

**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
MEMORANDUM CONTRA THE MOTIONS TO INTERVENE**

I. Introduction

Ohio Partners for Affordable Energy ("OPAE") respectfully submits to the Public Utilities Commission of Ohio ("Commission") this memorandum contra the motions to intervene filed August 30, 2012 in this docket by the Office of the Ohio Consumers' Counsel ("OCC"), the Retail Energy Supply Association ("RESA"), and Direct Energy Services, LLC and Direct Energy Business, LLC ("Direct"). These prospective intervenors do not meet the statutory and administrative requirements for intervention in this case; therefore their motions to intervene should be denied. Additionally, intervention should be denied because this docket was initiated pursuant to a filing that is defective under both Ohio Revised Code Section 4929.08(A) and Ohio Administrative Code Rule 4901:1-19-12. This docket, which is statutorily and procedurally defective, should be dismissed.

This docket is a "joint motion" of The East Ohio Gas Company d/b/a Dominion East Ohio ("Dominion") and the Ohio Gas Marketers Group ("OGMG") to modify the June 18, 2008 Opinion and Order in Case No. 07-1224-GA-EXM. The "joint motion" filed on June 15, 2012 requests a modification of the Commission's 2008 exemption order in 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 signed by Dominion,

OGLMG, and OCC that also 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. The “joint motion” should be dismissed because it is defective under both Ohio Revised Code Section 4929.08(A) and Ohio Administrative Code Rule 4901:1-19-12.

II. The motions to intervene should be denied because the intervenors do not meet the statutory and administrative requirements for intervention.

In determining whether to permit intervention, the Commission is to consider the nature and extent of the prospective intervenor’s interest, whether the intervenor will significantly contribute to full development of the factual issues, and the extent to which the intervenor’s interest is represented by existing parties. Revised Code Section 4903.221(B) and Ohio Administrative Code Rule 4901-1-11(B). None of the prospective intervenors meet the statutory and administrative criteria for intervention.

OCC has no interest in this proceeding. OCC is authorized to represent only residential customers. Ohio Revised Code Chapter 4911. This docket is explicitly designed not to affect residential customers. Its purpose is to deny SCO service to non-residential customers. The Stipulation and Recommendation signed by OCC and filed in this docket only refers to residential customers to assure that they will not be affected by this docket, i.e., the desired modification of the June 18, 2008 Opinion and Order to deny non-residential customers SCO service. OCC, in its attempt to protect residential customers

from the bill increases that will result from this docket, was apparently willing to subject non-residential customers to the denial of SCO service. OCC has negotiated to protect residential customers from any impact of the desired modification, but that does not render OCC a party of interest in a matter that only affects the service available to non-residential customers. OCC's motion to intervene should be denied because OCC has no interest in this proceeding.

Direct has filed to intervene, but Direct is among the joint movants. The "joint motion" was filed by the OGMG. The footnote on the first page of the "joint motion" states that OGMG includes Direct. As a filer of the "joint motion," Direct not only has interests identical to the joint movants; Direct **is** a joint movant. As a joint movant, Direct's interests are represented by OGMG, and Direct's motion to intervene fails to meet the statutory criteria for intervention. Therefore, Direct's motion to intervene should be denied.

RESA likewise is among the joint movants. According to the footnote on the first page of RESA's motion to intervene, RESA's members include Direct. RESA even has the same attorney as the OGMG. RESA's interests are identical to Direct's and the OGMG's. Through Direct and OGMG, RESA is among the joint movants. As a joint movant, RESA's interests are represented by OGMG, and RESA's motion to intervene fails to meet the statutory criteria for intervention. The motion to intervene of RESA should also be denied.

III. The motions to intervene should be denied because the "joint motion" should be dismissed because it does not comport with Revised Code Section 4929.08(A) and Ohio Administrative Code Rule 4901:1-19-12.

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 by such exemption..." only under the

following conditions: (1) The commission determined that the findings upon which the order was based are no longer valid and that the abrogation or modification is in the public interest". Ohio Administrative Code Rule 4901:1-19-12 sets forth the filing requirements for a modification of an exemption order. The rule states:

Abrogation or modification of an order granting an exemption.

(A) A complainant shall provide at a minimum the following information with its application to modify or abrogate an order granting an exemption.

(1) A detailed description of the exact nature of the violation.

(a) Which portion(s) of the separation plan the applicant has failed to comply with and how the applicant has failed to comply.

(b) Which portion(s) of the code of conduct the applicant has failed to comply with and how the applicant has failed to comply.

(c) How the complainant has been adversely affected by such exemption.

(d) Which findings of the order granting the exemption are no longer valid and why.

(e) How the modification or abrogation of the order granting the exemption is in the public interest.

(2) Supporting documentation for the complainant's allegation.

(3) The form of remedy requested.

(B) Such complaint shall be designated by the commission's docketing division using the acronym CSS.

(C) The docketing division of the commission shall serve the complaint upon the parties of record for the original exemption case which is the subject of the motion to modify or abrogate.

(D) The commission shall order such procedures as it deems necessary, consistent with these rules, in its consideration for modifying or abrogating an order granting an exemption.

