of Columbia Gas of Ohio, Inc. (July 27, 2005) at 10. Nevertheless, recognizing that sometimes inability to gain access to a customer's meter is beyond the company's control, the Commission finds that Section 4933.28, Revised Code, applies where the utility has failed to obtain an actual read for over 12 months or not followed its approved plan submitted pursuant to newly added 4901:1-13-04(G)(1)(a) through (c). This finding is consistent with our decision in *Fallucco*, where we held that:

When Section 4933.28(A) is read in its entirety, it is clear that the statute is applicable to circumstances where the utility has undercharged any residential customer as the result of a meter or metering inaccuracy or other continuing problem under its control, and is not strictly limited to problems where gas has been unmetered. In this case, although the unbilled-for-gas had been properly metered, Respondent undercharged Complainant as a result of a continuing meter reading problem under its control, and, therefore, Section 4933.28, Revised Code, does apply.

Fallucco, at 17.

The Commission points out that the utility whose customer has failed to provide reasonable access to the meter for 12 months has the right to disconnect the customer, as authorized by Rule 4901:1-18-02(F), O.A.C., after having provided proper notice to the customer as required by Chapter 4901:1-18, O.A.C. It is the hope of the Commission that disconnection is an effort of last resort. As stated above, the Commission did amend the rules to allow companies to provide the Commission with a plan to account for extreme situations when consumers are not cooperating. Again, adherence to an accepted plan will put the lack of access out of the companies' control and relieve the company from that year's meter reading requirement for certain meters.

Finally, Columbia argues that this rule penalizes utilities by forcing them to credit customers for overestimated usage at the highest rate the customer paid for gas or natural gas over the 12-month period. The Commission does not intend for this rule to unfairly penalize gas or natural gas companies. Therefore, the Commission will modify the provisions of paragraph (G)(2) to provide that overcharges be paid back to the customer at the "appropriate" rates (i.e., rates in effect at the time the gas or natural gas was used).

- (27) Columbia argues that the provisions of paragraph (G)(5), which require utilities to obtain actual meter readings at the initiation and termination of service if the meter has not been read in the immediately preceding 60 days, are unreasonable and should be eliminated or modified to "upon request of the customer and when not read within the preceding five months." In the alternative, Columbia recommends that, if this provision is not eliminated, the 60-day period be extended to 70 days. The extension to 70 days would accommodate Columbia's billing cycles, which range from 28 to 35 days. The Commission finds Columbia's alternative recommendation is reasonable. Therefore, the Commission will grant rehearing for the purpose of modifying the rule to extend the 60-day period to 70 days.

Rule 4901:1-13-05 Minimum Customer Service Levels

- (28) Joint Applicants, VEDO, Columbia, and DEO⁹ all request rehearing regarding the customer service standards contained in adopted Rule 4901:1-13-05. Specifically, the utilities request that the Commission measure performance of service initiation and upgrades, telephone answer time, and meeting scheduled appointments with customers on an "average monthly" basis or an annual basis rather than a calendar monthly basis, as provided by the rule adopted by the Commission.

On the other hand, OCC requests rehearing on the decision by the Commission not to provide for automatic credits for customers for failure to adhere to the minimum customer service levels.

As the Commission stated in its Opinion and Order, we believe that the rule, as adopted, strikes the proper balance between the interests of the utilities and the interests of consumers. The rule establishes minimum levels of customer service in order to encourage utilities to provide service in a timely manner and includes sufficient flexibility in the event that unforeseen circumstances cause utilities to miss those standards in a given month. The very nature of the argument raised by the applications for rehearing highlight the danger of an averaged standard of review of performance. The off-season responsibilities of a gas company are different than during the winter season. To combine the performance during those two seasons would erase a clear picture of what actually occurs in those busy and slow months. The rules are set up so that a company must miss the standard two months in a 12-month period before reporting performance to the Commission staff. That report provided to Commission staff can explain the factors leading to the utility's requirement to report the results. Once that is reported, our staff will assess all the factors and work with the company to determine the most efficient way to address the problem. The overall goal is the same, to provide consumers with some basic level of service and to provide the

⁹ DEO limited its request for rehearing to only the telephone answer time provisions of adopted Rule 4901:1-13-05(B), arguing that the 60-second requirement is too restrictive. DEO is willing to fund research to determine customer expectations regarding telephone answer time, as well as other areas in the MGSS.

Commission with the information necessary to address proactively any service issues. Thus, we believe the rule already provides sufficient flexibility and we see no reason to allow for further flexibility as advocated by the utilities by employing averaged monthly measures. The Commission is concerned that an averaged monthly measure as proposed by the utilities would preclude the Commission from gaining a full understanding as to the service quality provided by utilities because peak periods, when a utility may fail to meet the minimum customer service levels, will be averaged out. The Commission understands that the natural gas industry is subject to peak periods; however, the timing of those peak periods is predictable, and the natural gas companies should prepare to properly manage such peak periods.

With respect to the provisions for automatic crediting advocated by OCC, the Commission believes that it is not necessary to include automatic crediting provisions. Rehearing on this issue should be denied.

- (29) Moreover, Columbia further requests that the Commission extend the periods for completion of new service requests under paragraphs (A)(1) and (A)(2) from five days to 10 days and from 20 days to 30 days, respectively. Columbia also asks that the requirement be limited to individual residential customers only. Columbia argues that, while the timeframes may be reasonable for much of the year, during peak periods, the demands on its service personnel are 15 percent higher than the remainder of the year. As the Commission noted above, the timing of these peak periods is predictable, and the Commission expects utilities to be prepared to manage these peak periods. Moreover, the rule already provides sufficient flexibility with a 10 percent safe harbor. Finally, these peak periods occur when customers have a greater need for utility services. It would not make sense to lower the minimum customer service levels or limit them to a certain customer group during the periods when natural gas service is in its greatest need. Rehearing on this issue should be denied.
- (30) With respect to Columbia's concerns raised regarding meeting the installation standard when dealing with developers of residential subdivisions, the Commission notes that paragraph

(A)(2)(a) already takes into account Columbia's concern. The twenty-day standard for completing installation of a service line and setting a meter does not begin until the service location is ready and all necessary tariff and regulatory requirements have been met. Columbia and the OHBA seek rehearing on the provisions of paragraph (A)(3), which requires the utility to test the piping downstream of the meter, with a service drop installed, prior to the initial operation or reestablishing of gas service. Columbia and OHBA allege that this requirement will create delays and cause multiple trips by the utility to establish gas service but do not explain why that is the case. In particular, Columbia and OHBA do not explain why the requirement that a service drop be installed for the test would cause this problem. They also do not provide any information upon which we could judge whether the process they use is safe.

The Commission notes that this rule is intended to promote the public safety. The rule as written will provide an assured level of safety for the distribution system as a whole. Ultimately, in order to have gas service, the meter will need to be set and a service drop will need to be installed. This rule simply addresses a safety measure during that process. Further, the Commission notes that this provision appears to cause inconvenience in the service area of one company. Rehearing on this issue should be denied.

Should Columbia or the OHBA wish to demonstrate that their scheduling process provides the same assured level or a more efficient level of protection, the Commission would consider a waiver of this rule in the future. However, further details and justification would be needed to show that a waiver is appropriate.

Columbia further objects to the requirement in paragraph (A)(3)(c) for a five-minute test prior to reestablishing gas service. The Commission does not find a five-minute test to be unreasonable to ensure that no leaks exist, given the potential consequences of a leak. In fact, the test is the method of checking for leakage in the National Fuel Gas Code, the industry's current standard.

- (31) Columbia requests a modification to paragraph (A)(4). Under this provision, if a rescheduled completion date is delayed more than two business days, the utility must provide written notification to the customer. Columbia requests that this reference be changed to five business days. The Commission finds that this request is reasonable and should be granted.
- (32) Columbia and VEDO seek clarification on whether customer calls handled by an automated system should be included in the answer time calculation required by paragraphs (B)(1) and (2). The Commission will clarify in the rules that the answer time of calls completely handled by an automated system should be included in the answer time measurement.

