BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's	)	
Promulgation of Rules for Competitive	)	Case No. 01-1371-GA-ORD
Retail Natural Gas Service and its	)	
Providers Pursuant to Chapter 4929	)	
of the Revised Code.	)	

REPLY COMMENTS OF OHIO NATURAL GAS MARKETERS

Pursuant to the Commission's Entry of June 29, 2001 and the Attorney Examiner's Entry of July 6, 2001, the following independent natural gas marketers: The NewPower Company, Interstate Gas Supply, Inc., Vectren Retail, MidAmerican Energy Company, FSG Energy Services, a wholly owned division of WPS Energy Services, Inc., ProLiance Energy LLC and the National Energy Marketers Association (hereinafter the "Marketers") respectfully submit the following Reply Comments. These Reply Comments briefly respond to the issues, positions or suggestions raised in some of the fifteen sets of Initial Comments filed in this proceeding. These Reply Comments are offered in addition to the Marketers' Initial Comments, and are not intended to amend or supercede the positions taken in the Initial Comments. Each of the undersigned marketers do not necessarily endorse each and every position espoused in these comments, but such comments do represent a majority position of the undersigned marketers. To assist the Attorney Examiner and the other participants, the Marketers' Reply Comments are organized by OAC number, identify the initial comment by the name of the party who submitted the comment followed by a brief a summary in single space italics. Page references to those particular comments are in parentheses. The reply comments by the Marketers are then expressed in standard type, double spaced.

Proposed Rule 4901:1-27-01-Definitions

The Office of the Ohio Consumers' Counsel ("OCC") seeks to include a definition of "default" which would mean the failure of a retail natural gas supplier to comply substantially with the terms and conditions of its supplier agreement with the natural gas company, the tariffs of the natural gas company, or its contracts with customers. (p. 4)

The Ohio Partners for Affordable Energy ("OPAE") seek a clear definition of "default" by a retail natural gas supplier so that retail natural gas suppliers will have a clear definition of their responsibilities and natural gas companies will not be placed in a position of making subjective judgments. (p. 3)

The definition of "default", if one is included in these rules, should include the concept that the failure to comply is substantial, and the failure causes harm. The suggested definition by the OCC captures the concept that the violation must be substantive, but needs to also state that the failure to substantially comply with the terms and conditions of the supplier agreement materially harms the customer. For example, a Competitive Retail Natural Gas Supplier ("CRNGS") could charge less for natural gas than called for in the contract. Such a failure to comply with the terms and conditions, could be substantial, but would not cause harm to the customer. If there is no material harm to the end use customer the act of non-compliance should not be considered a default.

Dominion East Ohio ("DEO") takes issue with the definition of (A) "abandonment" indicating that it should be modified to follow the electric rule in 4901:1-24-02 to mean "ceasing to provide competitive retail electric service to one or more class of customers." (p. 11)

The Marketers Agree.

DEO also recommends that the proposed definitions of (T) retail natural gas brokerage service, (U) retail natural gas service broker, (V) retail natural gas marketing service, and (W) retail natural gas marketer be eliminated as meaningless. (p. 11)

The Marketers Agree.

Proposed Rule 4901:1-27-02-Purpose and Scope

Pike Natural Gas Company, Eastern Natural Gas Company, and Southeastern Natural Gas Company ("Pike, Eastern and Southeastern") suggest that there be explicit language in this rule indicating that the rules only apply to residential and non-mercantile customers. (p. 2)

AES-New Energy, Inc. seeks the addition of a Sub-Section (D) which would indicate that these rules do not apply to i) those persons supplying natural gas to mercantile customers and ii) producers and gatherers of natural gas to the extent such entities are not natural gas companies. (pp. 4-5)

Since these rules are authorized under H.B. 9, they should extend no further than the jurisdiction established for the Commission by H.B. 9. With that in mind, the Marketers find merit in suggestion of the above Commentators to include in the "Purpose and Scope" provision a proviso that these Rules are limited in application, and do not apply to mercantile customers.

OCC requests a thirty (30) day opportunity for input to alterations, amendments, or waivers to the PUCO Rules before any alteration, amendment, or waiver is finalized. (pp. 4-5)

Waivers are generally only granted for unusual or unique situations. Such situations could well require the Commission acting in the best interests of the public to grant a requested waiver in less than 30 days. The Marketers agree with OCC that an adequate amount of time should be afforded those who would be affected to review the requested waiver and petition the Commission. On the other hand, it is important not to handcuff the Commission if a timely act is required to protect the public. An automatic thirty day period for review could become such a barrier to needed action. Thus, while the Marketers support the general premise that the Commission should permit adequate time for those affected by a requested waiver to respond, they opposes a flat 30 day rule.

Proposed Rule 4901:1-27-03-General Prohibitions

DEO proposes that the last sentence of sub-section (A) be stricken because it submits that the certification rules should apply to all suppliers. It submits that issues such as "call center capabilities" are still a matter of importance to local gas distribution companies and to the Commission. (p. 11)

Columbia Gas of Ohio, Inc. ("Columbia" or "COH") recommends that Sub-section (C) be modified to limit enforcement to just the certification rules. It also wants a sub-section (D) added to require a governmental aggregator to be certified before entering into agreements or offering competitive retail natural gas service. (pp. 15-16)

H.B. 9 provided for a grandfathering period of 13 months for existing contracts to allow service under existing contracts to continue without interruption or amendment. The legislature wisely did not want what would be new governmental regulations to jeopardize existing contracts and service. The Commission's proposed rule follows the legislature's intent by grandfathering the contracts in place before these rules are promulgated. It should also be noted that whatever problems may exist with the existing contracts, such problems will end on the expiration of those contracts if not addressed previously by the parties to the contract. The Commission ought to let time heal any possible problem with an existing contract and not resort to the suggested rule amendment.

As for Columbia's suggested additional provision, under the statute and the rules the actual supplying of natural gas is going to be conducted by a CRNGS , not a governmental aggregator. Since no entity can actually supply natural gas to a residential and non-mercantile customer without obtaining a certificate, there is no practical reason to create additional limitations on the activities of municipalities or other governmental agencies concerning what will be CRNGS activities. This is particularly true if Columbia is suggesting a need for a Commission issued certificate prior to a municipality

or governmental agency contracting with agents or a CRNGS to set up a program. Governmental agencies may well wish to explore arrangements for an opt-out program prior to placing such an aggregation issue on the ballot.

Proposed Rule 4901:1-27-04-Application Process

Columbia seeks modification to Sub-section (A) to require "reasonable financial assurances sufficient to protect customers and natural gas companies from default" as part of the certification application for. (p. 16)

Vectren Energy Delivery of Ohio, Inc. ("VEDO") recommends that Sub-sections (A) and (B) be modified to require as part of the certification application form whether or not a retail natural gas supplier had ever been terminated from a choice program, had its certification revoked or suspended, or otherwise defaulted by failing to deliver. (p. 5)

Pursuant to Sub-section (B), retail natural gas suppliers and governmental aggregators must file general, technical, managerial, and financial information with the Commission including, "balance sheets, credit ratings and other relevant financial information." Columbia seeks to replace the term "marketers" in Sub-Section (B)(1) with "retail natural gas suppliers". (p. 16) OCC recommends that the list specifically include a disclosure of experience in competitive retail energy in Ohio and in other markets. OCC also seeks a disclosure of markets where formal complaints have been filed with the regulatory commission, the attorney general or with any court of general jurisdiction. (pp. 5-6)

Columbia seeks to modify Sub-section (B) by combining sub-parts (1) and (2) to cover all retail natural gas suppliers. It also seeks to modify the standard forms to require the applicant to describe the efforts it has undertaken or will undertake to resolve any issues with the natural gas company regarding aggregation prior to the date of commencement of service to that aggregated load. (p. 17)

This proposed rule, as written, supplies the Staff with some flexibility in the certification or renewal process. Instead trying to anticipate what will be needed over time to make the application process meaningful and then addressing those needs by rule, OAC 4901:1-27-04 allows for an application form which will be "approved by the Commission". Thus if minor changes in the information supplied to the Commission as part of the application process are needed, such can be done by a proceeding at the Commission instead of a rule change. All of the suggestions above could be addressed in

a request to change the form. For this level of detail, a Commission proceeding, rather than a rule change, has merit. Further, a form change will be part of a public proceeding and thus, all those affected could participate.

