

**MEMORANDUM**

TO: Christine Pirik, Public Utilities Commission of Ohio

FROM: Meredith Rockwell, Regulatory Policy Advocate

DATE: October 24, 2012

RE: **CSI Review– Natural Gas Alternative Rate Plan and Exemption Rules (OAC Chapter 4901:1-19)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

The package submitted by the Public Utilities Commission of Ohio (PUCO) proposes to amend 13 rules and make no changes to two additional rules in Ohio Administrative Code (OAC) Chapter 4901:1-19. The purpose of this chapter is to provide a clear and consistent process for the filing of applications and review of applications to do the following: (1) exempt any sales service or ancillary service of natural gas companies from certain Revised Code requirements; (2) allow natural gas companies to exit the merchant function; (3) and allow natural gas companies to request approval of an alternative rate plan.

Approximately one year ago, the PUCO asked for comments to assist in the development of these rules. The PUCO received detailed comments from eight different stakeholders, and addressed those in a staff summary prior to submitting the rules to the CSI Office for review. Upon receipt of the rules for the CSI process, additional comments were filed, which mostly reiterated the comments not adopted in the initial round of PUCO commenting. Most of these comments are

77 South High Street | 30th Floor | Columbus, Ohio 43215-6117
CSIOhio@governor.ohio.gov

more technical in nature, and deal with issues such as terminology selection and conformance to the Revised Code, rather than issues related to the adverse impact of the rules on businesses, which is the scope of the CSI review.

One issue raised, though, was directly linked to the principles of the CSI Office found in Executive Order 2011-01K, the order by which the CSI Office was initially created. The Ohio Consumers' Counsel states that the Executive Order was drafted to protect small businesses, and that the exit the merchant function created in the proposed rules will actually harm small businesses to provide flexibility to big businesses. However, the CSI Office – and specifically the review of proposed agency rules – is also governed by the Ohio Revised Code, which requires the analysis performed by the CSI Office to focus on the “adverse impact to business” (ORC 107.51 to 107.54). CSI's mission is not to select winners and losers among businesses, but to focus on whether the adverse impact to any business is justified by the public purpose of the regulation. In this specific instance, the proposed rules require a demonstration that additional choices remain available to consumers before the PUCO may authorize the supplier to exit the merchant function.

The PUCO describes the adverse impact to business created by the proposed rules as employer time expended on complying with the filing requirements in the rules. Furthermore, the proposed rules create alternative regulatory options for natural gas companies beyond those found in the current rules. The PUCO also states that the rules may have the impact of lessening the cost of supplying natural gas for natural gas utilities and marketers. Despite the flexibility and potential cost reduction the proposed rules afford, the PUCO goes on to justify the adverse impact of the rules by stating that the need for clear and consistent filing requirements and procedures for thorough review of the filed applications justifies the compliance requirements.

In conclusion, the CSI Office has no recommendations for this rule package. The PUCO has clearly articulated the adverse impact to businesses created by this rule package and has adequately justified that impact. Additionally, the PUCO has taken measures in this package to provide pathways to alternative regulatory options for natural gas companies, and such flexibility is a core principle of the CSI Office.

Recommendations

For the reasons stated above, the CSI Office has no recommendations for this rule package.

Conclusion

Based on its review of the proposed rule package, the CSI Office recommends the Commission should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.

cc: Elizabeth Stevens, Legal Director, Public Utilities Commission of Ohio