DEO requests rehearing on the 60-second answer time standard. DEO argues that there are significant differences between call centers of gas and electric utilities that affect the average length of a call and the average answer time, and, therefore, merit a longer answer time than sixty seconds. DEO points out the calls regarding natural gas outages, unlike calls about electric outages, cannot be handled by an automated system. Gas utilities also handle a greater volume of customer calls than electric utilities due to the fact that gas utilities have more inside gas meters, gas rates change monthly, and there is more gas choice, all generating more consumer interaction. DEO is concerned that the sixty-second answer time standard ignores the more important goal of addressing the customer's concern once the call is answered. In recognition of DEO's concerns, the Commission will grant rehearing in order to increase the requirement to 90 seconds from the previous 60-second standard.

- (33) Columbia objects to the provisions of paragraph (C) which require natural gas companies to keep 95 percent of scheduled appointments with customers and which require natural gas companies to provide an expected arrival window of four hours or less for all appointments requiring the customer to be present. The Commission notes that, in its reply comments, Columbia represented that it currently provides an "A.M." or "P.M." time for customers to schedule appointments. Reply Comments of Columbia Gas of Ohio, Inc. (August 26, 2005) at 8. Columbia further represents that its work management system

does not allow the over-scheduling of appointments, which helps ensure that, absent emergency situations, all appointments on a particular day are kept. *Id.* VEDO raised similar concerns to Columbia. The Commission believes that this rule is generally consistent with the process currently used by Columbia and the minor modifications to its process necessary to comply with the rule will not present an undue burden to Columbia or VEDO. The concern with leaving the rule as simply an "A.M." or "P.M." requirement is that technically each of those time periods encompasses a 12-hour period. The four hour window is an attempt to provide a more universal application of the standard. In our view, a four-hour window is a reasonable practice, while an "A.M." or "P.M." window is subject to different interpretations. Assuredly, Columbia or VEDO were not seeking a 12-hour window. A four-hour window allows a more focused expectation. For these reasons, we see no reason to modify our adopted rule on this point.

- (34) Columbia further objects to the requirement that a utility track compliance with provisions of paragraph (C) and the other provisions of this rule and report its compliance to the Commission. The Commission believes that tracking compliance with this rule is important for the utility and the Commission to assess customer service performance. The Commission further notes that the rule only requires reporting if a utility fails to comply with a minimum customer service level for two months in a rolling 12-month period. This reporting requirement is necessary for the Commission to have a full understanding of the utility's compliance with the minimum customer service requirements.

Rule 4901:1-13-08 Standards Specific to Small Commercial Gas Service

- (35) The Joint Applicants and Columbia request that the references to "guarantors" for the establishment of credit for small commercial customers be removed from paragraphs (B)(1)(a)(ii) and (B)(3)(d) because the Commission did not require that small commercial customers be provided with the option to use a guarantor to establish creditworthiness. The Commission agrees and will modify the rule accordingly.

- (36) Columbia further requests clarification regarding when the biennial review required by paragraphs (B)(3)(a) and (b) needs to take place. The Commission clarifies the rule to state that the biennial review need not take place until the deposit has been held for 24 months. We have modified the rule slightly to make this clear.
- (37) Columbia notes that the list of grounds upon which a natural gas company may refuse service does not include when the customer does not satisfy the utility's creditworthiness requirements. Therefore, Columbia requests that this ground be included in paragraph (C). The Commission did not intend for this provision to be read to preclude a utility from refusing service to a small commercial customer which did not meet its creditworthiness standards. Therefore, the Commission finds that Columbia's request is reasonable and should be added in paragraph (C)(12).
- (38) The Joint Applicants request that the Commission delete the provisions of paragraph (B)(3)(c) pertaining to closed accounts which owe less than one dollar or are due a refund of less than one dollar, arguing that the provisions interfere with accounting practices. The Commission finds the request to be reasonable and has modified the rule accordingly.

Rule 4901:13-09 Fraudulent Practice, Tampering and Theft of Natural Gas Service

- (39) Columbia seeks rehearing on the requirement in paragraph (C)(2) that the utility hand-deliver written advance notice to the customer that its natural gas service will be disconnected due to apparent fraud. Columbia points out that the most common form of fraud is the attempted negotiation of bad checks. It alleges that it deals with approximately 14,000 dishonored checks each year. Columbia maintains that, since checks are presented twice, the customer will receive notice from both Columbia and his bank and, therefore, an additional hand-delivered notice is not warranted and is unreasonable. The Commission has modified the process for disconnection in cases of fraud. The Commission grants rehearing to modify (C)(2) to strike out the requirement to hand-deliver advanced notice and strike (C)(3)(f) which the Commission now believes is unnecessary given the changes the Commission has made to

this rule since it was issued for notice and comment. Companies may still provide hand-delivered advanced service, but it is not required. In order to inform the customer that service has been disconnected, the Commission also added a notice provision at the time disconnection takes place.

Rule 4901:1-13-10 Customer Complaints and Complaint-Handling Procedures

- (40) Columbia requests that the Commission clarify that this rule is limited to residential and small commercial customers rather than all utility customers. As the Commission noted earlier, the Commission has limited the MGSS to residential and small commercial customers in some areas. However, with respect to this specific rule, the Commission's call center is open to all consumers. The Commission has a statutory duty pursuant to Section 4905.261, Revised Code, to operate a call center for all consumer complaints. Therefore, this rule governs complaints made by all gas or natural gas customers.
- (41) Columbia further notes that paragraph (D) permits deviations from the five-day status report requirement only with the agreement of Commission Staff and does not appear to allow agreed-upon deviations from the requirement in cases where the Staff is not involved. Therefore, Columbia recommends that the rule be modified to allow the utility and its customer to agree to dispense with the five-day status reporting requirement when the Staff is not involved in the complaint. The Commission believes that Columbia's request is reasonable and has modified the rule accordingly.

Rule 4901:1-13-11 Gas or Natural Gas Company Customer Billing and Payments

- (42) For this rule, the Commission finds that a few modifications are warranted. The Commission grants rehearing to add in a requirement concerning bill questions and telephone numbers of the utility in new provision (B)(4).
- (43) The Commission also grants rehearing to update paragraph (C). The post office now provides a less expensive alternative to mailing that does not use dated postmarks. In order to leave that lower cost measure available to gas and natural gas companies, the Commission will allow the due date for bills

mailed out under a non-postmarked mailing to be due no earlier than fourteen days from the date on the bill. There is also a requirement that bills mailed under this system be mailed no later than the day listed on the bill.

Bill Formats

- (44) OCC's first assignment of error objects to the Commission's failure to adopt standards requiring alternative formats for bills and customer-specific notices to assist visually-impaired customers. OCC argues that the Commission was presented with substantial information on the extent of the need for alternative formats. OCC cites to the numerous letters of support filed in Case No. 04-1680-GA-UNC.

OCC further argues that the identification of the actual steps that would be required by natural gas companies to implement alternative bill formats can readily be resolved in this docket. OCC points to CG&E as a utility that has demonstrated the capability to provide visually impaired customers with alternative bill formats. On the other hand, OCC cautions that there is no "one size fits all" solution to alternative bill formats and that the Commission should continue to explore alternative solutions for the visually impaired. OCC argues the costs of compliance for natural gas companies would not be unreasonable. Finally, OCC contends that, in applications for proposed new bill formats, the Commission must also consider the interface with technology for the visually impaired.

- (45) In its memorandum contra OCC's application for rehearing, DEO argues that there is no need for a minimum service standard for alternative bill formats. DEO points to efforts currently in place by natural gas companies to offer alternative formats.
- (46) The Commission finds that the arguments raised by the OCC were thoroughly addressed by the Opinion and Order in this proceeding. As the Commission stated in the Opinion and Order, we are not convinced that the MGSS must include a requirement that all of Ohio's natural gas companies provide bills or customer information in alternative formats. The Commission applauds the efforts by the natural gas companies

to make alternative formats available; however, OCC's contention that there is no "one size fits all" solution demonstrates that this issue is not suitable for a minimum service standard and that further efforts in this area are best made on a case-by-case and company-by-company basis. Rehearing on this assignment of error should be denied.

Effective Date

- (47) In recognition of the efforts and cooperation by all members of the industry and the participants in the case, and in recognition of the need of the companies to implement the rules, the Commission will delay the effective date of the rules to October 1, 2006. This should allow the companies sufficient time to adopt practices if any changes are needed. Furthermore, we note that company tariffs need to be updated. We note that, after these rules have become effective but before the tariffs are updated, the rules will supercede any inconsistent tariff provisions, as set forth in adopted Rule 4901:1-13-02(E).

