Ohio | Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Carrie Kuruc, Director

MEMORANDUM

TO: Angela Hawkins, Public Utilities Commission of Ohio

FROM: Danielle Dillard, Regulatory Policy Advocate

DATE: March 18, 2019

RE: **CSI Review – Alternative Rate Plan and Exemption Rules (OAC 4901:1-19-01, 4901:1-19-02, 4901:1-19-03, 4901:1-19-04, 4901:1-19-05, 4901:1-19-06, 4901:1-19-07, 4901:1-19-08, 4901:1-19-09, 4901:1-19-10, 4901:1-19-11, 4901:1-19-12, 4901:1-19-13, 4901:1-19-14, and 4901:1-19-15)**

On behalf of Lt. Governor Jon Husted, 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

This rule package consists of fifteen amended rules proposed by the Public Utilities Commission of Ohio (Commission) as part of the statutorily required five-year rule review. The rule package was submitted to CSI on July 3, 2018 and the comment period was held open through July 13, 2018. Five comments were received during this time, and the Commission issued its finding and order finalizing the amendments on December 12, 2018. An application for rehearing was entered on February 6, 2019 and denied on February 27, 2019. The denial marks the end of consideration for this rule package and there is no need for another finding and order to be issued.

Ohio Administrative Code (OAC) Chapter 4901:1-19 governs the filing, consideration, and implementation of applications to exempt any commodity sales service or ancillary service of a natural gas company to exit the merchant function. It also governs the filing and consideration of an application made by a natural gas company to request approval of an alternative rate plan. The proposed changes are intended to improve clarity, streamline the rules and attendant processes, simplify and coordinate filing requirements, and update obsolete language.

As part of early stakeholder outreach, the Commission notified interested parties by U.S. Mail and email of the rules. It also scheduled a workshop to receive feedback from stakeholders and the general public on September 11, 2017. Stakeholders participating in the workshop included all regulated natural gas companies, pipeline companies, certified retail natural gas service suppliers, the Ohio Gas Association, Ohio Petroleum Council, the Ohio Oil and Gas Association, and Ohio Consumers' Counsel. The Commission received feedback from several local distribution companies in the form of two joint proposals during the workshop. It incorporated nearly all of the proposed revisions.

Five comments were received during the CSI public comment period. Ohio Partners for Affordable Energy recommended the elimination of all provisions in OAC Chapter 4901:1-19 that provide for exit-the-merchant-function plans. These plans entail a complete transfer of the obligation to support default commodity sales service for choice-eligible customers from a natural gas company to retail natural gas suppliers without the occurrence of a competitive retail auction. The group stated that these provisions are incompatible with the authorizing statute and state policy. Further, it asserted that the promotion of effective competition requires an auction-based default service option that provides all consumers with a price that is set by the competitive market.

Ohio Consumers' Counsel submitted comments concerned with residential customer price protection. It recommended that the Commission adopt a rule that prohibits the assignment of residential customers to a supplier under a monthly variable rate program as a default service. It suggested that the natural gas company's standard offer be the only default service, and that even if the Commission permits an alternative it should prohibit suppliers from charging customers more than the competitive standard choice offer rate.

The Retail Energy Supply Association, Ohio Gas Company, and Dominion Energy all submitted reply comments to counter the concerns of Ohio Partners for Affordable Energy and Ohio Consumer's Counsel. They asserted that the recommendations were contrary to the authorizing statute, which clearly expresses authorization for a complete transfer of the commodity-sales function, and state policy to recognize the emergence of competitive natural gas markets. They noted that attempts to disallow the exit function should be rejected, because entities can formally oppose any exit-the-merchant-function proposal that is filed with the Commission. Dominion Energy specifically asserted that the Commission does not have the broad authority to adopt a blanket prohibition against any application that involves residential customers. It suggested that pricing issues be resolved on a case-by-case basis rather than generally applicable rules.

The Commission agreed that the authorizing statute gives it express permission to, upon application, exempt any commodity sales service or ancillary service from statutory requirements. Therefore, it declined to adopt recommendations seeking to eliminate all exit-the-merchant-function plan provisions. The Commission also noted that it had previously considered and rejected similar recommendations from Ohio Partners for Affordable Energy.

The Commission also declined to modify requests made to alter the definition of "alternative rate plan," and to determine cost recovery responsibility for exit-the-merchant-function plans. It felt that the definition in question was sufficiently clear, and that determining cost recovery at this stage was premature. The Commission did, however, adopt various minor language changes suggested by the Retail Energy Supply Association, and Ohio Consumers' Counsel. It also adopted a modification proposed by Dominion Energy to explicitly acknowledge its discretion to determine whether an alternative rate plan application is for an increase in rates. Dominion noted that the Commission's proposed change would establish a standard under which an alternative rate plan would always be considered an application for an increase in rates if the billing determinants and revenue requirement change. It stated that there are instances where a plan could use different billing determinants and revenue requirements for the purpose of lowering rates.

The rules impact natural gas companies. These entities must comply with the filing requirements established by the Commission in order to qualify for alternative options to traditional regulation. This includes exemption from the rules, as well as eligibility for an alternative rate. The proposed changes do not establish any additional compliance requirements; they are intended to provide additional flexibility, and streamline the application process. The Commission justifies the rules as necessary to provide clear and consistent filing requirements and procedures for thorough review of applications.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that the Commission should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.