Ohio Administrative Code Rule 4901:1-19-12.

The “joint motion” does not comply with either Ohio Revised Code Section 4929.08(A) or Ohio Administrative Code Rule 4901:1-19-12. 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. Joint Motion at 3-4. Every reference made in the “joint motion” is simply to Dominion’s own pleadings and exhibits, not to the Commission’s findings in the exemption 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; the Commission is making no findings on Page 6. In violation of Ohio Administrative Code Rule 4901:1-19-12 (A)(1)(d), the “joint motion” provides no information upon which it bases its complaint that the findings of the exemption order are no longer valid.

The exemption order anticipates that Dominion may file an application seeking Commission approval to move 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. Under the exemption order, if Dominion had not obtained Commission approval to move to this market upon the expiration of the second term of the SCO service, March 31, 2011, another SCO service auction would be held for a subsequent annual period, and so on thereafter. Exemption Order at 15.

Dominion made no application to move to full choice commodity service and obviously had not obtained Commission approval by March 31, 2011; therefore, under the exemption order, SCO auctions continue. If this finding of the exemption order is no longer valid, OPAE will have a complaint under Ohio Revised Code Section 4929.08(A) and Ohio Administrative Code Rule 4901:1-19-12.

The Commission is currently considering extensive new administrative rules for applications by natural gas utilities to exit-the-merchant function. *In the Matter of the Commission's Review of the Alternative Rate Plan and Exemption Rules Contained in Chapter 4901:1-19 of the Ohio Administrative Code*, Case No. 11-5590-GA-ORD. The "joint motion" seeks an exit-of-the-merchant function by Dominion under which non-residential customers would be forced to purchase natural gas directly from a marketer; if the customers do not choose a marketer, Dominion will chose one for them. There will be no SCO available to non-residential customers. This circumstance is the definition of "exit-the-merchant-function in the Proposed Rules at 4901:1-19-02(N). Extensive comments have been made by all interested parties on the proposed rules, and the Staff of the Commission has made its recommendations. The recommendations include filing

requirements for utilities seeking to exit-the-merchant function. Proposed Rule 4901:1-19-05. See Case No. 11-5590-GA-ORD, Staff Recommendations and Summary of Comments, Attachment A to the July 2, 2012 Entry. At this point, the recommended rules are not in effect.

The “joint motion” disregards all these efforts to adopt administrative rules and set a process for an application to exit-the-merchant function. Clearly, the “joint motion” disregards all existing statutory and procedural requirements for a complaint for modification for an exemption order and also seeks to avoid all pending procedural requirements for an application to exit-the-merchant function. If the “joint motion” is granted, Dominion will have achieved an exit for non-residential customers in violation of the existing statute and rules and before any of the new rules take effect. This is unlawful, inefficient, a waste of time, and unfair; the Commission should dismiss the “joint motion” and require a proper filing be made under Ohio Revised Code Section 4929.08(A) and Administrative Code Rule 4901:1-19-12 or order that Dominion await the adoption of the new proposed rules for applicants to exit-the-merchant function.

The “joint motion” violates Ohio Revised Code Section 4929.08(A) and Ohio Administrative Code Rule 4901:1-19-12. The “joint motion” does not cite a Commission finding in the exemption order that is now invalid nor does the “joint motion” describe how the movants are adversely affected by a Commission finding that was never made. This is not an issue of facts; this is a legal matter that the joint movants, in requesting a modification to an exemption order, have failed to meet the statutory and administrative requirements of Revised Code Section

4929.08(A) and Ohio Administrative Code Rule 4901:1-19-12 that information be provided about an invalid Commission finding that adversely affects them. The “joint motion” should be dismissed.

IV. Conclusion

The motions to intervene should be denied. OCC is not a party of interest to this docket, because the “joint motion” filed by Dominion and OGMG affects no residential customers.

RESA and Direct are among the joint movants; their motions to intervene do not meet the statutory and administrative requirements for intervention because they are represented by the joint movant OGMG. Therefore, their motions to intervene should also be denied.

The motions to intervene should also be denied because the “joint motion” to modify the June 18, 2008 exemption order should be dismissed. The statutory criteria given at Revised Code Section 4929.08(A) have not been met because no actual findings made by the Commission in the June 18, 2008 exemption order have been cited. The requirements of Ohio Administrative Code Rule 4901:1-19-12 have not been met because no complaint has been filed regarding the exemption under which Dominion is currently operating, nor has any of the information required by the rule been submitted. Again, as the rule requires, no findings of the Commission in the June 18, 2008 Opinion and Order have been cited as being invalid. Therefore the Commission has no statutory authority to hear this case or to issue an order modifying the June 18, 2008 Opinion and Order granting the exemption. Revised Code Section 4929.08(A).

Respectfully submitted,

/s/ Colleen L. Mooney

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra the Motions to Intervene was served electronically upon the persons identified below in this case on this 13th day of September 2012.

/s/Colleen L. Mooney
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Summary: Memorandum Contra the Motions to Intervene electronically filed by Ms. Colleen L Mooney on behalf of Ohio Partners for Affordable Energy