It is, therefore,

ORDERED, That the applications for rehearing filed by the Ohio Gas Association, the Ohio Consumers' Counsel and the Ohio Home Builders Association be denied. It is, further,

ORDERED, That the applications for rehearing filed by The East Ohio Gas Company, d.b.a. Dominion East Ohio, Vectren Energy Delivery of Ohio, Inc., Columbia Gas of Ohio, Inc., Ohio Gas Company, Pike Natural Gas Company, Eastern Natural Gas Company and Southeastern Natural Gas Company be granted in part and denied in part. It is, further,

ORDERED, That Rules 4901:1-13-01 through 4901:1-13-12, O.A.C., be further modified and adopted as reflected in the attachment to this decision. It is, further,

ORDERED, That copies of the final rules contained in the attachment to this Entry on Rehearing be filed with the Joint Committee on Agency Rule Review (JCARR), the Legislative Service Commission, and the Secretary of State in accordance with divisions (D) and (E) of Section 111.15, Revised Code. It is, further,

ORDERED, That, the amendments to Chapter 4901:1-13, O.A.C., be effective the later of October 1, 2006, or the earliest day permitted by law, in accordance with finding (47) above. It is, further,

ORDERED, That all gas and natural gas companies review their existing tariffs and propose necessary amendments (in separate individual ATA dockets) to be effective on October 1, 2006. It is, further,

ORDERED, That Ohio Gas Company's request for waivers is denied as moot. It is, further,

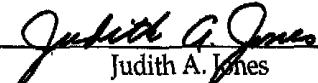
ORDERED, That a copy of this Entry on Rehearing be served upon all parties who filed comments in this proceeding, the Ohio Gas Association, the Ohio Consumers' Counsel, and each gas or natural gas company listed on the rolls of public utilities regulated by the Commission.

THE PUBLIC UTILITIES COMMISSION OF OHIO

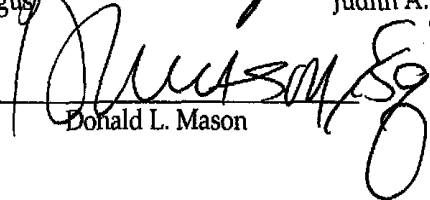
Alan R. Schriber, Chairman



Ronda Hartman Fergus



Judith A. Jones




Donald L. Mason

GAP/GLP:ct

Entered in the Journal

MAY 16 2006



Renee J. Jenkins
Secretary

4901:1-13-01 **Definitions.**

As used in this chapter:

(A) "Business day" means, for purposes of initiation or installation of service, a day when a gas or natural gas company performs regularly scheduled installation and, for all other purposes, a day when the provider observes regularly scheduled customer service office hours.

(B) "Ccf" means one hundred cubic feet.

(C) "C.F.R." means the code of federal regulations.

(D) "Commission" means the public utilities commission of Ohio.

(E) "Company" means a gas or natural gas company as defined in section 4905.03 of the Revised Code.

(F) "Consumer" means any person who receives service from a gas or natural gas company.

(G) "CRNGS" means competitive retail natural gas service as defined in section 4929.01 of the Revised Code.

(H) "Customer" means any person who has an agreement, by contract and/or tariff, with a gas or natural gas company to receive service or any person who requests or makes application for service from a gas or natural gas company.

(I) "Customer premises" means the residence(s), building(s), or office(s) of a customer.

(J) "Fraudulent practice" means an intentional misrepresentation or concealment of a material fact that the gas or natural gas company relies on to its detriment. Fraudulent practice does not include tampering or unauthorized reconnection of gas service.

(K) "Gas company" has the meaning set forth in section 4905.03 of the Revised Code and which meets the definition of a public utility under section 4905.02 of the Revised Code.

(L) "Governmental aggregation" means the gathering of the competitive retail natural gas service for the retail natural gas loads by a municipal corporation, a board of township trustees, or a board of county commissioners acting under sections 4929.26 or 4929.27 of the Revised Code or under section four of Article XVIII of the Ohio Constitution.

(M) "Manometer" means an instrument for measuring the pressure of gas or natural gas.

(N) "Mcf" means one thousand cubic feet.

(O) "Natural gas company" has the meaning set forth in section 4905.03 of the Revised Code and which meets the definition of a public utility under section 4905.02 of the Revised Code.

(P) "Nonresidential gas service" means a gas or natural gas service provided to any location where the use is primarily of a business, professional, institutional, or occupational nature.

(Q) "Person" includes an individual, corporation, company, co-partnership, association, or joint venture.

(R) "PIPP" means percentage of income payment plan.

(S) "PSIG" means pounds per square inch gauge, a measurement when testing gas pressure.

(T) "Residential gas service" means a gas or natural gas service provided to any location where the use is primarily of a domestic nature.

(U) "Slamming" means the transfer of or requesting the transfer of a customer's competitive natural gas service to another provider without obtaining the customer's consent.

(V) "Small commercial customer" means a commercial customer which is not a mercantile customer under division (L) of section 4929.01 of the Revised Code.

(W) "Small gas company" means a gas company serving seventy-five thousand or fewer customers.

(X) "Small natural gas company" means a natural gas company serving seventy-five thousand or fewer customers.

(Y) "TDD/TTY" means telecommunication device for the deaf/text telephone yoke as defined in 47 C.F.R. 64.601 as of May 1, 2006.

4901:1-13-02 **Purpose and scope.**

(A) The rules in this chapter:

(1) Apply to investor-owned gas or natural gas companies, as defined in this chapter.

- (2) Are intended to promote reliable service to consumers and the public, and to provide minimum standards for uniform and reasonable practices.
 - (3) Unless otherwise specified, apply to both residential and nonresidential gas or natural gas service.
 - (B) The commission may, in addition to the rules in this chapter, require gas or natural gas companies to furnish other or additional service, equipment, and facilities upon any of the following:
 - (1) The commission's own motion.
 - (2) Formal or informal commission resolution of a complaint.
 - (3) The application of any gas or natural gas company.
 - (C) The commission may waive any requirement of Chapter 4901:1-13 of the Administrative Code for good cause shown or upon its own motion.
 - (D) The rules in this chapter shall not relieve the gas or natural gas companies from both:
 - (1) Providing adequate service and facilities as prescribed by the commission.
 - (2) Complying with the laws of this state.
 - (E) Except as set forth below, the rules of this chapter supersede any inconsistent provisions, terms, and conditions of the gas or natural gas company's tariffs. A gas or natural gas company may adopt or maintain tariffs providing superior standards of service, reliability, or greater protection for customers or consumers. Further, a gas or natural gas company may adopt or maintain tariff provisions which involve other areas not addressed by the rules of this chapter.
 - (F) When a gas or natural gas company in a complaint proceeding under section 4905.26 of the Revised Code demonstrates compliance with the relevant service or performance standard of this chapter, a rebuttable presumption is created that the gas or natural gas company is providing adequate service regarding that standard. Such presumption applies solely to the specific standard addressed by the commission for the time period at issue in the complaint proceeding. No such presumption is created merely by compliance with any reporting requirement of this chapter.
 - (G) Each gas or natural gas company is also subject to the requirements in:
 - (1) The pipeline safety code and requirements set forth in Chapter 4901:1-16 of the Administrative Code.

- (2) Establishing credit for residential natural gas services contained in Chapter 4901:1-17 of the Administrative Code.
- (3) Disconnecting residential gas or natural gas service contained in Chapter 4901:1-18 of the Administrative Code.
- (4) The provision of CRNGS, as applicable to gas or natural gas companies, in Chapters 4901:1-27, 4901:1-28, 4901:1-29, 4901:1-32, and 4901:1-34 of the Administrative Code.
- (H) Nothing in this chapter is intended to supersede, alter or amend the above-listed administrative requirements.

4901:1-13-03 Retention of records and access to records and business activities.