Sub-section (C)(3) allows applicants to update or complete documentation within ten (10) business days prior to offering service. DEO seeks to modify the rule to require that such information be filed before a certificate is granted or at least thirty (30), instead of ten (10), business days prior to offering service. (p. 12)

Some of the information that may be needed for certification may not be readily available at the time of certification. For example, financial data for public corporations are issued on a time schedule that the CRNGS may not be able to alter. The proposed rule, which permits the subsequent submission of such information, is a practical solution to possible short-term temporal problems. Ten business days is sufficient time for those who find an interest in certification to be heard, and this should not be extended to thirty days.

Proposed Rule 4901:1-27-05-Affidavits

First Energy Services Corp. recommends that Sub-section (B) be changed to delete the phrase "gross earnings", as the reporting of intrastate gross receipts should suffice. (p. 1)

The Marketers assume that the reason for Sub-Section (B) is for verification of the calculated payments for the PUCO and OCC support assessments. Until those assessments are required of CRNGS though, Sub-Section B should not be implemented. Further, if and when PUCO and OCC assessments are required of CRNGS, then the Marketers agree with First Energy Services Corp., that net income information should not be part of the affidavit, since the assessments are not based on "net" income. Further, it

should be recognized that net income in a competitive industry if often considered proprietary information, and public disclosure may harm competition.

Columbia believes that many customer complaints will likely involve the natural gas company and will continue to originate with customer contacts being made to natural gas companies. Columbia seeks to modify Sub-section (E) by requiring an applicant to cooperate with the commission and its staff <u>and the natural gas company</u>. (p. 17) OCC asks for a modification requiring cooperation with the OCC with respect to any consumer complaints. (p. 6)

This rule in general, and the sub-section on the affidavit in particular, address the issuance of a certificate by the Commission. As such it should be limited to the relationship between the applicant for a certificate (the CRNGS) and the Commission. Thus while the Marketers agree that there should be cooperation <u>between</u> the natural gas company and the CRNGS, and the OCC and the CRNGS, such requirements are out of place in this Rule given the subject matter.

<u>Proposed Rule 4901:1-27-06-Application Approval or Denial</u>

Cincinnati Gas & Electric Company ("CG&E") seeks to modify Sub-section (A)(2)(b) to provide that if the Commission suspends an application and fails to act within ninety (90) days from the date of the suspension, the application will be deemed automatically approved. (p. 9)

The Marketers agree with CG&E.

Columbia seeks to amend Sub-section (C) by adding a third subpart which would require applicants to provide reasonable financial assurances sufficient to protect customers and natural gas companies. (p. 18)

OCC also seeks to amend Sub-section (C) by requiring the applicant to demonstrate a willingness in addition to an ability to meet obligations of their service offerings. OCC would propose that if the applicant has a history of consumer protection or anticompetitive conduct violations, that the applicant demonstrate that it will not engage in such behavior in Ohio. (pp. 7-8)

Since the Commission's standard for issuance of a certificate is that the applicant demonstrate that it is both "fit" and "capable" financially, managerially, and technically, to provide service, all of the minor concerns listed above are already subsumed in this rule. Thus these additional specific items are not necessary and could cause confusion.

Columbia also seeks to modify Sub-section (F) by requiring that the Commission's notification and explanation of its decision denying the application be docketed and made available for public inspection. (p. 18)

The Marketers agree with Columbia. Certification decisions should contain explanation and be of public record.

<u>Proposed Rule 4901:1-27-08-Financial Security</u>

Sub-section A

DEO recommends that Sub-section (A) be modified 1) to permit a natural gas company to require an aggregator to issue and maintain a financial statement and 2) so that the natural gas company should have the right, after the disbursement of a financial instrument is made in the event of the failure of a retail natural gas supplier to make restitution to customers, to seek additional financial security from the supplier or aggregator. (pp. 12-13) Columbia also seeks to modify Sub-section (a) to permit a natural gas company to require governmental aggregators to provide and maintain financial security. (pp. 18-20)

OCC seeks to modify Sub-section (A) by making it mandatory that a natural gas company shall (instead of may) require the issuance and maintenance of a financial instrument by a retail natural gas supplier. (pp. 8-9)

VEDO (p. 4), and Pike, Eastern and Southeastern (p. 3) seek to modify Sub-section (A) by 1) making it clear that the filing of a tariff needs to occur and 2) changing the reference to Rule 4901:1-29-15 to the correct Rule 4901:1-29-13.

Columbia seeks to change the proposed rule to require two separate forms of financial security – one for the protection of customers (to be submitted to the Commission) and one required to be submitted to the natural gas company for its own protection. Columbia goes on to suggest that the financial security 1) should be used to protect against all forms of default, not just lack of deliveries and 2) should be dynamic

and flexible depending on a number of factors influencing the degree of risk involved such as the number of customers. Columbia recommends that the natural gas company's tariffs be permitted to address those issues. (pp. 18-20)

CG&E recommends that Sub-section (A) be modified to permit natural gas companies to require that a retail natural gas supplier maintain a financial instrument sufficient to protect natural gas companies and customers against the failure of a retail natural gas supplier to the extent of the natural gas companies' projected commodity price risk as a supplier of last resort. CG&E also seeks to have eliminated from the proposed rule the requirements that natural gas companies are to require financial instruments designed to protect customers from contract price risks and that natural gas companies act as a disbursing agent on behalf of the Commission. CG&E suggests that the Commission ought to be vigilant in assessing the financial resources of applicant retail natural gas suppliers; if the rule is not changed, CG&E seeks to clarify the rule that the natural gas company is first in line to collect the proceeds from the financial instrument to cover its gas supply costs. (pp. 10-14)

As noted above, several commentators, especially the natural gas companies, addressed the proposed rules concerning the provision of financial assurances. The provisions of H.B. 9 are important in the discussion of the proposed rules concerning the provision of financial assurances. First, the general policy of the State of Ohio and the intent of H.B. 9, as stated in Revised Code Section 4929.02, is to promote the availability of natural gas at reasonable costs and promote the availability of supplier and supply options by means of effective competition between suppliers. Second, H.B. 9 contains provisions regarding the provision of financial assurances:

> [N]o retail natural gas supplier shall provide a competitive retail natural gas service on or after thirteen months following the effective date of this section to a consumer in this state **without first being certified by the public utilities commission regarding its managerial, technical, and financial capability to provide that service** and providing **reasonable financial assurances** sufficient to protect customers and natural gas companies from default. In addition, a retail natural gas supplier **may** be required to provide a performance bond sufficient to protect customers and natural gas companies from default. R.C. 4929.20(A) (emphasis supplied).

