

**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 No. 12-1842-GA-EXM
Case No. 07-1224-GA-EXM.)

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT
AND MOTION TO DISMISS THE JOINT MOTION TO MODIFY ORDER
AND MEMORANDUM IN SUPPORT**

Ohio Partners for Affordable Energy ("OPAE") hereby respectfully moves the Public Utilities Commission of Ohio ("Commission") for leave to intervene in the above-captioned matter pursuant to R.C. §4903.221 and Section 4901-1-11 of the Commission's Code of Rules and Regulations, with full powers and rights granted by the Commission specifically, by statute or by the provisions of the Commission's Code of Rules and Regulations to intervening parties. OPAE also files herein a motion to dismiss the "joint motion to modify order granting exemption" filed on June 15, 2012 in this docket. The reasons for granting this motion to intervene and motion to dismiss are contained in the memoranda attached hereto and incorporated herein.

Respectfully submitted,

/s/Colleen L. Mooney
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
Telephone: (419) 425-8860
FAX: (419) 425-8862
e-mail: cmooney2@columbus.rr.com

**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 No. 12-1842-GA-EXM
Case No. 07-1224-GA-EXM.)

MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE

Ohio Partners for Affordable Energy (“OPAE”) should be permitted to intervene in this matter pursuant to Section 4903.22.1, Revised Code, and the Commission’s Rules and Regulation contained in Rule 4901-01-11 of the Ohio Administrative Code. The above-referenced docket is a joint motion of The East Ohio Gas Company d/b/a Dominion East Ohio (“Dominion”) and Ohio Gas Marketers Group (“Marketers”) to modify the June 18, 2008 Opinion and Order in Case No. 07-1224-GA-EXM. The joint motion filed on June 15, 2012 seeks a modification to the Commission’s exemption order to allow Dominion, beginning in April 2013, to discontinue the availability of standard choice offer (“SCO”) service to non-residential customers. Joint Motion at 1. Attached to the joint motion is a “joint exhibit,” which is a stipulation and recommendation that asks the Commission to issue an order modifying its June 18, 2008 Opinion and Order in Case No. 07-1224-GA-EXM so that, effective April 2013, non-residential customers no longer have an option to receive SCO service. Instead, if a non-residential customer has not selected a competitive retail supplier, the customer will be assigned one by Dominion. Joint Exhibit 1 at 2.

In determining whether to permit intervention, the following criteria are to be considered: the nature of the person’s interest; the extent to which that interest is represented by existing parties; the person’s potential contribution to a just and expeditious resolution of the proceeding; and, whether granting the

intervention will unduly delay or unjustly prejudice any existing party. OPAE meets all four criteria for intervention in this matter.

OPAE is an Ohio corporation that includes as members non-profit organizations such as community action agencies located in the service area that will be affected by this matter.¹ OPAE members are non-residential ratepayers of Dominion. As such, OPAE has a real and substantial interest in this matter. OPAE's real and substantial interest is contrasted to the lack of interest of one of the stipulating parties, the Office of the Ohio Consumers' Counsel ("OCC"). OCC has no real and substantial interest in this matter because the matter only affects non-residential customers whom OCC has no statutory authority to represent.

As required by statute and regulation, OPAE has an interest in this proceeding that will consider the joint motion of Dominion and Marketers to modify the June 18, 2008 Opinion and Order in Case No. 07-1224-GA-EXM so that non-residential customers no longer have the option of SCO service. OPAE was a party in Case No. 07-1224-GA-EXM. OPAE's primary interest in this case is to protect the interests of small commercial customers, including OPAE members, who will no longer have the option of SCO service if the joint motion is granted and whose rates will be negatively affected should the June 18, 2008 Opinion and Order be modified as proposed by the joint motion.

For the above reasons, OPAE has a direct, real and substantial interest in this matter. The disposition of this matter may impair or impede the ability of OPAE to protect its interests. No other party to the matter will represent the interests of OPAE and the non-residential nonprofit customers which make up its membership. OPAE's participation in this matter will not cause undue delay, will not unjustly prejudice any existing party, and will contribute to the just and

¹ A list of OPAE members can be found on the website: www.ohiopartners.org.

expeditious resolution of the issues raised by this case. Therefore, OP&A is entitled to intervene in this matter with the full powers and rights granted by statute and by the provisions of the Commission's Codes of Rules and Regulations to intervening parties.

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS

Introduction

The Commission should dismiss this joint motion to modify the June 18, 2008 Opinion and Order. The reasons for dismissal are as follows.

- 1. The joint motion is not authorized by Revised Code Section 4929.08(A).**
- 2. The joint motion is based on a false premise that the findings upon which the June 18, 2008 order was based are no longer valid as required by Revised Code Section 4929.08(A).**
- 3. The joint motion does not comport with the state of Ohio's energy policy set forth at Revised Code Section 4929.02.**
- 4. No customer group affected by the joint motion has signed the attached Joint Exhibit 1, the stipulation and recommendation.**

Each of these reasons will be discussed in the argument that follows.