- (A) Each gas and natural gas company shall maintain and have available for auditing and inspection any and all utility property and all associated equipment for examination and copy.
- (B) The regulations governing the retention and preservation of gas or natural gas company records are set forth in appendix A to rule 4901:1-9-06 of the Administrative Code.
- (C) Unless otherwise specified in this chapter, each gas or natural gas company shall maintain records for three years that are sufficient to demonstrate compliance with the rules of this chapter.
- (D) Access to records and business activities includes such records and activities as would allow the commission staff to effectively monitor Ohio-specific customer calls made to the gas or natural gas company. Access includes the ability of commission staff to adequately monitor gas or natural gas company customer call center interactions with Ohio customers either at a location in Ohio or in a manner agreed to by the commission staff. Gas and natural gas companies, other than small gas and small natural gas companies, shall provide access to monitor customer/consumer calls without the customer service representative's knowledge of the monitoring.

4901:1-13-04 Metering.

- (A) Service provided by a gas or natural gas company shall be metered, except where it is impractical to meter the gas usage, such as in street lighting and temporary or special installations. The usage in such exceptions may be calculated or billed in accordance with an approved tariff on file with the commission.

- (B) A customer's usage shall be metered by commercially acceptable measuring devices. Meter accuracy shall also comply with the standards found in section 4933.09 of the Revised Code. No metering device shall be placed in service or knowingly allowed to remain in service if it violates these standards.
- (C) Gas or natural gas company employees or authorized agents of the gas or natural gas company shall have the right of access to the metering equipment for the purpose of reading, replacing, repairing, or testing the meter, or determining that the installation of the metering equipment is in compliance with the company's requirements.
- (D) Meter test at customer's request. Metering accuracy shall be the responsibility of the gas or natural gas company.
- (1) Upon request by a customer, the company shall test its meter to verify its compliance with section 4933.09 of the Revised Code, within thirty business days after the date of the request.
 - (2) The customer or the customer's representative may be present when the meter test is performed at the customer's request.
 - (3) A written explanation of the test results shall be provided to the customer within ten business days of the completed test.
 - (4) Each company shall notify the customer of applicable charges prior to the test.
 - (5) If the accuracy of the meter is found to be outside the tolerances specified in this rule, the gas or natural gas company shall do all of the following:
 - (a) Not charge a fee or recover any testing expenses from the customer.
 - (b) Provide a properly functioning meter without charge to the customer.
 - (c) Within thirty days, pay or credit any overpayment to the customer, in accordance with one of the following billing adjustments:
 - (i) When the company or customer has reasonably established the approximate period of meter inaccuracy, the overcharge shall be computed on the basis of a customer's metered usage prior and/or subsequent to such period consistent with the rates in effect during that period.
 - (ii) When the company and customer cannot reasonably establish the approximate period of meter inaccuracy, the overcharge period shall be determined to be the most recent twelve months, or the period since the date of the most recent meter test performed, whichever is less. The

rates applicable shall be those in effect during the period of inaccuracy in order to determine the appropriate credit or refund.

Paragraph (D)(5) of this rule shall not apply in the event there has been either tampering with or unauthorized reconnection of the meter, metering equipment, or the gas or natural gas company's property during the involved period of time and which causes meter or metering inaccuracies or no measurement of service.

(E) Each gas or natural gas company shall identify each customer meter, which it owns, operates, or maintains, by serial or assigned meter numbers and/or letters, placed in a conspicuous position on the meter.

(F) Each gas or natural gas company shall:

(1) Maintain all of the following meter test records:

- (a) Date of customer's request for each test.
- (b) Date and reason for each test.
- (c) Test results.
- (d) Meter reading(s) before and after each test.
- (e) Accuracy "as found" and "as left."

(2) Keep all of the following records while the meter is in service:

- (a) Identification and location of the meter.
- (b) Date of installation.
- (c) Serial or assigned meter number.

(G) Meter reading.

(1) Each gas or natural gas company shall obtain actual readings of its customer meters at least once every twelve months. At a minimum, each company shall make reasonable attempts to obtain actual readings of its customer meters every other month, except where the customer and the company have agreed to other arrangements. Meter readings taken by electronic means (i.e., automated meter reading equipment) shall be considered actual readings. While remote meter index equipment readings may be used by a company, they do not qualify as actual meter readings. When billing customers based on estimated usage, the

gas or natural gas company shall calculate the amount due using the applicable rate(s) in effect during each period of estimated usage.

- (a) Each gas or natural gas company shall submit a plan to the director of the commission's service monitoring and enforcement department to read all customer meters at least once every twelve months. Plans should include the steps, notices, and measures the company intends to take in order to read each customer's meter at least once every twelve months. Each gas or natural gas company shall update or resubmit its plan for review every three years.
 - (b) If the director of the service monitoring and enforcement department or the director's designee rejects the plan or does not approve the company's plan within one hundred and twenty days of submittal, the gas or natural gas company may file a request with the commission for a hearing seeking approval of its plan. The gas or natural gas company shall file a written report and provide documentation supporting its plan.
 - (c) Adherence to the procedures of a gas or natural gas company's plan, accepted under the terms of this rule, shall place that gas or natural gas company in compliance with the requirement to read each meter at least once every twelve months. Adherence to the plan will also create a rebuttable presumption in any complaint proceeding brought under section 4905.26 of the Revised Code, alleging that failure to read the meter at least once in the twelve-month period was a matter beyond the control of the gas or natural gas company.
- (2) If a gas or natural gas company fails to read a residential or small commercial customer's meter for any reason for any twelve-month period and the company has underestimated the customer's usage, the company may only bill the customer for the difference between the estimated usage and the actual usage under the terms of section 4933.28 of the Revised Code based upon the appropriate rates in effect at the time the gas or natural gas was used. If the company fails to read a residential or small commercial customer's meter for any twelve-month period and the company has overestimated the customer's usage, the company shall credit such customer for the overestimated usage at the appropriate rate(s) in effect at the time the gas or natural gas was used.
- (3) When a gas or natural gas company has undercharged any small commercial customer as the result of a meter or metering inaccuracy or other continuing problem under the gas or natural gas company's control, unless the customer and the company agree otherwise, the maximum portion of the undercharge that may be billed to the customer in any billing month, based upon the appropriate rates, shall be determined by dividing the amount of the undercharge by the number of months of undercharged service. The undercharge shall be in compliance with division B of section 4933.28 of the Revised Code. Each gas

or natural gas company shall state the total amount to be collected in the first bill under this rule. This paragraph shall not affect the gas or natural gas company's recovery of regular monthly charges. This paragraph shall not apply in the event there has been either the tampering with or the unauthorized reconnection of the meter, metering equipment, or the gas or natural gas company's property during the involved period of time and which causes meter or metering inaccuracies or no measurement of service.

- (4) 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 read, 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 read 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.
- (5) 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) If a gas or natural gas company has read the meter within the immediately preceding seventy days, it shall inform the customer, when the customer contacts the company to initiate or terminate service, of the right to have an actual meter read at no charge to the customer. The gas or natural gas company could use the summary information provided at service initiation per rule 4901:1-13-06 of the Administrative Code to satisfy this paragraph's notification requirement when the customer contacts the company to initiate service.
- (7) When a meter read is scheduled through a menu-driven, automated interactive answering system that allows the customer to interact mechanically rather than through a live person, the gas or natural gas company shall provide confirmation (i.e., order confirmation number, written letter) to the customer by the following business day, verifying the nature of the interaction and any appointment made.
- (8) Where there is a landlord/tenant relationship and neither the gas or natural gas company nor the customer 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.

(A) Service initiation and upgrades. On a calendar monthly basis, each gas or natural gas company shall complete the installation of new service as follows:

(1) Ninety per cent of residential and small commercial new service requests requiring no installation of gas pipelines shall either:

(a) Be completed within five business days after the gas or natural gas company has been notified that the customer's service location is ready for service and all necessary tariff and regulatory requirements have been met.

(b) Be completed by the requested installation date, when a customer requests an installation date more than five business days after the customer's service location is ready for service and all necessary tariff and regulatory requirements have been met.

(2) Ninety per cent of residential and small commercial new service installations requiring installation of the service line, including the setting of the meter, shall either:

(a) Be completed within twenty business days after the gas or natural gas company has been notified the customer's service location is ready for service and all necessary tariff and regulatory requirements have been met.

(b) Be completed by the requested installation date, when a customer requests an installation date more than twenty business days after the customer's service location is ready for service and all necessary tariff and regulatory requirements have been met.

Paragraph (A)(2) of this rule shall not apply to main line extension installations. For residential and small commercial customers placing requests for new service that require installation of main line extensions, the gas or natural gas company shall contact the customer within thirty days with an estimate of the cost of the main line extension and the amount, if any, of a deposit. In addition, the gas or natural gas company shall provide an estimated date to complete the main line extension.