The provisions of H.B. 9 concerning financial assurances must be read in the overall context of Ohio's policy regarding the provision of natural gas and the intent of the recently enacted legislation.

The Ohio Consumers' Counsel comments that the Staff's proposal that a financial instrument "may [be] require[d of] a retail natural gas supplier" be changed to require that such an instrument "SHALL [be] require[d]" *See* OCC Comments at 9 (emphasis in original). The change in the proposed rule is not supported by the legislation, quoted directly above, that uses the word "may."

The Marketers are concerned that the emphasis and redundancy of COH's proposed additional provisions regarding financial assurances (*see* Columbia's Comments at 18-20) reflect that Company's intention to place high financial demands upon suppliers as a condition for participation in programs to serve customers using Columbia's distribution facilities. The proposed rules already reflect that a principal device used by the General Assembly in H.B. 9 is certification by the Commission whereby the "financial capability" of the supplier is considered. *See* R.C. 4929.20(A) (quoted above). Moreover, "reasonable financial assurances" are those that are reasonable under the facts and circumstances presented at the relevant time. For instance, "reasonable" regarding an existing supplier should take into consideration the length of time the supplier has been performing in transportation programs and the suppliers actual record of not defaulting on its responsibilities.

Cincinnati Gas & Electric ("CG&E") in its comments recognized the legislative intent concerning financial assurances. CG&E observes that:

> If the natural gas companies are required to obtain a financial instrument capable of protecting … indeterminable customer risks, the natural gas

> companies will be forced to require a financial instrument so large as to severely discourage retail natural gas suppliers' participation in its choice program. CG&E Comments at 12-13.

The Ohio Partners for Affordable Energy ("OPAE")[1] also recognizes that the requirement of unreasonable financial assurances, especially as they could easily and inappropriately be set by natural gas companies (see OPAE Comments at 5), could *"represent a financial burden so great that it prevents retail natural gas suppliers from entering the Ohio market."* Id.

This Rule must strike a balance in which it secures adequate funds to pay for gas in the event that a CRNGS fails to make a timely delivery, yet not make the bond / financial requirement so excessive that the bond becomes a barrier to entry for marketers and an unnecessary expense for end users[2]. The Rule also need to be relatively easy to administrator.

The Marketers feel the proposed rule is practical under the circumstances. Currently, the natural gas company serves as the supplier of last resort, so placing the bond or financial instrument in the hands of the natural gas company is logical. The Marketers believe that an alternative model may be to assign the task of the provider of last resort to an entity other than the natural gas company. If that comes to pass, then a different arrangement for the bond or financial instrument will have to be made. Whether the provider of last resort is a natural gas company or other entity, natural gas will always be available and no customer will be at risk of not having service.

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[1] OPAE is a consumer advocacy group whose members are largely concerned with the provision of energy to low-income customers.

[2] If bonds and financial instruments are a required cost of doing business, such costs will be reflected in the price paid by consumers for natural gas. Excessive bonds, like the purchase of excessive amounts of insurance, does not bring more security -- only higher prices.

As noted above, some Commentators want a separate bond or financial instrument to ensure that in addition to service at the regulated price, that insurance is put in place to cover the loss of perquisites and savings if the CRNGS fails to deliver such additional benefits pursuant to the terms and conditions of the contract. First, it should be noted that under HB 9 the Commission will be the forum in which residential customers bring complaints against a CRNGS who fails to live up the their bargain. Thus for example, if a customer did not get a promised toaster, or the full measure of the promised savings, the Commission, after determining the facts and pertinent law, could order such reimbursements. Therefore, the only possible use of the bond or financial instrument would be to have a source of funds if the CNGS did not honor the Commission 's order. Even then, if the CNGS failed to provide the additional contractual benefit because of insolvency, the bond or financial instrument may well be seized by a bankruptcy trustee. In situations of insolvency, the federal bankruptcy laws will not permit a preference by gas customers over other creditors who have not had their contracts honored due to the financial plight of the supplier.

Marketers are not aware of another state where an agency of State government has assumed the ostensible authority to generally ensure the receipt of a bargain, as opposed to assuring the delivery of gas service at a regulated price. In part that may be due to philosophy of caveat emptor, if a customer buys an "off brand" because it is cheaper, the customer should accept the risk of the bargain and address disputes in a court of competent jurisdiction. There are also practical reasons not to require bonding to ensure benefits to be derived from savings and perquisites. These reasons include: 1) the difficulty in valuing the anticipated savings and perquisites and consequent difficulty in

determining an appropriate amount of bond and frequency of change, particularly in times of commodity price volatility; 2) the administrative cost for both the CRNGS and natural gas company to keep track of the bonds as well as the payments out of any of the bonds and financial instruments; and 3) the cost to the customer. If a CRNGS must post a bond equal to the promised savings and perquisites, which today often approximates 10% to 20% of the total cost of natural gas, the undertaking will be very expensive. Posting a bond is a cost of doing business, and like other costs of doing business, will have to be recovered in the price charged to customers. In this case the commentators are advocating a bond that could significantly raise gas costs for all customers simply to address the rare situation in which a CRNGS defaults on its contracts, and ignores a Commission order to pay for reason other than insolvency.

In sum, for the reasons stated above, the bond or financial instrument should be limited to cover the cost of gas by the default provider if the CRNGS fails. Disputes concerning the value of non-core products and services are better addressed through consumer protection safeguards and procedures currently in place.

Additionally, the OCC requests that the bond or financial instrument be imposed as a matter of mandate rather than discretion by the natural gas company. As of this writing, the natural gas companies are the default providers. If natural gas companies elect not to ask for bond or financial instrument, it would be based on their assessment of their risk. There may be situations in which a natural gas company makes a determination that a financial instrument is unnecessary because it has been made secure in other ways. For example, the security may be physical rather than financial. A CRNGS may have pre-delivered supplies of gas or have a supply of gas backed up by

producing wells attached to the natural gas company. There is no reason to require a financial instrument if the natural gas company does not feel it is necessary. Thus, the word "may" in the subsection (C) should not be changed to "shall".

Also, because the CRNGS and not the municipal aggregator is responsible for delivering the needed volumes of gas in a timely fashion, there does not seem to be a need to have separate financial requirements for the municipal aggregator.

Finally, both the Rules and comments assume that it will be the natural gas company that will be the provider of last resort, and thus the entity that must provide hold and levy on the bond or financial instrument. It is possible though, especially under a filing for alternative service under Section 4929 Revised Code, that the role of provider of last resort could be turned over to third party supplier, much as the PIPP program is supplied today. The Commission should either address in the body of the rule the possibility of a third party supplier rather than the natural gas company acting as the provider of last resort, or indicate in the Order adopting the Rule that such a situation would be addressed by Commission order.

The OPAE recommends that Sub-section (A) be rewritten to follow the mandate of H.B. 9 by allowing the Commission, not the natural gas companies, to require a performance bond of a retail natural gas supplier. (pp. 5-6)

The Marketers would not object if the Commission is the entity holding the bond or financial requirement rather than the natural gas company.

