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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Motion to Modify)
the June 18, 2008 Opinion and Order in Case) Case No. 11- 6076 -GA-EXM
No. 07-1224-GA-EXM.)

**JOINT MOTION TO MODIFY ORDER
GRANTING EXEMPTION**

By an Opinion and Order issued in Case No. 07-1224-GA-EXM on June 18, 2008 ("Exemption Order"), the Commission, pursuant to R.C. 4929.04, granted an exemption authorizing The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO") to implement Phase 2 of DEO's plan to exit the merchant function. By this Motion, DEO, Staff of the Public Utilities Commission of Ohio ("Staff"), and Ohio Gas Marketers Group (which comprises Commerce Energy, Inc., Direct Energy Services, LLC, Integrys Energy Services, Inc., Interstate Gas Supply, Inc., Southstar Energy Services LLC, and Vectren Retail LLC) (all of the foregoing referred to collectively as the "Joint Movants") respectfully request, pursuant to R.C. 4929.08(A), that the Commission modify the Exemption Order to allow DEO to combine the Standard Service Offer ("SSO") auction and the Standard Choice Offer ("SCO") auction into a single auction.¹

R.C. 4929.08(A) authorizes the Commission to modify an order granting an exemption only after notice and a hearing. To facilitate the scheduling of such a hearing, the Joint Movants have filed, concurrently with this Motion, a Stipulation and Recommendation designated as Joint Exhibit 1.

¹ Office of the Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE) and Industrial Energy Users-Ohio (IEU-Ohio) are not a Joint Movant to this Motion or a Signatory Party to the Stipulation and Recommendation filed concurrently herewith. OCC, OPAE and IEU-Ohio will file a letter in this proceeding indicating that it neither supports nor objects to the Stipulation and Recommendation.

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The next SSO and SCO auctions are scheduled for February 28, 2012. In order to implement the changes necessary to combine the auctions prior to this time, 2012 SSO/SCO auction, the Joint Movants respectfully request issuance of a final order on this Motion by no later than February 1, 2012.

The Joint Movants are currently engaged in discussions concerning possible additional modifications to the Exemption Order. Such additional modifications, if any, will be requested in a separate motion filed in this docket.

For the reasons discussed in this Motion and attached Memorandum in Support, the Commission should modify the Exemption Order as requested herein.

Dated: December 28, 2011

Respectfully submitted,



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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Motion to Modify)
the June 18, 2008 Opinion and Order in Case) Case No. 11-_____-GA-EXM
No. 07-1224-GA-EXM.)

**MEMORANDUM IN SUPPORT OF
JOINT MOTION TO MODIFY ORDER
GRANTING EXEMPTION**

I. INTRODUCTION

In the May 26, 2006 Opinion and Order in Case No. 05-474-GA-ATA, the Commission approved DEO's application to implement Phase 1 of its plan to exit the merchant function. Phase 1 replaced DEO's gas cost recovery mechanism with a standard service offer ("SSO") retail price adjustment based on a competitive auction. In the subsequent Phase 2 proceeding, the Commission approved a standard choice offer ("SCO") auction process whereby competitive suppliers bid for the right to supply gas to tranches of choice-eligible customers at a retail level in which the supplier is identified on the customer's bill. Non-choice eligible customers continue to receive SSO service at a wholesale level in which DEO is identified as the supplier on the customer's bill.

The Exemption Order approved the SCO Program and authorized DEO to hold separate SSO and SCO auctions on the same day to establish their respective retail price adjustments. DEO proposed this bifurcated structure to allow its customers an opportunity to gain a benefit from suppliers willing to pay a premium to serve retail customers. This benefit has not been realized in DEO's two most recent SCO auctions. Furthermore, since implementing the SCO program, other LDCs have implemented a single auction to obtain their entire commodity load.

These changed circumstances demonstrate that a modification of the Exemption Order to allow DEO to combine the SSO and SCO auctions is in the public interest and should be approved.

II. ARGUMENT

A. The Commission Has Statutory Authority To Modify An Order Granting An Exemption.

The Exemption Order was issued under R.C. 4929.04. *See* Exemption Order at 20. The Commission has the authority to modify or abrogate the Exemption Order under certain specified conditions. Specifically, R.C. 4929.08(A) provides:

The public utilities commission has jurisdiction over every natural gas company that has been granted an exemption or alternative rate regulation under section 4929.04 or 4929.05 of the Revised Code. As to any such company, the commission, upon its own motion or upon the motion of any person adversely affected by such exemption or alternative rate regulation authority, and after notice and hearing and subject to this division, may abrogate or modify any order granting such an exemption or authority only under both of the following conditions:

- (1) The commission determines that the findings upon which the order was based are no longer valid and that the abrogation or modification is in the public interest;
- (2) The abrogation or modification is not made more than eight years after the effective date of the order, unless the affected natural gas company consents.