(3) Prior to initial operation or reestablishing residential or nonresidential gas service (including after an outage), the gas piping downstream of the meter shall be tested with a service drop installed for a gas appliance to determine that no leaks exist. Testing may be accomplished by pressure testing or dial testing as set forth below.

(a) When pressure testing, the test pressure shall be measured with a manometer or with a pressure measuring device designed and calibrated to read, record, or indicate a pressure loss due to leakage during the pressure test period.

- (b) For new house lines at new installations, a pressure test shall be conducted at no less than one and one-half times the proposed maximum working pressure, but not less than three PSIG. Consideration shall be given to accommodate the manufacturer's inlet pressure specifications for connected appliances. Appliances may need to be isolated during the pressure test to prevent damage. All appliance drops shall be tested at a minimum of operating pressure. The test duration shall be no less than one-half hour for each five hundred cubic feet of pipe volume or fraction thereof. When testing a system having a volume less than ten feet or a system in a single-family dwelling, the test duration shall be a minimum of ten minutes. The duration of the test shall not be required to exceed twenty-four hours.
- (c) For existing house lines when reestablishing gas service, a pressure test shall be conducted at operating pressure for a duration of no less than three minutes. When gas service has been off for less than thirty days (such as, during an outage), a dial test at operating pressure may be used in place of a pressure test. The duration of the dial test shall be no less than: five minutes for meters which have minimum registering dials showing one-fourth or one-half cubic foot; seven minutes for meters which have a minimum registering dial showing one cubic foot; ten minutes for meters which have a minimum registering dial showing two cubic feet; twenty minutes for meters which have a minimum registering dial showing five cubic feet; and thirty minutes for meters which have a minimum registering dial showing ten cubic feet.
- (d) Prior to the reestablishment of service when gas has been disconnected or discontinued in a service line, the service line shall be tested in accordance with 49 C.F.R. 192 as of May 1, 2006. Bare steel services operating at a pressure less than one PSIG shall be tested at a minimum of three PSIG for a duration of no less than ten minutes. Bare steel service lines that have been previously abandoned shall not be returned to service. For purposes of this rule, "abandoned" shall mean pipe that was not intended to be used again for supplying of gas or natural gas, including a deserted pipe that is closed off to future use.
- (4) If a residential or small commercial customer complies with all pertinent tariff requirements and the gas or natural gas company cannot complete the requested service installation or service upgrade as set forth in paragraph (A)(1) or (A)(2) of this rule, the gas or natural gas company shall promptly notify the customer of the delay, the reasons for the delay, the steps being taken to complete the work, and the probable completion date. If a rescheduled completion date cannot be met, the customer shall be promptly notified. If the rescheduled completion date is delayed more than five business days, written notification shall be given to the customer including the reason(s) for the delay, the steps being taken to complete the work and the new rescheduled completion date. This notification process shall be repeated as necessary. Each subsequent missed completion date

shall count as a missed service installation or upgrade for purposes of calculating performance under paragraph (A)(1) or (A)(2) of this rule.

- (5) If the gas or natural gas company fails to complete the requested service installation or upgrade as set forth in paragraphs (A)(1) or (A)(2) of this rule, as a result of a military action, war, insurrection, riot or strike or a failure by the residential or small commercial customer or the customer's agent to provide access to the premises when necessary, such failure shall be reported but not be included in the monthly percentage calculation for this rule. Each gas or natural gas company must justify and document in its records each instance where it applied any of the exceptions listed in this paragraph.

(B) Telephone response. On a calendar monthly basis, each gas or natural gas company's average answer time for customer service calls made to its customer service telephone number shall not exceed ninety seconds. A gas or natural gas company shall set its queue to minimize the number of disconnected calls and busy signals. The requirements in this paragraph do not apply to small gas and natural gas companies.

- (1) As used in this paragraph, "answer" means the service representative or automated system is ready to render assistance and/or accept the information necessary to process the call. Acceptance of an automated call back feature by a caller, allowing a caller to pick a later time to be called by a live company representative, shall satisfy the definition of answer.

- (2) Answer time shall be measured from the first ring at the gas or natural gas company or, for companies using a menu-driven, automated, interactive answering system, at the point the caller begins to wait in queue.

- (3) When a gas or natural gas company utilizes a menu-driven, automated, interactive answering system (referred to as the system), the initial recorded message presented by the system to the caller shall only identify the company and the general options available to the caller. The system should include the option of being transferred to a live attendant by selecting a zero on the phone in the first or second tier of caller options. At any time during the call, the caller shall be transferred to a live attendant if the caller fails to interact with the system for a period of fifteen seconds following any prompt or if the customer pushes zero. Calls handled exclusively by an automated system shall be included in the answer time measurement.

- (4) Callers shall not be delayed from reaching the queue by any promotional or merchandising material not selected by the caller.

(C) Scheduled appointments with customers. The gas or natural gas company shall provide all customers with an expected company arrival time window of four hours or less for all appointments requiring the customer to be present. On a calendar

monthly basis, each gas or natural gas company shall complete ninety-five per cent of the scheduled appointments with its customers. When the gas or natural gas company will not be able to meet a scheduled appointment with a customer, the company shall reasonably attempt to notify the customer in advance of the failure to meet the appointment and arrange a new appointment date and time.

(D) Reporting requirements.

(1) When a gas or natural gas company does not meet any minimum service level set forth in paragraph (A) or (B) or (C) of this rule for any two months within any rolling twelve-month period, the gas or natural gas company shall notify the director of the commission's service monitoring and enforcement department or the director's designee in writing within sixty days after such failure. The notification shall include any factors that contributed to such failure, as well as any remedial action taken or planned to be taken or rationale for not taking any remedial action. Any failure to report the lack of compliance with the minimum service levels set forth in paragraphs (A) and/or (B) and/or (C) of this rule constitutes a violation of this rule.

(2) The commission's staff shall review and evaluate the failure reports required by this rule and make any recommendations considered necessary to the commission or the gas or natural gas company.

4901:1-13-06

Provision of customer rights and obligations.

Each gas or natural gas company shall provide new customers, upon application for service, and existing customers upon request, written summary information detailing who to contact concerning different rights and responsibilities under this chapter. This summary information shall be in clear and understandable language and delivered to customers. Each gas or natural gas company shall submit the initial version of the summary information and notice of each subsequent amendment thereafter to the director of the commission's service monitoring and enforcement department or the director's designee in writing for review prior to the first mailing of that version of the summary information to its customers. For purposes of this rule, "new customer" means a customer who opens a new account and has not received such summary information within the preceding year.

At a minimum, the summary information shall let customers know of the existence and how to get further information orally and in writing, relating to the following topics.

(A) Complaint procedures available at the gas or natural gas company and the commission.

(B) Customer rights and responsibilities including installation of service, payment of bills, disconnection and reconnection of service, meter testing, security deposits,

rights to usage history, deferred payment plans, low-income assistance, information relating to the area's "one-call" or "call-before-you-dig" protection services, and service line responsibilities.

(C) Requirements of company personnel on customer premises.

(D) Availability of rate information and alternatives upon request.

(E) A statement that customers may review a copy of the minimum gas service standards on the commission's website or obtain a copy from the commission upon request.

(F) Privacy rights.

(G) Actual meter readings.

(H) Gas choice programs available to its customers, including information on slamming.

(I) The summary information shall include the following statement:

"If your complaint is not resolved after you have called (name of utility), or for general utility information, residential and business customers may call the Public Utilities Commission of Ohio (PUCO), toll-free at 1-800-686-7826 or for TDD/TTY toll-free at 1-800-686-1570, from 8:00 a.m. to 5:30 p.m. weekdays, or visit www.puco.ohio.gov.

The Ohio Consumers' Counsel (OCC) represents residential utility customers in matters before the PUCO. The OCC can be contacted toll-free at 1-877-742-5622, from 8:00 a.m. to 5:00 p.m. weekdays, or visit www.pickocc.org."

4901:1-13-07 **Employee identification.**

Any gas or natural gas company employee or agent seeking access to the customer's or landlord's premises shall, upon request, identify himself/herself, provide company photo identification, and state the reason for the visit.