Sub-section (C)

CG&E recommends that Sub-section (C) be modified to indicate that a retail natural gas supplier's failure to maintain sufficient financial security constitutes an event of default so that the natural gas company could invoke proposed Rule 4901:1-27-12(J). (pp. 14-15)

VEDO (p. 5) and Pike, Eastern and Southeastern (p. 3) argue that Sub-section (C) inappropriately places the burden and potential delay on natural gas companies to apply for relief in the event a retail natural gas supplier fails to maintain sufficient financial security. They also argue that the proposed rule does not delineate any standards for relief. VEDO seeks clarification to allow the natural gas company to delineate such relief in their tariffs. CG&E seeks that the application and form of relief "piggy-back" the process set forth in proposed Rule 4901:1-32(C) which addresses the recovery of incremental costs incurred by a natural gas company in connection with the Commission's continuation, suspension, rescission, or conditional rescission of a certificate. (pp. 15-16)

Concerns regarding the mechanics of applying these rules to each individual natural gas company should be addressed in each gas company's tariff.

Proposed Rule 4901:1-27-11-Transfer or Abandonment of a Certificate

Sub-section (A)

OCC seeks to add a sentence to the end of Sub-section (A)(1) that would require information that demonstrates that the proposed transferee has been certified or meets the certification requirements. (p. 10)

OCC also seeks to add a sentence to the end of Sub-section (B) that makes non-compliance with the first sentence an event of default and subjects non-complying retail natural gas suppliers or governmental aggregators to enforcement procedures including penalties and restitution to customers. (p. 11)

Since competitive retail natural gas service can only be performed by a certificated supplier, and each CRNGS must be financially, technologically, and managerially "fit" and "capable", there is not reason to impose an additional restriction on CRNGS on the assignment of customers. This restriction would only make sense if a higher standard was being set for assignment than original service. There is no higher standard for assignment, nor is there any reason to have one. Since any assignee is already been found to be "fit" and "capable" by the Commission to be a CRNGS, the standard for which the Commission would judge approving the assignment has already been met.

Proposed Rule 4901:1-27-12(J)-Certification suspension, rescission, or conditional rescission

Sub-section (J) sets forth a process in the event of default (as defined by these rules) by a retail natural gas supplier.

CG&E proposes that Sub-section (J) be modified to define the terms "default" and "non-delivery". (pp. 17-18) CG&E lists six instances of default including late payment after three business days, having the supplier credit exposure exceed the required financial security by 5% or more and failing to comply with a request for additional security within three business days, jeopardizing operational integrity, safety or reliability, abandonment, bankruptcy, or meeting other conditions defined as default as set forth in the tariff or the aggregation agreement. DEO would limit the notice to events of a <u>*material*</u> *default. (p. 14) Columbia wants an event of default to be defined by the aggregator agreement or the tariff and that it also be applied to governmental aggregators. (pp. 24-25)*

Columbia would also include underdelivery as an event of default (pp. 24-25) while CG&E would define non-delivery broadly to include underdelivery. (p. 19) VEDO seeks modification of Sub-section (J) to recognize situations of <u>*immediate*</u> *(without waiting for 5 days) termination or suspension of a retail natural gas supplier in the event of failing to deliver during a critical day or operational flow order.*

VEDO indicates that such conditions could be specified in a tariff and that the natural gas company could be required to provide notice to the Commission. (pp. 5-6)

VEDO (pp. 6-7) and Pike, Eastern, and Southeastern (p. 4) recommend that Sub-section (J) be modified to add language indicating that if the Commission does not act within the 5 or 10 business day window, the automatic approval constitutes the requisite Commission authorization.

VEDO (p. 7) and Pike, Eastern, and Southeastern (p. 4) also asks that Sub-section (J) be modified to designate only one or two Commission employees for the purpose of receiving notice.

Several of the above commentators address the topic of who may act with authority to drastically curtail or eliminate the rights of a marketer under programs that provide retail gas users a choice of their supplier. For example, Eagle Energy[3] states that "the Commission Staff should have the authority to void an existing certificate." *See*

[3] Eagle Energy is a gas marketer that submitted its individual initial comments in this case.

Eagle Energy Comments at 3. VEDO states that "[t]here are situations that should result in a [Distribution] Company being able to immediately terminate or suspend a Supplier." *See* VEDO Comments at 6.[4] As the proposed rule is presently stated, it seems to reflect both sound policy and the legal requirement that authorization from the Commission itself or from an attorney examiner is required before action can be taken to deliver the "death sentence" to a supplier within the "10-day" and "5-day" time constraints that are stated in the proposed rule.

The proposed rule recognizes that action by the State of Ohio to take the drastic step to terminate the rights of a supplier under a Commission-authorized supply program requires the attention of officials acting in a judicial or quasi-judicial capacity. This does not mean that prompt action will not be available in situations that demand prompt action. However, the Commission must not delegate its adjudicatory role to others, and especially not to the distribution companies with whom they compete in the supply of natural gas to retail customers.

The Marketers agree with the Commentators above who believe that this section should only be triggered by a <u>material</u> default. The attempts to further define material by rule should not be pursued at this time. Percentage triggers are unfair when the volume is low. Payment dates are affected by holidays and disputes over communications. Finally, the time table for automatic acceptance by the Commission if it does not act is already fairly short, and does not need to be contracted further.

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[4] VEDO similarly argues, with reference to financial assurances commented upon in Section A regarding Proposed Rule 4901:1-27-08, that LDCs should be entitled to relief due to insufficiency of financial security without case-specific Commission action. *See* VEDO Comments at 5. VEDO apparently inappropriately views its role as that of regulator rather than as a regulated provider of services that owns and operates bottleneck facilities.

Proposed Rule 4901:1-28-02 – Formation and Operation of Natural Gas Government Aggregation

VEDO seeks to clarify the Rule by adding an affirmative statement that the rules only apply to residential and non-mercantile customers. (p. 7)

For the same reasons as noted in Section 27, the Marketers agree.

Proposed Rule 4901:1-28-04-Opt-out disclosure requirements

Sub-section (C)

AMP-Ohio points out that the Commission may wish to reevaluate the "inflexibility" of Sub-Section (C) on the development of a detailed aggregation program. It suggests that these proposed rules may sacrifice clarity for the sake of consumer protection that may result in rules that govern few transactions. (pp. 13-14)

The Marketers filed similar concerns in their Initial Comments. See Page 12 of the Marketers' Initial Comments.

Sub-section (D)

Columbia seeks to narrow the scope of information contained in an "Eligible Customer List" required to be provided by a natural gas company to a governmental aggregator to customer names, billing address, and account number. (pp. 29-30)

Pike, Eastern and Southeastern also believe that the proposed Rule which currently calls for names, addresses, account numbers, service addresses, billing addresses, rate codes, PIPP plan codes, usage data and other related customer information is inconsistent with or broader than H.B. 9. (p. 9)

Columbia also seeks to amend the rule to prohibit a governmental aggregator from disclosing or using any information from an eligible customer list for any purpose other than the formation and operation of its aggregation. (pp. 29-30)

OCC would expand this prohibition to agents, assignees, consultants, and any retail natural gas suppliers that have access to the information. (p. 17)

The Marketers believe that all the information now called for in the proposed rule is useful and not outside the authority of the Commission to require. It should be noted though, that natural gas companies do not have to provide all the information, just the information that the governmental aggregator or their CRES seek. The suggestions

offered by Columbia and the OCC that an enforceable pledge of confidentiality should accompany this information and extend to agents and consultants is reasonable and would not be opposed by the Marketers.

