

company's choice-eligible customers have done so reliably for at least two consecutive heating seasons through a competitive retail auction process.

The definition of "competitive retail auction" can be deleted in the rules by replacing the phrase "competitive retail auction" in the definition of "exit the merchant function" and in Rule 4901:1-19-05(D)(1) with the phrase "competitive bidding process." Doing so will simplify the rules and account for the fact that competitive retail auctions are not the only available competitive bidding process.

For example, Rule 4901:1-19-09 notes that upon the implementation of an exit-the-merchant-function plan, supply for choice-ineligible and PIPP-enrolled customers shall be procured by auction or a public request for proposal. Even more recently, the Commission reaffirmed a request for proposal as a competitive bidding process when it adopted such as the means for competitively selecting suppliers for Ohio's electric PIPP load. *In the Matter of the Implementation of Sections 4928.54 and 4928.544 of the Revised Code*, Case No. 16-247-EL-UNC, Finding and Order (March 2, 2016) and Entry on Rehearing (April 27, 2016).

The use of the term "competitive bidding process" is a practical way to capture current practices and any future processes for competitively bidding supply. If the Commission agrees, the same edit can be made to Rule 4901:1-19-09(A) as well.

B. Rule 4901:1-19-03 – Replacing use of "Auction"

Rule 4901:1-19-03(C)(2) requires an applicant that implements an "auction" for default commodity sales service to describe how the auction may or may not be consistent with previous Commission orders and best industry practices.

(2) If the applicant is proposing to implement an *auction* for provision of default commodity sales service, the applicant shall provide a detailed description of how the proposed *auction* may or may not be consistent with previous commission orders considering exemption applications as well as best industry practices.

Auctions, however, are not the only competitive bidding process utilized by utilities. For example, PIPP auctions are held by a request for proposal process (sealed bids), as explained above. Rather than limit the provision of default commodity sales service to just an auction process, the rule can use the phrase “process” in place of “auction” to recognize that there may be different ways (both existing today and in the future) to provide default commodity sales service.

At a minimum, the phrase “competitive bidding process” should replace the word “auction” to recognize the use of requests for proposals as a way to competitively source offers.

C. Rule 4901:1-19-05(E) – Clarifying Cost Recovery

Rule 4901:1-19-05(E) allows an applicant to request cost recovery for exiting the merchant function. The rule, however, does not clarify what entity will be responsible for the cost recovery. Rather than leaving this to debate in the actual exemption proceeding, RESA proposes that Choice-eligible default customers be responsible for the cost recovery (and not shopping customers or suppliers).

The revised rule would read: “(E) The applicant may request recovery from *Choice-eligible default customers* of its reasonable costs of exiting the merchant function.” Although other commenters may think this is unfair to non-shopping customers, it would be more unfair to assess cost recovery to customers already shopping and to suppliers operating in competitive markets. Rather, following principles of cost-causation, those customers electing to not shop and driving the level of costs of the exemption process (such as the amount of customer education) should bear the costs.

D. Rule 4901:1-19-05(D)(5), (F) and (G)(1) – Requirements Not in Statute

The Commission is limited to the authority granted it by statute and, as such, cannot exercise authority beyond it. *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St.3d 87, citing

Columbus S. Power Co. v. Pub. Util. Comm. (1993), 67 Ohio St.3d 535, 620 N.E.2d 835. Consistent with that authority, Rules 4901:1-19-05(D)(5), (F) and (G)(1) require revisions because all include language that is not authorized by the underlying statute (Section 4929.04).

First, Rule 4901:1-19-05(F) states “[t]he commission shall order such procedures as it deems necessary, consistent with these rules, in its consideration of an application to exit the merchant function.” The Commission, however, should only order procedures that are consistent with the underlying statute following *Tongren*. To ensure compliance, the rule should be revised to state “[t]he commission shall order such procedures as it deems necessary, consistent with *section 4924.04 of the Revised Code and these rules*, in its consideration of an application to exit the merchant function.”

Second, Rules 4901:1-19-05(D)(5) and (G)(1) require that an exit-the-merchant-function application be just and reasonable. This requirement, however, is not in the underlying statute (Section 4929.04). As a result, these rules should also be modified as follows:

4901:1-19-05(D)(5) The applicant shall demonstrate that the application satisfies section 4929.04 of the Revised Code, ~~and is just and reasonable.~~

4901:1-19-05(G)(1) The burden of proof shall be on the applicant to show that the application satisfies section 4929.04 of the Revised Code, ~~and is just and reasonable.~~

The above modifications will ensure the Commission’s rules do not exceed that allowed by statute – and importantly, the proposed modifications by RESA do not change the underlying goal of each rule.

E. Rule 4901:1-19-08(A)(2) – Clarifying what Modifications Trigger an Application Withdrawal

Rule 4901:1-19-08(A)(2) states that an applicant shall proceed with either implementing or withdrawing an exemption, exit-the-merchant-function plan or alternative rate plan within a

certain time-frame. RESA’s concern with the rule as proposed is that an applicant can withdraw an exemption, exit-the-merchant-function plan or alternative rate plan if the Commission “modifies” the application. This means that the slightest modification would give rise to a withdrawal right by the application.

To avoid this result, RESA proposes inserting the word “substantially” before the word “modifies” in Rule 4901:1-19-08(A)(2). The rule would then read as follows: “Withdraw the exemption, exit-the-merchant function plan, or alternative rate plan application if the commission *substantially* modifies or does not approve the application as filed.”

The clarification of a modification triggering a withdrawal is not uncommon in Commission practice. For example, stipulations adopted and approved by the Commission commonly contain provisions allowing a party to withdraw from a stipulation if the Commission “substantially” modifies the stipulation. Clarifying the rule will avoid the result of a withdrawal occurring when a non-substantive modification of an application is made by the Commission.

F. Rule 4901:1-19-10 – Clarifying when the Rule Applies

Rule 4901:1-19-(10) imposes restrictions on retail natural gas suppliers assigned a choice-eligible customer. RESA would like to clarify that this rule only applies to the period during which a supplier is assigned the choice-eligible customer – and not during the period when the customer may be voluntarily contracting with the supplier.

The clarification is simple and can be done in the introductory sentence. The rule can be revised to state

During the period a retail-Retail natural gas supplier is assigned a choice-eligible customer, the retail natural gas supplier shall:

- (A) Not charge that customer any more than the retail natural gas supplier’s posted standard variable rate, which the supplier shall submit to the commission and which the commission shall post on its web site.

- (B) Not charge that customer a termination fee if the customer chooses another retail natural gas supplier.
- (C) Not require that the customer remain a customer of that retail natural gas supplier for a minimum period of time beyond the first month in which that customer is assigned to the retail natural gas supplier.
- (D) Keep the assigned customer's personal, billing, account number and usage information confidential except to the natural gas company with the distribution function or as otherwise provided under commission rules.

The above edit, while simple in nature, provides the necessary clarification to RESA's members.

III. CONCLUSION

RESA respectfully requests that the Commission accept these targeted suggestions and incorporate them into the administrative rules in Chapter 4901:1-19.

Respectfully Submitted,

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