4901:1-13-08 **Standards specific to the provision of small commercial gas service.**

This rule addresses standards involving creditworthiness, deposits, bases for denial or disconnection, notice requirements and reconnection for small commercial customers. Standards applicable to the provision of residential gas service are set forth in Chapters 4901:1-17 and 4901:1-18 of the Administrative Code.

(A) Creditworthiness for establishing small commercial gas service.

(1) Each gas or natural gas company shall establish equitable and nondiscriminatory written procedures to determine creditworthiness of customers for small commercial gas service. These procedures shall be submitted in current form to the commission staff upon request.

(2) Upon request, each gas or natural gas company shall provide small commercial gas service customers with their credit history with that company, a copy of this rule, the commission's website, and the local, toll-free and TDD/TTY numbers of the commission's consumer hotline.

(B) Deposits for establishing and reestablishing small commercial gas service.

(1) Review of deposit upon small commercial customer request.

(a) Each gas or natural gas company which requires a cash deposit shall communicate all of the following to the small commercial customer:

(i) The reason(s) for its decision.

(ii) Options available to establish credit.

(iii) The small commercial customer may contest the company's decision and show creditworthiness.

(iv) The small commercial customer may raise concerns with the public utilities commission of Ohio, which has staff available to provide assistance with complaints.

(v) The commission's website and the local, toll-free and TDD/TTY numbers of the commission's call center.

(b) Upon request of the small commercial customer, the information in paragraph (B)(1)(a) of this rule shall be provided in writing.

(2) Upon acceptance of a deposit under this rule, each gas or natural gas company shall furnish a receipt to the small commercial customer which shows all of the following: the name of the small commercial customer; the address of the premises currently served or to be served; the billing address for service; the amount of the deposit; a statement as to the interest rate to be paid; the length of time the deposit must be held to qualify for interest; and the conditions for refunding the deposit.

(3) In retaining and returning deposits for small commercial gas service, the gas or natural gas company shall do all of the following:

- (a) Review, on a biennial basis, each small commercial account for which a deposit has been held for twenty-four months and promptly refund the deposit or credit the small commercial customer's account, plus any interest accrued, if during the preceding twenty-four months all of the following conditions are satisfied:

 - (i) The small commercial customer's service was not disconnected for nonpayment, a fraudulent practice, tampering, or unauthorized reconnection.
 - (ii) The small commercial customer had no more than three past due bills.
 - (iii) The small commercial customer is not then delinquent in payment of bills.
- (b) Pay interest of not less than three per cent per annum on a deposit, provided the company has held the deposit for at least six consecutive months.
- (c) When service is terminated or disconnected, promptly apply the deposit and interest accrued to the final bill for service and refund any amount in excess of the final bill to the small commercial customer. A transfer of service from one premise to another premise within the gas or natural gas company territory or service area shall not be deemed a disconnection under this paragraph.
- (C) Reasons to deny or disconnect small commercial service. Each gas or natural gas company may refuse or disconnect service to small commercial customers for only the following reasons:

 - (1) When the small commercial customer violates or fails to comply with a contract approved by the commission pursuant to section 4905.31 of the Revised Code, or the gas or natural gas company tariff(s).
 - (2) When gas or natural gas company service to a small commercial customer or consumer violates any law of this state or any political subdivision thereof, or any federal law or regulation.
 - (3) When a small commercial customer or consumer tampers with gas or natural gas company property or engages in a fraudulent practice to obtain service, as set forth in rule 4901:1-13-09 of the Administrative Code.
 - (4) For using gas or equipment which adversely affects gas or natural gas company service to other customers or consumers, e.g., interruptions of service.
 - (5) When a safety hazard or emergency may threaten the health and safety of any of the following: the premises, occupants of the premises, the surrounding area, the

public, the gas or natural gas company's personnel, or the operation or integrity of the gas or natural gas company's facilities.

(6) When the small commercial customer, landlord of the small commercial customer, or tenant leasing the landlord or small commercial customer's premises repeatedly refuses access to gas or natural gas company facilities or equipment on the property.

(7) For nonpayment of small commercial gas or natural gas company bills and any tariffed charges, including deposits and amounts not in bona fide dispute. Where the small commercial customer has registered an informal complaint with the commission's staff or filed a formal complaint with the commission which reasonably asserts a bona fide dispute, the gas or natural gas company shall not disconnect service if the small commercial customer pays either the undisputed portion of the bill or the amount paid for the same billing period in the previous year.

(8) When the small commercial customer vacates the premises.

(9) For repairs, provided that the gas or natural gas company has reasonably attempted to notify the small commercial customer and, if the small commercial customer is not located at the service location, the consumer prior to scheduled maintenance interruptions in excess of six hours.

(10) Upon the small commercial customer's request.

(11) When a former small commercial customer, whose account with that gas or natural gas company is still in arrears for service previously furnished at the premises has again requested service for that premise.

(12) When a small commercial customer does not meet the gas or natural gas company's creditworthiness standards.

(13) For other good cause shown.

(D) Notice requirements when disconnecting small commercial service.

(1) Except as otherwise provided by contract approved by the commission pursuant to section 4905.31 of the Revised Code, each gas or natural gas company shall give the small commercial customer written notice, not less than five business days after the postmark date, before service is disconnected, when any of the following conditions exist:

(a) Violation of or noncompliance with the contract or gas or natural gas company's tariff(s) which applies to small commercial customer service.

- (b) The small commercial customer refuses access to gas or natural gas company facilities or equipment on the property.
- (c) For nonpayment of bills and any tariffed charges, including security deposits and amounts not in a bona fide dispute. Where the customer has registered a complaint with the commission call center or filed a formal complaint with the commission which reasonably alleges a bona fide dispute, the gas or natural gas company shall not disconnect service if the customer pays either the undisputed portion of the bill or the amount paid for the same billing period in the previous year.
- (2) Prior notice from the gas or natural gas company is not required when either of the following conditions exist:

 - (a) When a safety hazard or emergency may threaten the health or safety of any of the following: the premises, occupants of the premises, the surrounding area, the public, the gas or natural gas company's personnel, or the operation or integrity of the gas or natural gas company's facilities.
 - (b) When a customer or consumer tampers with gas or natural gas company property.
- (3) The disconnection notice itself or the documents accompanying the disconnection notice shall clearly display all of the following:

 - (a) The delinquent or invoiced billing account number.
 - (b) The dollar amounts for any past due amounts, any reconnection charge, and any deposit owed.
 - (c) The earliest date when disconnection may occur.
 - (d) The address and toll-free telephone number of the gas or natural gas company office for customers to contact about their account.
 - (e) A statement that the commission staff is available to render assistance with unresolved complaints, and the commission's current address, the local, toll-free and TDD/TTY numbers of the commission's call center, and the commission's website address.
 - (f) If applicable, a statement that the small commercial customer's failure to pay the amount required at the gas or natural gas company's office or to one of its authorized agents or by other acceptable available means by the date specified in the notice may result in a deposit and in a charge for reconnection.

(g) If applicable, a statement that the nonpayment of charge(s) for ancillary service unrelated to regulated distribution service shall not result in the disconnection of regulated gas distribution service.

(E) Reconnection of small commercial service.

(1) Unless a small commercial customer requests or agrees otherwise, a gas or natural gas company shall reconnect service by the close of the following regular working day after any of the following occurs:

(a) The gas or natural gas company receives the full amount in arrears, for which service was disconnected, and the gas or natural gas company receives any deposit authorized under these rules and any tariffed charges.

(b) The gas or natural gas company agrees with the customer on a deferred payment plan and already received a payment (if required under the plan), and the gas or natural gas company receives any deposit authorized under these rules and any tariffed charges.

(c) The customer establishes that the conditions that warranted disconnection of service have been eliminated.

(2) Before small commercial gas service is reconnected, a gas or natural gas company may not require a small commercial customer to pay any of the following to have service reconnected:

(a) Any amount owed but not yet past due.

(b) When the small commercial customer has multiple small commercial accounts, any amount owed or overdue on those other small commercial accounts.

Fraudulent practice, tampering, and theft of gas service.

(A) Each gas or natural gas company shall establish and maintain an antitheft and antitampering plan.

(B) Disconnection of service for tampering or unauthorized reconnection.

(1) A gas or natural gas company may disconnect service for safety reasons without prior notice to a customer when either of the following occurs:

(a) The gas service meter, metering equipment, or associated property was damaged, interfered with, displaced, bypassed, or otherwise tampered with by a customer, consumer, or other person.