Sub-section (E)

DEO wants to change the phrase "customer's former supplier" to "natural gas company" at the end of the second sentence because a customer served by a supplier will not be an eligible customer and should not even receive the opt-out notice. (p. 16)

The Marketers disagree. This section is dealing with inadvertent or mistaken inclusion in an aggregation group. A customer already served by a retail natural gas supplier could be mistakenly placed in an aggregation group. The Staff's choice of the phrase "former supplier" is appropriate for it applies to another CRGS or a natural gas company's tariff rate. By contrast, the DEO suggested change would limit the switch back to only the natural gas company. AMP-Ohio's suggestion that the phrase "such customers" be deleted and replaced with "incorrectly switched customers" (p. 14) is appropriate and may be the most straight forward language.

The Northeastern Ohio Public Energy Council (NOPEC) seeks to delete the last two sentences requiring governmental aggregators to reimburse customers that were incorrectly included in an aggregation program. (pp. 3-4) OPAE also seeks the elimination of these two sentences. (p. 14)

The Marketers agree with both NOPEC and OPAE on this matter.

Proposed Rule 4901:1-28-05-Natural gas cooperation with certified governmental aggregators

Sub-section (A)

AMP-Ohio believes that Sub-section (A) should be clarified to provide that customer information should be made available immediately after an opt-out ordinance

or resolution is approved by voters and that a governmental aggregator should not have to wait for such information until after it receives PUCO certification. (p. 5)

AMP-Ohio also seeks clarification in Sub-section (A) that the phrase "customers who have opted-off" contained in the last sentence means customers who have opted-off of a pre-enrollment list, not the "opting-out" of a governmental aggregation program. (p. 6)

AMP-Ohio also points out that the "percentage of income payment plan codes" required to be supplied by a natural gas company in Sub-section (A) is not likely to be consistent with any pre-enrollment list that is provided to retail natural gas suppliers" as contained in the last sentence of Sub-section (A). (p. 7)

Dominion Retail, Inc. ("Dominion Retail") proposes to add language to Sub-section (A) to provide that under no circumstances is a natural gas company to provide information for customers who are currently being served by a retail natural gas supplier. (pp. 6-7).

FirstEnergy Service also seeks modification to Sub-section (A) indicating that customers who are already under contract with a natural gas supplier should not be subject to or bothered by an opt-out notice and should remain under contract with their current supplier. (p. 2)

NOPEC seeks to revise Sub-section (A) to require a natural gas company to provide a timeframe for delivery of information within 24 hours of a governmental aggregator's request, a 10-business day maximum delivery time, and clarity on the standard format for all electronic information. (pp. 4-5)

In their Initial Comments the Marketers expressed a similar view that opt out letter should not be sent to those customers currently under contract with another CRNGS or in the PIPP program. That information must come from the natural gas company and it must be supplied in a timely fashion. NOPEC's suggested specified time frame is acceptable to the Marketers.

<u>Sub-section (C)</u>

VEDO (pp. 7-8) and Pike, Eastern and Southeastern (pp. 5-6) seek to modify Sub-section (C) by requiring customers who do not intend to join a governmental aggregation program to contact the governmental aggregator, not the natural gas company. Further, these parties state that the Rule should be clarified to indicate that customers who miss the opt-out deadline should not be allowed a second chance to opt-out by notifying the natural gas company.

The Marketers agree with this suggestion.

Miscellaneous

OCC seeks to modify Rule 4901:1-28 to specify that a local government is required to publish notice of public hearings on the operation and governance plan even if they are held in conjunction with other local governments. (p. 18)

NOPEC also seeks a requirement in these rules that a natural gas company must offer budget billing as an option to customers of competitive suppliers on a basis not less favorable to such residential consumers than is available to such customers for the utility itself. (p. 6)

HB 9 was specific as to how the notice was to be sent and the procedure for governmental aggregators to follow to authorize an opt-out program. Since published notice was not included in the statute, it cannot now be added by rule.

NOPEC's suggestion on budget billing makes sense if the natural gas company is going to be performing consolidated billing. Customers should not lose the right to have their utility charges spaced out over the year because of the added saving that may come from participating in a governmental aggregation program.

Proposed Rule 4901:1-29-02-Purpose and Scope

VEDO (p. 8) and Pike, Eastern and Southeastern (p. 5) seek to add explicit language limiting the scope of the rule to residential and non-mercantile customers.

VEDO suggests that Sub-section (C) be modified to permit an automatic approval of a waiver 30 days after its filing unless the Commission suspends a waiver request for good cause shown. VEDO further suggests that in the event of such a suspension by the Commission, the Commission must act within 90 days of the suspension on the waiver request. (p. 9)

AES-NewEnergy seeks to clarify Sub-section (A)(4) to indicate that the Rules do not apply to persons supplying gas for mercantile customers and producers and gatherers of natural gas to the extent such entities are not natural gas companies. (p. 5)

As noted above in the Section 27 rules, the Marketers agree with both a definitive statement that the rules only apply to residential and non-mercantile customers, and an automatic approval of a certificate or renewal request if the Commission takes no action in thirty days. The Marketers fear, particularly in the case of a certificate renewal, that an inadvertent failure by the Commission to authorize a renewal prior to the expiration of the current certificate could result in the interruption of marketer service to customers. The Marketers agree with the clarification sought by AES New Energy.

Proposed Rule 4901:1-29-03-General Provisions

DEO proposes that Sub-section (D) be modified so as not to apply to the situation where one supplier buys the business of another and the terms and conditions of service are not changed. (p. 17)

At first reading, the Marketers assumed that Sub-Section D did not apply to the assignment of an existing contract from one supplier to another where the contract does not forbid assignment or require approval. If the intent of the Staff in this Rule is to add a provision calling for prior approval of assignment when such is not in the contract, then the Marketers support DEO's comment that Proposed Rule 4901:1-29-03(D) should also be changed or deleted to permit the assignment of contracts. The assignment of consumer contracts during the 2000-2001 heating season (*see* DEO Comments at 17, "has already happened several times in DEO's program") greatly contributed to the ability of many consumers to obtain the benefits of their contracts during a stressful time in the natural gas industry when suppliers exited from the provision of natural gas under the COH or DEO programs.

The reasonable assignment of contracts and their enforceability according to their original terms is the manner in which contracts are generally treated, including the

assignment of consumer contracts. Of course, assignments can only be made to a retail natural gas supplier that is certified by the Commission. The certification requirement already restricts assignments more than in the past as part of the consumer protection provisions that are contained in Am. Sub. H.B. 9.

Also, Ohio natural gas policy, as expressed in Revised Code Section 4929.02, supports a rule and policy that permits assignments to a qualified retail natural gas supplier. The General Assembly emphasized consumer options in the selection of contract provisions. *See* R.C. 4929.02(A)(2). Consumers benefit from the assignability of contracts, including reasonable assignment of any agreements between a retail natural gas supplier and an LDC, because the transfer serves to prevent the loss of bargained-for benefits when a supplier desires to leave the Ohio market. While a customer can consent to such an assignment under the proposed rules, the economic viability of customer acquisition by assignment of contracts requires timely affirmative responses to assignment requests by the bulk of retail customers covered by the standardized contracts of a retail natural gas supplier. The requests also add notification and consent verification costs on a customer-by-customer basis that will discourage contract assignments. Proposed Rules 4901:1-29-03(D) and 4901:1-29-10(D) should be deleted as a customer protection measure and to support the development of contract options.

OCC would modify Sub-section (E) to require retail natural gas suppliers to provide copies of contract offers to OCC as well as the Staff. (p. 19-20).