As discussed below, certain findings upon which the Exemption Order was based are no longer valid, and modification of the Exemption Order is in the public interest. Moreover, the Exemption Order was approved almost 3½ years ago, well under the 8-year limit imposed by R.C. 4929.08(A)(2). Therefore, the Commission has the authority to modify the Exemption Order granting DEO's exemption.

B. Pursuant To R.C. 4929.08(A), The Commission Should Modify The Exemption Order.

1. Certain findings upon which the Exemption Order was based are no longer valid.

The benefits of conducting separate SSO and SCO auctions were not realized in the last two auctions. In Case No. 07-1224-GA-EXM, the Commission approved the SCO program as part of DEO's second phase to exit the merchant function. Exemption Order at 7, 20. At the time of the application, DEO proposed to hold two separate auctions for its SSO and SCO programs. *Id.* at 7-8. Specifically, DEO envisioned a separate SCO auction to "yield additional benefits by extracting the premium that suppliers place on obtaining a retail customer, with whom they can establish an ongoing contractual relationship." Application, Appendix A, Phase 2 Transition Plan at 3. DEO expected that "the significant benefits of avoided customer acquisition costs," would be "reflected in the Phase 2 auction result and further reduce customer costs." *Id.*

Customers realized these benefits only in the first SCO auction conducted by DEO on February 10, 2009. When the SCO descending clock auction remained oversubscribed at the final SSO retail price adjustment, DEO transitioned to an ascending clock auction. *See* Case No. 07-1224-GA-EXM, Entry (Feb. 11, 2009) at Finding (5). During the ascending clock auction, suppliers submitted bids for the premium they would pay to serve SCO customers at the SSO retail price adjustment. *Id.* The ascending clock auction resulted in a \$1,449,000 credit to DEO's Transportation Migration Rider - B. *Id.*; *See also* Staff Report (Feb. 10, 2009).

Since the 2009 auction, however, the ascending clock auction format has not been triggered. In the 2010 and 2011 SCO auctions, the SCO customer load was fully subscribed at the final SSO retail price adjustment without any additional premium being extracted. *See*

Finding and Order (Feb. 11, 2010) at Finding (5); Finding and Order (Mar. 2, 2011) at Finding (5). These auctions demonstrate that an assumption underlying the Commission's findings, the benefit derived from suppliers paying a premium to serve retail customers, is no longer valid and that the Exemption Order should be modified.

Moreover, since the Exemption Order, the Commission authorized other local distribution companies to utilize a single auction format. DEO was the first LDC to propose a separate SCO auction in light of the differences between SSO and SCO service, primarily being the underlying nature of the commodity service (i.e. wholesale in the case of SSO service and retail in the case of SCO service). Since that time, however, other LDCs have implemented a single auction to obtain commodity service for both wholesale and retail loads. Vectren successfully utilized a single auction in 2010 and 2011 to obtain a gas supply, and Columbia will implement a single SCO auction in 2012.² The success of a single SCO auction demonstrates that DEO's separate SSO and SCO auctions are no longer necessary.

2. Certain modifications to the Exemption Order are necessary and in the public interest.

Combining the SSO and SCO auctions benefits DEO's ratepayers in several ways and is in the public interest. A combined SSO and SCO auction would ease the administrative burden of holding two separate auctions and lead to lower auction services costs. A single auction also eliminates the possibility of different SSO and SCO auction outcomes, which could result in considerable customer confusion. Because the tranches to be served by the winning bidders contain a more diverse portfolio of customers, the risk to suppliers of customers moving between

² See *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 07-1285-GA-EXM, Entry (Jan. 13, 2010); *Id.*, Entry (Jan. 19, 2011); *In the Matter of Columbia Gas of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 08-1344-GA-EXM, Second Opinion and Order (Sept. 7, 2011). The SCO auction structure for both Vectren and Columbia yields a retail price adder for both SCO and Default Sales Service customer loads.

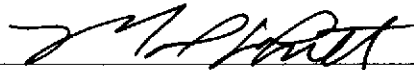
SSO and SCO service is reduced, which, other things being equal, could result in more aggressive bidding due to that reduction in risk. Finally, all residential loads would be served by certified retail natural gas suppliers regulated by the Commission, which provides an additional layer of oversight of suppliers and increases assurance of their capabilities.

III. CONCLUSION

Accordingly, the Joint Movants respectfully requests that the Commission modify the Exemption Order as requested herein.

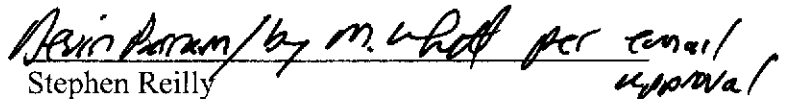
Dated: December 28, 2011

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Modify Order Granting Exemption was served by electronic mail to the following persons on this 28th day of December, 2011:

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