(b) A person not authorized by the gas or natural gas company has reconnected service.

(2) Each gas or natural gas company that has disconnected service under this paragraph shall tag or seal the customer's meter and hand-deliver written notice to the customer or consumer at the service location. If neither the customer nor an adult consumer is present, the gas or natural gas company shall attach a prominent written notice to a conspicuous place on the premises. When a gas or natural gas company reasonably believes that tagging or sealing the meter, hand delivering notice, or posting notice may jeopardize employee safety, it shall promptly mail the notice, return receipt requested, to the customer and consumer if the customer is not located at the service location. The notice shall include the following information:

(a) Service was disconnected because either the meter, metering equipment and/or gas or natural gas company property was tampered with, or a person not authorized by the gas or natural gas company reconnected the customer's service.

(b) The gas or natural gas company's telephone number and notice that the customer may contest the disconnection by requesting an opportunity to discuss the matter with a company representative.

(c) If the customer does not contest the disconnection, no gas or natural gas company is required to restore service until the customer has provided satisfactory assurances that such tampering or unauthorized reconnection has ceased and has paid or made satisfactory arrangements to pay the company an amount which the company calculates for unmetered service, any defaulted amount, any damage to company equipment or meter, any security deposit (consistent with rules 4901:1-13-08 and 4901:1-17-05 of the Administrative Code), and any tariffed reconnection and investigation charges.

(d) A statement that:

"If your complaint is not resolved after you have called (name of utility), or for general utility information, residential and business customers may call the Public Utilities Commission of Ohio (PUCO), toll-free at 1-800-686-7826 or for TDD/TTY toll-free at 1-800-686-1570, from 8:00 a.m. to 5:30 p.m. weekdays, or visit www.puco.ohio.gov.

The Ohio Consumers' Counsel (OCC) represents residential utility customers in matters before the PUCO. The OCC can be contacted toll-free at 1-877-742-5622 from 8:00 a.m. to 5:00 p.m. weekdays, or visit www.pickocc.org."

- (3) If the customer contests the disconnection, the company shall timely mail or deliver its decision to the customer.

(C) Disconnection of service for fraudulent practice.

- (1) A gas or natural gas company may disconnect service, after providing notice to the customer pursuant to this paragraph, when a customer uses any fraudulent practice to obtain or maintain service. Before it may disconnect service for a fraudulent practice, each gas or natural gas company shall deliver or send a written notice to the customer or consumer at the service location.

(2) The notice shall include the following information:

- (a) The alleged fraudulent practice.
- (b) The gas or natural gas company telephone number and notice that the customer may contest the company's findings by requesting an opportunity to discuss the matter with a company representative.
- (c) The gas or natural gas company may disconnect service if either:
- (i) The customer does not contact the gas or natural gas company to contest the findings of fraudulent practice within three business days after receiving this notice.
- (ii) The customer does not provide a satisfactory explanation to the company.
- (d) If service is disconnected, the gas or natural gas company is not required to reconnect service until the customer pays or makes satisfactory arrangements to pay the company the bill for service which was fraudulently obtained or maintained, any security deposit (consistent with rules 4901:1-13-08 and 4901:1-17-05 of the Administrative Code), and any tariffed reconnection and investigation charges.
- (e) A statement that:

"If your complaint is not resolved after you have called (name of utility), or for general utility information, residential and business customers may call the Public Utilities Commission of Ohio (PUCO), toll-free at 1-800-686-7826 or for TDD/TTY toll-free at 1-800-686-1570, from 8:00 a.m. to 5:30 p.m. weekdays, or visit www.puco.ohio.gov.

The Ohio Consumers' Counsel (OCC) represents residential utility customers in matters before the PUCO. The OCC can be contacted toll-free

at 1-877-742-5622 from 8:00 a.m. to 5:00 p.m. weekdays, or visit www.pickocc.org."

- (3) A gas or natural gas company may terminate service for a fraudulent practice when the customer fails to contest the disconnection with the company within three business days after delivery of the written notice required by this paragraph. Should the customer fail to satisfy the claims of fraud, the company may terminate service two business days after the customer receives the gas or natural gas company's written adverse decision regarding the matter. Notice of actual disconnection shall be left for the customer or consumer at the service location in a conspicuous location. When a company reasonably believes that posting the notice of actual disconnection may jeopardize employee safety, it shall promptly mail the notice, return receipt requested, to the customer and consumer (if the customer is not located at the service location).
- (D) Each gas or natural gas company shall maintain records which include the basis for its decision.

4901:1-13-10

Complaints and complaint-handling procedures.

- (A) As used in this rule, customer/consumer complaint means a customer/consumer contact when such contact necessitates follow-up by or with the gas or natural gas company to resolve a point of contention.
- (B) Each gas or natural gas company shall make good faith efforts to settle unresolved disputes, which may include meeting with the customer/consumer at a reasonable time and place.
- (C) Except as ordered by the commission or directed by the commission staff in disconnection or emergency cases, each gas or natural gas company shall investigate customer/consumer complaints and, unless otherwise agreed to, provide a status report within three business days of the date of receipt of the complaint to the customer/consumer, when investigating a complaint made directly to the gas or natural gas company, and to the customer/consumer and commission staff, when investigating a complaint referred to the gas or natural gas company by the commission or commission staff.
- (D) If an investigation is not completed within ten business days, each gas or natural gas company shall provide status reports to update the customer/consumer, or update the customer/consumer and commission staff when investigating a complaint referred to the gas or natural gas company by the commission or commission staff, either orally or in writing, at five-business-day intervals, unless otherwise agreed to, until the investigation is complete.

- (E) Each gas or natural gas company shall inform the customer/consumer, and commission staff when involved, of the results of the investigation, orally or in writing, no later than five business days after completion of the investigation. The customer/consumer or commission staff may request the final report to be in writing.
- (F) If the customer/consumer disputes the gas or natural gas company's report(s), each gas or natural gas company shall inform the customer/consumer that the commission staff is available to mediate complaints. The company shall provide the customer/consumer with the commission's current address, website, local and toll-free telephone numbers, and TDD/TTY toll-free telephone number of the commission's call center.

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

- (A) This rule applies to gas or natural gas company bills that do not include any CRNGS supplier charges. Requirements for natural gas consolidated billing appear in rule 4901:1-29-12 of the Administrative Code.
- (B) Bills issued by or for the gas or natural gas company shall be accurate and rendered at regular intervals and shall contain clear and understandable form and language. Each bill shall display all of the following information:
- (1) The customer's name, billing address, service address, and account number.
 - (2) The gas or natural gas company's name and its payment address.
 - (3) The gas or natural gas company's twenty-four hour, local or toll-free telephone number for reporting service emergencies.
 - (4) A statement that customers with bill questions or complaints should call or write the gas or natural gas company first. The bill shall list the gas or natural gas company's local or toll-free telephone number(s) and the address where a question or complaint may be sent.
 - (5) The following text:

"If your complaint is not resolved after you have called (name of utility), or for general utility information, residential and business customers may call the Public Utilities Commission of Ohio (PUCO), toll-free at 1-800-686-7826 or for TDD/TTY toll-free at 1-800-686-1570, from 8:00 a.m. to 5:30 p.m. weekdays, or visit www.puco.ohio.gov.

The Ohio Consumers' Counsel (OCC) represents residential utility customers in matters before the PUCO. The OCC can be contacted toll-free at 1-877-742-5622, from 8:00 a.m. to 5:00 p.m. weekdays, or visit www.pickocc.org."

- (6) A rate schedule, if applicable.
- (7) The dates of the service period covered by the bill.
- (8) The billing determinants, if applicable:
 - (a) Beginning meter reading(s).
 - (b) Ending meter reading(s).
 - (c) Multiplier(s).
 - (d) Consumption(s).
- (9) The gas cost recovery rate expressed in dollars and cents per mcf or ccf.
- (10) The total charge attributable to the gas cost recovery rate expressed in dollars and cents.
- (11) The identification of estimated bills.
- (12) The due date for payment.
- (13) The total charges for the current billing period.
- (14) Any late payment charge or gross and net charges, if applicable.
- (15) Any unpaid amounts due from previous bills, customer credits, and total amounts due and payable.
- (16) The current balance of the account, if the residential customer is billed according to a budget plan.
- (17) The current gas and electric charges separately, if the customer is billed for gas and electric service on the same bill.
- (18) If applicable, each charge for nontariffed, nonregulated service(s).
- (19) Any nonrecurring charge(s).
- (20) Any payment(s) or credit(s) applied to the account during the current billing period.
- (21) If applicable, all the PIPP billing information:

(a) Current PIPP payment.