OCC also seeks modify Sub-section (E)(2) by requiring the contracts and disclosure statements for variable rate contracts to contain an explanation of the quantifiable and verifiable factors that cause the price to change as well as information on how the customer can verify changes that will cause the price to vary. (p. 20)

Revised Code Chapter 4929 envisions a deregulated market for natural gas commodity, in which the Commission and OCC provide a policing role, not a market in which these entities command and control regulation in the restructured market environment. Thus, as the Marketers more fully describe in their Initial Comments, the request for contracts and pricing information should not be made on a blanket basis, but only when there is a customer dispute or complaint.

Proposed Rule 4901:1-29-04-Records and Retention

OCC seeks to add language to Sub-section (C) to require records required to address consumer complaints and inquiries that have been brought to the OCC must be provided to the OCC within 5 calendar days of the request. (p. 23)

CRNGS and natural gas companies should only have to send records to one governmental agency. If more than one governmental agency is required to address an problem, surely they can share or copy the produced records.

Proposed Rule 4901:1-29-05-Marketing and Solicitation

OCC seeks to add language to Sub-sections (A)(1) and (A)(2) to require that the retail natural gas suppliers' and governmental aggregators' statement must include the amount per ccf or mcf the customer should expect to pay for services and delivery charges. (pp. 21-23)

OCC's proposed modification is too restrictive and regulates what type of pricing and service a retail natural gas supplier can offer to customers. Delivery charges are the concern of natural gas companies, not that of the retail natural gas supplier. Further, the retail natural gas supplier may not know what the delivery charges are if the customer is on a "budget billing" program. OCC's modifications should be rejected.

OCC also seeks to modify Sub-section (A)(2)(a) to require a clear and understandable explanation of the quantifiable and verifiable factors that will cause the price to vary and that marketing materials must include information on how the customer can verify the changes that will cause the price to vary. (pp. 22-23)

OCC recommends the modification of Sub-section (B) to require the promotional and advertising material also be provided to the OCC as well as the Staff. (p. 23) It also seeks to provide language in Sub-section (c) which would prohibit a retail natural gas supplier or governmental aggregator from engaging in marketing, solicitation, or sales acts or practices that are prohibited by local, state, or federal law. (pp. 23-24)

The proposed rules already require that pricing information be clear and understandable. Thus it is superfluous and counter-productive to micro manage the marketing endeavor with numerous particular informational requirements. It is axiomatic that onerous and unnecessary rules which micro-manage marketing endeavors in a manner unique to Ohio customers cost Ohio customers money. If marketers in Ohio cannot use, to the maximum extent practical, templates contracts, promotional materials and marketing methodologies produced for use in other states in Ohio, then Ohioans lose the opportunity to enjoy lower prices available from larger economies of scale. For this reason alone the Commission should refrain, whenever possible from promulgating inefficacious and unnecessarily specific rules unique to Ohio.

Moreover, some of the above proposed requirements would prevent the use of certain products in Ohio. For example, rules that require estimating the price and descriptions of all the pricing variables would make an index priced product impractical. How could one describe all the ways the New York Mercantile Exchange closing monthly price could change, let alone what that price will be in the future? Yet, index

based pricing is very popular and potentially beneficial to the customer. Thus, this type of pricing flexibility should not be eliminated in Ohio due to administrative rule[5].

DEO recommends modifications to Sub-section (B) to require that a retail natural gas supplier or governmental aggregators' promotional and advertising material be provided to the PUCO Staff in advance of being sent out and to the natural gas company at the time it is sent out. (p. 17)

The rule as written requires that contracts or promotional material be provided within five days of request. This is in keeping with the Commission's role of protecting the public, but not managing the affairs of independent natural gas suppliers. A requirement to turn in all promotional material is not necessary since the Commission does not approve pricing and products. Since the natural gas company has no role in policing private contracts between CRNGS and end use consumers, there is no reason they should have copies of the promotional material; natural gas companies should refer all commodity inquiries to the appropriate retail natural gas supplier or to the Commission.

<u>Proposed Rule 4901:1-29-06-Customer Enrollment</u>

Columbia asks for clarification of (D)(1) to determine if the Commission wants the initial call between the customer and the supplier recorded. (p. 38)

Marketers also request clarification on the telephonic enrollment audio recording requirement. Gas marketers, many of whom are also CRES providers, have made significant investments to comply with Commission Rule 4901:1-21-06 of the CRES

[5] The author of this section for his personal residence has been on a NYMEX plus basis type contract for three years. Because of the price volatility the author has accepted, the non commodity portion of the charge is very low. Last year the gas prices under the contract were high, but they did not outstrip the savings vis a vis an offered fixed price offers from the first two years. Further, the price for this summer has come down sharply and the prospects for winter are good.

Rules which provides that a supplier must be able to verify a customer's enrollment by producing a signed contract, an audio tape of the customer's enrollment that comports with the telephonic enrollment rule, or an Internet verification. The Rule on documentation for telephonic enrollment today requires only that certain elements of the conversation that deal directly with the customer's choice to enroll with the marketer be recorded and maintained.

Thus, it is also understood that additional information that may have nothing to do with the customer's understanding of the verbal contract does not need to be recorded and kept. Additionally, calls in which customers do not enroll are likewise not recorded or kept.

Dominion Retail suggests that the one calendar day deadline for a retail natural gas supplier or governmental aggregator to send out a written contract in Sub-section (D)(1)(f) and (D)(2)(c) are impractical and recommends 4 calendar days instead. (p. 10)

The marketers agree, but in keeping with their Initial Comments would like to quantify all time requirements in "business" days rather than calendar days to avoid problems of carrying out tasks during holidays and weekends.

OCC asks that (D)(2)(c) be modified to require the retail natural gas supplier or governmental aggregator to provide the audio recording to OCC as well. (p. 25)

CRNGS should only have to report to one governmental agency (see comments to Section 20 –04 above).

DEO (p. 19) and Columbia (pp. 39-40) want natural gas companies to have such audio recordings as well.

Since it will be the Commission and not the natural gas company that will be administering complaints, there does not appear to be a reason why the natural gas company would need a copy of the enrollment tape.

Beginning with Sub-section (E)(4), Columbia suggests that the reference to calendar days be changed to business days. (pp. 40-41)

The Marketers agree and have asked that all the day requirements in this section be "business" days instead of "calendar" days.

FirstEnergy seeks to revise various parts of Sub-section (E) by adding e-mail as an option. (p. 3)

The Marketers agree and join with FirstEnergy on this request.

Columbia recommends deleting Sub-section (K)(1) and replacing it with a rule that says that any sales customer that enrolls in a competitive retail natural gas supplier program shall be responsible for the payment of GCR adjustments for the first twelve months of enrollment in the competitive retail natural gas supplier program. (p. 42-43)

OCC would delete the phrase "including any commodity adjustment (i.e. GCR adjustments)." from the Rule. (p. 25)

The Marketers agree with the OCC that GCR adjustments should not be part of these rules, but rather addressed in the GCR process. For that reason, the Marketers oppose Columbia's suggestion that GCR adjustments be made part of the rule.

Proposed New Rule 4901:1-29-08–Customer Access and Complaint Handling

Subsection (A)

The City of Toledo seeks a clarification that a governmental aggregator can delegate various tasks or obligations to its supplier and thus would modify (A)(1); (A)(3); and (B)(1) through (6). (p. 3)

The Marketers agree and support this clarification.