Argument

- 1. The joint motion is not authorized by Revised Code Section 4929.08(A).**

Ohio Revised Code Section 4929.08(A) provides that the Commission may modify any order granting an exemption "upon its own motion or upon the motion of any person adversely affected...." Under the statute, neither Dominion

nor Marketers is eligible to file a motion for a modification of the exemption order. Neither joint movant, Dominion or Marketers, has demonstrated that it is adversely affected by the current alternative regulation plan as approved by the Commission.

Dominion is not affected at all, much less adversely affected by the exemption order. All of its customers are served by marketers through an auction, for which Dominion is compensated, through a direct bilateral contract, or through a governmental aggregation. Dominion has now what it asked for in Case No. 07-1224-GA-UNC and makes no allegation that changed circumstances have rendered the current alternative regulation plan harmful to it.

Likewise, Marketers have made no argument that they are adversely affected by the existing exemption order. As a result, neither joint movant qualifies under the statute to offer this joint motion to modify the exemption order. The joint motion should be dismissed.

2. The joint motion is based on a false premise that the findings upon which the June 18, 2008 exemption order was based are no longer valid as required by Revised Code Section 4929.08(A).

Ohio Revised Code Section 4929.08(A) also provides that the Commission may modify any order granting an exemption only if, inter alia, 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. The joint motion falsely claims that “certain findings upon which the Exemption Order was based are no longer valid” but points to no such Commission findings with regard to the

discontinuance of SCO service. Joint Motion at 3-4. Every reference made in the joint motion is simply to Dominion's own pleadings and exhibits. In fact, there are no Commission findings at all about the discontinuance of SCO service in the June 18, 2008 Opinion and Order.

The joint motion cites the Commission's Opinion and Order at 6, but this part of the Opinion and Order is only a description of Dominion's application. The full sentences on Page 6 of the Opinion and Order in Case No. 07-1224-GA-EXM read as follows:

In addition, DEO offers that phase 2 is also intended to facilitate the process of choice-eligible customers establishing a contractual relationship with a competitive retail natural gas service provider prior to the time DEO ceases providing commodity service to such customers (DEO Ex. 2 at 3). However, DEO notes that, under phase 2, DEO will continue to take title to the gas and resell it. (DEO Ex. 15, Murphy at 3).

In these sentences cited in the joint motion, the Commission is merely describing Dominion's application and exhibits. This is the Commission's description of the application as filed. The Commission itself is making no findings on Page 6.

The joint motion also cites "DEO Exhibit 2 at 5" for the notion that the Commission's "findings" are no longer valid. Joint Motion at 3. This exhibit by Dominion apparently referred to Dominion's "anticipation" that the 2010 SCO would be the "final SCO auction." This is the crux of the joint motion's argument that the "findings of the Commission" are no longer valid. But this is merely Dominion's testimony; it is not a finding of the Commission. The Commission made no finding that the 2010 SCO auction would be the final auction.

In fact, the Commission's actual findings in the June 18, 2008 Opinion and Order are the opposite. The Opinion and Order approved a Stipulation and Recommendation filed on April 10, 2008. In describing the Stipulation, the Commission stated, at 15 of the June 18, 2008 Opinion and Order:

- (5) DEO must seek, through a separate application in the future, Commission approval before moving from the SCO commodity service market to a market in which choice-eligible customers will be required to enter into a direct retail relationship with a supplier or governmental aggregator to receive commodity service, i.e., full commodity service market.
- (6) If DEO does not obtain Commission approval to move to a full choice commodity service market upon the expiration of the second term of the SCO service, March 31, 2011, another SCO service auction will be held for a subsequent annual period, and so on thereafter.

At this point in the Opinion and Order, at 15, the Commission is quoting the Stipulation and Recommendation that it approved in Case No.07-1224-GA-EXM, not Dominion's application or exhibits. The Commission's discussion of the Stipulation and Recommendation states that "another SCO service auction will be held for a subsequent annual period, and so thereafter." The Commission did not find that there would be no SCO service after 2011; it approved a Stipulation and Recommendation that states the opposite. Therefore, any argument that the

Commission's findings are no longer valid based on a "finding" that SCO auctions would end by 2011 is false.

The criteria for modifying the exemption order at Revised Code Section 4929.08(A) have not been met. Therefore, the Commission may not modify the exemption order. The joint motion is based on a false premise and should be dismissed.

3. The joint motion does not comport with the state of Ohio's energy policy set forth at Revised Code Section 4929.02.

The joint motion also states that modification to the June 18, 2008 Opinion and Order are necessary and in the public interest. Joint Motion at 4. The joint motion states that modification satisfies the state's energy policy at Revised Code Section 4929.02(A)(7), which instructs the Commission to promote "an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods." The joint motion states that there is "nothing inconsistent with requiring" a non-residential customer to choose a marketer. Id. Dominion and Marketers state that no one will be forced to buy gas commodity service, but if a non-residential customer wants to buy gas commodity service, he will be required to choose a marketer and will have no SCO commodity service.