(b) PIPP payments defaulted (i.e., past due).

(c) Total PIPP amount due.

(d) Total account arrearage.

(22) An explanation of codes and abbreviations used.

(23) If a customer's selected CRNGS supplier or governmental aggregator bills separately for its supplier charges, the supplier's name and a statement that such supplier is responsible for billing the gas supplier charges and such supplier will separately bill the customer for that component of natural gas service.

(24) The customer's historical consumption during each of the preceding twelve months, with a total and average consumption for such twelve-month period, if the company has a choice program.

(25) A prominently displayed "apples-to-apples" notice, if the company has a choice program.

(26) A statement, either appearing directly on the bill, in a bill insert, or as a separate mailing, of any payment arrangement agreed upon by the customer and the company.

(27) Other information required by Ohio law or commission rule or order.

(C) All bills shall not be due earlier than fourteen days from the date of the postmark on the bill. If the bill is sent electronically, the bill shall not be due earlier than fourteen days from the date of the electronic postmark on the bill. If the bill is mailed by means that does not place a postmark on the bill (i.e. such as permit mailing), the bill shall not be due earlier than fourteen days from the date on the actual bill. All bills mailed without postmarks shall be mailed no later than the day listed on the bill.

(D) A gas or natural gas company proposing any new bill format shall file its proposed bill format with the commission for approval. If the commission does not act upon an application for a new bill format approval within forty-five days, the proposed bill format shall automatically be approved on the forty-sixth day.

(E) Payment methodologies and parameters

(1) Each gas or natural gas company shall make payment options available in a number of ways. Those ways may include, but are not limited to: cash; check or money order payments in person to the company or a payment agent; check or money order through the mail; check over the telephone; credit card; or

electronic money transfers. Each gas or natural gas company shall, upon request, provide customers with an updated list of its available payment options and descriptions thereof. The list shall also include the name and street address/location of the nearest payment center and/or local authorized agent, and all applicable fees for utilizing the various methods available for payment of customer bills. The gas or natural gas company may not deny a customer the use of one or more of the payment options solely because the customer's account is in arrears.

(2) Each gas or natural gas company shall not charge more than two-times the cost of a first-class postage stamp for processing their payments by cash, check or money order at authorized agent locations. Customers may not be charged for processing their payments by check or money order through the mail. Customers may be charged for processing their payments by check over the telephone, by credit card, or electronic money transfers and such charges will be evaluated by the commission.

(3) When a customer pays the bill at the gas or natural gas company's business office or to an authorized agent of the company, the payment, including any partial payment, shall be immediately credited to the customer's account where feasible, and, in any event, be credited to the customer's account as of the date received at the business office or by the agent. When a customer pays the bill by check or money order through the mail; by check over the telephone; by credit card; or electronically, the customer's account shall be credited immediately where feasible and, in any event, within two business days of receipt at the gas or natural gas company's business office.

(4) No gas or natural gas company shall disconnect service to a customer who pays the total amount due (or an amount agreed upon between the gas or natural gas company and the customer to prevent disconnection) on the account by the close of business on the disconnection date listed on the disconnection notice. Payment received by an authorized agent of the gas or natural gas company shall constitute receipt of payment by the company.

(5) Each gas or natural gas company shall establish a written policy for its personnel at its business offices and for its authorized agents to handle billing disputes, requests for payment arrangements, and for the reporting of payments made by customers due to their receipt of a disconnection notice, in order to prevent disconnection of service. If such matters cannot be handled by an agent authorized to accept payments, the agent shall provide customers with the gas or natural gas company's local or toll-free number.

(F) Any gas or natural gas company that issues billing statements electronically shall comply with each of the following requirements:

- (1) A customer receiving a billing statement electronically shall not be required to pay that bill electronically or pay electronically any future bill statements. All payment methods shall continue to be available to the customer.
- (2) No enrollment or usage fees shall be assessed to a customer who chooses to receive bills and/or customer information electronically.
- (3) The electronic billing statement shall include all requirements listed in paragraph (B) of this rule.
- (4) The gas or natural gas company shall maintain a secure and encrypted internet location that is to be accessed only by the customer of record after completing a secure registration process.
- (5) Any fees to accept electronic payments shall be clearly disclosed in payment window(s).
- (6) Any payment made electronically shall be treated as a payment made at the company business office and shall be posted to the account in accordance with paragraph (E)(3) of this rule. The time needed to post the payment to the account shall be clearly stated.

(G) Handling partial payments

- (1) Each gas or natural gas company shall credit any customer's partial payments in the following order:
 - (a) First, credit past due distribution and sales service charges.
 - (b) Second, credit current distribution and sales service charges.
 - (c) Third, credit past due and current nonregulated charges
- (2) Budget billing payments and payments in full of the undisputed amount related to a bona fide dispute do not constitute partial payments. Payments made on accounts for which there is a bona fide dispute shall be credited to the undisputed portion of the account.

(H) Any billing adjustments shall be made according to paragraph (G) of rule 4901:1-13-04 of the Administrative Code.

(A) Each gas or natural gas company shall maintain a listing including the twenty-four hour emergency number in each local telephone service provider's directory operating in the gas or natural gas company's service territory.

(B) The commission staff may review and/or request modification of informational, promotional, and educational materials.

(C) Unfair and deceptive acts or practices.

No gas or natural gas company shall commit an unfair or deceptive act or practice in connection with the promotion or provision of service, including an omission of material information. An unfair or deceptive act/practice includes, but is not limited to, the following:

(1) A gas or natural gas company states to a customer that distribution service will or may be disconnected unless the customer pays any amount due for ancillary service unrelated to regulated distribution service.

(2) A gas or natural gas company charges a customer for a service in which the customer did not make an initial affirmative order. An affirmative order means that a customer must positively elect to subscribe to a service before it is added to the account. Failure to refuse an offered or proposed service is not an affirmative order for the service.

(D) Customer-specific information.

(1) Except as otherwise provided in rule 4901:1-29-09 of the Administrative Code, a gas or natural gas company shall only disclose a customer's account number without the customer's written consent for gas or natural gas company credit evaluation, collections and/or credit reporting or pursuant to court order or subpoena.

(2) Except as otherwise provided in rule 4901:1-29-09 of the Administrative Code, a gas or natural gas company shall only disclose a customer's social security number without the customer's written consent for gas or natural gas company credit evaluation, collections and/or credit reporting or as ordered by the commission, other governmental agency or pursuant to court order or subpoena.

(3) When required by this rule, the gas or natural gas company must obtain the customer's signature on the consent form prior to releasing the customer's social security number. The consent form shall be on a separate piece of paper and shall be clearly identified on its face as a release of personal information and all text appearing on the consent form shall be in at least sixteen point type. The following statement shall appear prominently on the consent form, just prior to the signature, in type darker and larger than the type in surrounding sentences: "I realize that under the rules and regulations of the public utilities commission of

Ohio, I may refuse to allow (name of the gas or natural gas company) to release the information set forth above. By my signature, I freely give (name of the gas or natural gas company) permission to release the information designated above." The information that the gas or natural gas company seeks to release shall be specified on the form. Forms requiring a customer to circle or to check off preprinted types of information to be released may not be used.

- (E) Upon customer request, a gas or natural gas company shall timely provide twelve months of a customer's usage history and twenty-four months of a customer's payment history to the customer.

4901:1-13-13 Uniform system of accounts for gas companies.

- (A) Natural gas companies subject to the jurisdiction of the public utilities commission of Ohio shall keep their books of accounts and records in accordance with the uniform system of accounts from time to time prescribed by the federal energy regulatory commission except to the extent that the provisions of said uniform system of accounts are inconsistent in any way with any outstanding orders of the public utilities commission of Ohio.
- (B) The public utilities commission of Ohio reserves to itself the right to require the creation and maintenance of such additional accounts as may hereafter be prescribed to cover the accounting procedures of natural gas companies operating within the state of Ohio.