OCC seeks (A)(2) modified by requiring suppliers to answer the telephone within 60 seconds based on an average calendar month. (pp. 26-27)

The Marketers object to this proposed rule as unnecessarily and unjustifiably intrusive into the exercise of reasonable business judgment. There is no basis for the sixty-second

standard, and no discussion as to the cost of its implementation.

Subsection (B)

OCC requests modification to (B)(1)(b) to require status reports to be provided to OCC in addition to the Staff. (p. 27)

CG&E also recommends that status reports and reports and reports of investigation be provided to the natural gas company. (pp. 24-25)

DEO (p. 28) and Columbia (pp. 44-45) would add a new section requiring status reports to go to the natural gas company when the complaint is referred to the retail natural gas supplier or governmental aggregator by the natural gas company.

OCC seeks to modify (B)(4) to require a retail natural gas supplier or governmental aggregator to inform a disputing customer that the OCC is available to assist residential consumers. (pp. 27-28)

OCC also seeks to amend (B)(5) to require that records be provided to the OCC as well as the Staff. (p. 28)

Sub-Section B requires a CRNGS or a governmental aggregator to respond to the customer if the customer contacts the CRNGS or governmental aggregator directly, or the Commission if the customer complaint came via the Commission. Follow-up reports are required if an investigation goes longer than fourteen days. The Sub-Section seems complete as written. If the customer contacted the CRNGS or governmental aggregator directly, it is reasonable to infer a customer preference to deal directly with the CRNGS or governmental aggregator; and, that preference should be respected. Telling the customer that called directly that he can contact the OCC may result in customer confusion and the misperception that the customer is being denied the right to speak and deal directly with the service provider. Similarly, if the customer initiates a complaint with the OCC it is reasonable to infer a customer preference to have the OCC act as representative for the customer. In such a case, the CRNGS or governmental aggregator will interact directly with the OCC. If a complaint is referred from the natural gas

company, the CRNGS or governmental aggregator would treat the complaint as though it was initiated by the customer in view of the fact that, unlike the OCC, the natural gas company is not authorized to represent the customer in a non-utility service matter. Thus there does not appear to be a need to send the natural gas company a copy of any subsequent report.

<u>Proposed Rule 4901:1-29-09-Customer Information</u>

Under Sub-section (A), a retail natural gas supplier or governmental aggregator must provide timely payment history of up to 24 months to the customer free of charge. Dominion Retail seeks to modify Sub-section (A) to only require a retail natural gas supplier or governmental aggregator to provide a customer's payment history upon customer request when the retail natural gas supplier is providing the billing service. (p. 12) Columbia (pp. 45-46) and DEO (pp. 25-26) recommend that the customer's payment history be limited to the history with the said retail natural gas supplier or governmental aggregator.

The Marketers in their Initial Comments echoed a similar theme, only the entity that is keeping the payment records should have to provide the history. Generally that will be the billing party, but not always. In sum, the rule to provide payment histories ought to be limited to entities which have the information.

DEO recommends that (C)(1) be modified to allow a natural gas company to disclose over the telephone to a customer that customer's account number. It would limit the prohibition against disclosure to a "knowing disclosure". (p. 26)

The Marketers agree. If a customer cannot find his/her account number, there should be a way to obtain it easily. DEO's suggestion that it be provided telephonically upon request is acceptable assuming that there is some means of verifying that it is truly the customer on the phone making the request.

Proposed Rule 4901:1-29-10-Contract administration and renewal

As DEO observes, protections against "slamming" "should not apply …[regarding assignment of contracts] so long as the terms and conditions of service are not changed." See DEO Comments at 17.

The Marketers previously commented that Proposed Rule 4901:1-29-10(D)(1) should be deleted (see Ohio Natural Gas Marketers Comments at 25), while a retail natural gas supplier must "comply with all terms and conditions in effect for the contract before the assignment occurred" as provided in Proposed Rule 4901:1-29-10(D)(2).

Columbia seeks to modify (E) by extending the "remorse period" from seven calendar days to seven business days and by giving customers the right to rescind by either telephoning or writing the retail natural gas supplier or governmental aggregator as opposed to the natural gas company. (pp. 48-49)

While extending the "remorse period" may benefit the few who would like more time to decide whether to repudiate the contract to which they previously agreed, the extension is, in and of itself, an impediment to the initiation of Choice program service. Not only will extending the remorse period delay the initiation of service by a marketer, the natural gas company will not even complete the enrollment process until the remorse period has expired. Thus, additional time that is bought for the "few" who decide to repudiate their contracts must be counter-balanced against the delay for the "many". There does not seem to be a compelling reason to tilt this balance toward greater delay.

OPAE seeks to modify Sub-section (F)(5) by striking the phrase "by more than fifteen percent" thereby requiring affirmative customer consent for any change in the contract. (pp. 23-24)

The Marketers in their Initial Comments requested that Sub-section (F)(5) be eliminated in its entirety as detrimental to competition and unnecessary given other less

obtrusive consumer safeguards. Thus, the Marketers oppose OPAE's request to not only keep the rule but make it more stringent. OPAE's request is inconsistent with the well-established doctrines of implied consent. The Marketers reincorporate by reference their Initial Comments at pages 26-28.

Dominion Retail seeks to revise the second sentence of (F)(5) to make it clear that no response from the customer will result in staying with the retail natural gas supplier unless the customer opts to revert to the natural gas company or change to another retail natural gas supplier. (pp. 12-13)

The Marketers strongly support Dominion Retail in this comment. In an automatic renewal the common perception of the customer is that if they do nothing, the contract will stay remain in effect. The rule however would bounce the customer from the supplier and put them on sales tariff. Switching to tariff is likely to be a greater change than staying with the existing contract plus the disclosed changes. Thus the default mode should result in the customer staying with the retail natural gas supplier.

OCC would add a Sub-section (I) which would give customers who have not participated in a gas choice program the right to cancel a gas supplier contract after the first full year of service without penalty and require a supplier to give notice to the customer of this right between 60 and 90 days before the end of the first full year of service. (p. 29)

When the first "pilot" Choice programs were started a one year term limit was included in the participating natural gas company's tariff. The original fear was that if the pilot programs failed, how would a multi year contract be unwound. When the Choice programs entered their second and third years, the reasoning for the one year limit was that "new" customers were not as sophisticated as customers that had been in the market before, so the one year limit was only to protect customers from imprudent purchasing. Now that Choice programs are neither pilots nor obscure, there seems to be no good

reason to make any customers forego their right to sign multi years if they perceive that such will result in greater savings.

Proposed Rule 4901:1-29-11-Contract disclosure

COH comments that a consumer contract should terminate, according to a Commission-approved rule, if "the supplier returns the customer to the natural gas company's sales service." See COH Comments at 51.

COH's comment is strangely in conflict with its admonition that the proposed rules go too far in restructuring existing natural gas programs. See COH Comments at 1-2. Under existing programs, the natural gas company is not closely involved in the contract between the retail natural gas supplier and the consumer. The natural gas company responds to "switch" transactions that inform the LDC concerning the identity of the supplier that is responsible for a consumer at a particular point in time. Presently, a customer can be switched from and to LDC sales service[6] according to its agreement with its supplier, and the LDC is completely unaware of whether such switches are conducted according to a single contract or multiple contracts.