This is ridiculous. Customers who have not chosen a marketer clearly do not want to choose a marketer. The state's energy policy is to achieve effective

competition, not to force customers to choose a marketer and certainly not to allow Dominion to choose a marketer for them. The promotion of competition requires an SCO option that gives customers the choice not to choose a marketer. Taking away that choice serves no one but the marketers. The interest of marketers is clear; they want to have more customers and to make more money. The state of Ohio's energy policy is not so limited or blind that it excludes the needs and desires of customers to make their own choices and to obtain fair and reasonable prices.

4. No customer group affected by the joint motion has signed the attached Joint Exhibit 1, the Stipulation and Recommendation ("Stipulation").

Even if the Commission is unconcerned that stipulating parties are not applicants or intervenors in a case to which they stipulate (an accurate description of OCC's situation in this matter) and even if the Commission is unconcerned that certain parties to Case No. 07-1224-GA-EXM, including OP&E, were excluded from the negotiations that led to the Stipulation filed in this case as Joint Exhibit 1, the Commission should be concerned that one of the three signatories to the Stipulation has no interest in this case. The Stipulation recommends, at 1, that the Commission grant the joint motion, which affects only non-residential customers. OCC is only authorized to represent residential customers.

The Stipulation signed by OCC and filed in this docket as an attachment to the joint motion only refers to residential customers to assure that they will not be

affected by the desired modification of the June 18, 2008 Opinion and Order. OCC, in its attempt to protect residential customers from the bill increases that will result from a Dominion exit of the merchant function, is apparently willing to subject non-residential customers to marketers they do not want and to higher rates. Apparently, OCC has negotiated to protect residential customers from any impact of the modification, but that does not render OCC a party of interest in a matter that only affects non-residential customers.

The Commission should not allow this. In this case, OCC's signature on the Stipulation means that OCC negotiated not to be affected by the desired order. Thus, the joint motion and the desired modification to the exemption order do not affect residential customers. As a result, OCC has no interest in this docket, and, if OCC's files to intervene, its intervention should be denied. This would leave the Stipulation as an agreement between Dominion and Marketers, two groups with identical interests in this matter. The Stipulation signed by Dominion, Marketers and OCC should be rejected. It is not the product of serious bargaining among interested groups.

Conclusion

The joint motion to modify the June 18, 2008 exemption order should be dismissed. First, the statutory criteria given at Revised Code Section 4929.08(A) have not been met. In violation of the statute, the joint motion is made by persons who have not been adversely affected by the exemption order. In addition, no findings of the Commission in the June 18, 2008 Opinion and Order are no longer

valid. Therefore the Commission has no statutory authority to issue an order modifying the June 18, 2008 Opinion and Order granting the exemption. Revised Code Section 4929.08(A).

Second, a requirement that customers choose a marketer conflicts with the policy of the state of Ohio. Revised Code Section 4929.02(A). Such a requirement does not promote competition; by taking away the SCO service option, customers are deprived of the choice not to choose a marketer. Customers need the choice of the SCO service option. Customers who have not chosen a marketer do not want to choose a marketer.

Third, the Stipulation attached to the joint motion is signed by no customer group proposed to be affected by the modification of the exemption order. Therefore, the Stipulation attached as Joint Exhibit 1 to the joint motion is not an agreement among any persons who could possibly be adversely affected by the outcome of this case. The Stipulation is, therefore, not the product of serious bargaining and should be dismissed. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992).

Respectfully submitted,

/s/ Colleen L. Mooney
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45840
Telephone: (419) 425-8860
FAX: (419) 425-8862
cmooney2@columbus.rr.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Motion to Dismiss and Memoranda in Support was served electronically upon the persons identified below in this case on this 28th day of June 2012.

/s/Colleen L. Mooney
Colleen L. Mooney

SERVICE LIST

Devin D. Parram
Attorney General's Office
Public Utilities Commission Section
180 E. Broad Street, 9th Floor
Columbus, Ohio 43215-3793
Devin.parram@puc.state.oh.us

Mark Witt
Andrew J. Campbell
Whitt Sturtevant
155 East Broad Street
Columbus, Ohio 43215
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease
52 East Gay Street
Columbus, Ohio 43216
mhpetricoff@vorys.com
smhoward@vorys.com

Joseph P. Serio
Larry S. Sauer
Office of Ohio Consumers' Counsel
10 West Broad Street
Columbus, Ohio 43215
serio@occ.state.oh.us
sauer@occ.state.oh.us

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

6/28/2012 3:18:50 PM

in

Case No(s). 12-1842-GA-EXM

Summary: Motion to Intervene and to Dismiss and Memoranda in Support electronically filed by Ms. Colleen L Mooney on behalf of Ohio Partners for Affordable Energy