COH's comment reflects a desire to interfere and restrict the contract options that retail natural gas suppliers may make available to consumers. Again, this conflicts with the aims of Am. Sub. H.B. 9, as especially reflected in Revised Code Section 4929.02(A)(2) ("supplier, price, terms, conditions, and quality options [consumers] elect"). The Commission's objectives must be to secure effective choices for consumers concerning contract options and sources of supply (see R.C. 4929.02(A)(2) and (3)) and to "encourage innovation and market access." See R.C. 4929.02(A)(4). The objective of

[6] For example, a customer may lose eligibility to participate in a natural gas program at a point in time but be entitled to return to service by a retail natural gas supplier, under its contract with that supplier, when the customer's eligibility is restored.

Am. Sub. H.B. 9 was not to "scuttle the enlightened regulatory structure that has fostered the development of … successful CHOICE programs." See COH Comments at 2.

OCC seeks to modify (B)(8)(b) to require contracts to include for variable rate offers a clear and understandable explanation of the quantifiable and verifiable factors that will cause the price to vary and how the customer can verify changes that will cause the price to vary. (p. 32)

The Marketers oppose this suggestion as expensive and unnecessary. What are now understandable one page contracts would devolve into lengthy statements of overly technical disclaimers as the marketer dutifully explains each and every quantifiable and verifiable factor that could cause the price to vary. No need for such a rule has been demonstrated.

OCC recommends deleting (B)(17) which provides notice to customers that a customer returning to natural gas company service may be charged a price other than the natural gas company's GCR rate. (p. 33) DEO agrees this language may be misleading if the natural gas company is only allowed to charge the GCR rate. But DEO believes that the 85 - 800 Transportation Guidelines may allow a natural gas company to justifiably charge customers who return to a natural gas company sales service the market rate which may be greater than the GCR rate. (pp. 28-29) OPAE believes the Commission should reopen the tariffs of natural gas companies which allow returning customers to be charged something other than the GCR rate. OPAE believes that the General Assembly did not intend for customers to be punished for exercising choice. (p. 24)

Sub-Section (B)17 needs repair. The initial fix should be as the OCC suggests, simply drop the sub-section. The Commission, though, ought to take up the issue raised by DEO as to whether that it can charge more the GCR rates for returning customers. The Marketers note that even if DEO, under the 85-800 Guidelines, has the right to charge more, it could not do so without first getting Commission approval. Prior to granting such approval, the Commission may wish to weigh OPAE's comment about the intent of the General Assembly.

Proposed Rule 4901:1-29-12-Customer billing and payments

CG&E (pp. 26-27) and VEDO (p. 14) object to (A) to the extent that it could be interpreted as mandating that retail natural gas suppliers or governmental aggregators be permitted to bill for public utility gas distribution service. They seek clarification of the Commission's intent. OCC would amend (A) by making the demonstration of the capability to bill customers to be reviewed by the Commission Staff; OCC would also require a demonstration of the capability of fulfilling all PUCO rules and orders covering billing of regulated services. (p. 33)

The Marketers believe the rule does and should permit consolidated billing by marketers. The OCC suggestion to shift the review and approval process from the natural gas company to the Commission would not be opposed by the Marketers. There are synergies in having a marketer who is doing consolidated billing for power to include natural gas billing to the same end use customer. The natural gas rules should permit such dual consolidated billing if it proves to be efficient and if the Marketer can satisfactorily demonstrate the capability to do so. The rules certainly should not become a barrier to more efficient billing modes.

Proposed Rule 4901:1-29-13 -- Coordination Between Natural Gas Companies and Retail Natural Gas Suppliers and Governmental Aggregators

Columbia argues that subsection (C) goes far beyond the requirements of H.B. 9 and should be modified to require natural gas companies to provide certified retail natural gas suppliers and governmental aggregators with Eligible Lists which include only customer names, billing addresses and account numbers, with quarterly updates. (p. 55-56)

Section 4929.02, Revised Code, which was part of H.B. 9 made it the policy of the State to promote diversity of natural gas supplies and suppliers[7] by giving customers choices of supplies and suppliers, and encouraging innovation, market access for cost effective supplies, and demand side natural gas services[8]. Providing certified marketers

[7] Section 4929.02 (A) (3), Revised Code
[8] Section 4929.02 (A) (4), Revised Code

the customer lists and consumption data will greatly assist both these state policy goals. The availability of customer lists will bring more marketers to the Ohio market, make the marketers already in Ohio, consequently providing more customer choices and diversity of suppliers. Similarly, the more data on consumption that is available, the bolder and more innovative the CRNGS programs, products and services will be.

Proposed Rule 4901:1-30 -- Reporting Requirements

The City of Toledo asks that the rule be clarified to allow a delegation of the requirement to provide an annual report from a governmental aggregator to its supplier. (p. 4)

The Marketers support the City of Toledo in this request.

Proposed Rule 4901:1-32 -- Filing and Contents of Requests for Cost Recovery

DEO seeks to expand Subsection (B)(1) and (B)(2) to permit natural gas companies to file projected migration rates and not just ask for recovery based solely on historical information (p. 33)

All through the debate on H.B. 9 the point was stressed by the natural gas companies that under the Gas Cost Recovery rules commodity was sold at actual cost. Since the cost of gas was strictly a "pass through" item, the migration of customers from GCR to Choice or governmental aggregation should not cause any loss of net revenue to the natural gas companies. Thus, the only need for a migration rider would be to compensate the natural gas company for additional personnel or equipment needed for coordinating the delivery of natural gas from CRNGS, which are not off set by the savings in costs by not having to procure a gas supply.

The best way to determine what the actual, net, verifiable cost of switching from utility procurement to marketer procurement will not be known until it actually happens.

Thus the Commission is wise to propose a rule that calls for the filing a documentation of actual costs. This safe guard of looking at actual expenses is severely compromised, if the migration riders can be charged based on projected incremental expenses. Further, the use of projections in and of itself, requires a follow-up to see if the projected expenses did emerge as predicted and if the off setting cost reductions were not larger than anticipated. If the projections turn out to be imprecise, which will quite likely as predicting the future is an inexact science, then additional time and effort will have to be devoted by utility, customers and government alike to fashioning a true up.

For these reasons, the suggestion that migration riders be based on anything other than actual, net, verifiable, incremental costs associated to migration should be rejected.

Miscellaneous

CG&E points out that Rule 4901:1-29-03(C) provides that retail natural gas suppliers and governmental aggregators shall not arrange for the discontinuation of distribution service for nonpayment. However, CG&E points out that where the natural gas company purchases the receivables of the retail natural gas supplier or governmental aggregator, but the natural gas company must collect amounts due associated with the gas commodity. CG&E recommends that amounts due related to the commodity where the natural gas company has purchased the receivable be counted towards the natural gas company's turn-off authority. (pp. 30-31)

Marketers agree with CG&E's observation that failure to pay for natural gas itself, whether that natural gas be supplied by a natural gas company or a CRNGS, should be grounds for termination of service. Separating utility service from non-utility service when determining if non payment is grounds for service termination may make sense in the telecommunications industry. In telecommunications, the non-utility portion on the customer's bill has little or no role to play in with the utility providing local access phone service. With natural gas however, the gas itself is the heart of the utility service. Simply

put, if there is no natural gas purchased by the customer the utility cannot provide natural gas service. Thus, failure to pay for natural gas should constitute a reason for shut off.

Conclusion

The Marketers request the Commission to review the above Reply Comments and consider these statements when it decides if and how its proposed rules should be modified prior to implementation.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 31, 2001 a copy of the above Reply Comments has been served upon all entities that filed Initial Comments. A list of all entities served is attached and made a part of this Certificate of Service.

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