

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

**DIRECT TESTIMONY OF JEFFREY A. MURPHY  
ON BEHALF OF  
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

## **TABLE OF CONTENTS**

|             |  |           |
|-------------|--|-----------|
| <b>I.</b>   | <b>INTRODUCTION .....</b>  | <b>1</b>  |
| <b>II.</b>  | <b>DESCRIPTION OF THE STIPULATION .....</b>                            | <b>1</b>  |
| <b>III.</b> | <b>BACKGROUND TO THE STIPULATION .....</b>                             | <b>3</b>  |
| <b>IV.</b>  | <b>STATUTORY REQUIREMENTS.....</b>                                     | <b>5</b>  |
| <b>V.</b>   | <b>RESPONSE TO COMMENTS.....</b>                                       | <b>9</b>  |
| <b>VI.</b>  | <b>THE STIPULATION’S COMPLIANCE WITH<br/>COMMISSION STANDARDS.....</b> | <b>10</b> |
| <b>VII.</b> | <b>CONCLUSION .....</b>  | <b>11</b> |

1 **Direct Testimony of**  
2 **Jeffrey A. Murphy**

3 **I. INTRODUCTION**

4 **Q1. Please introduce yourself.**

5 A. My name is Jeffrey A. Murphy. I am employed by The East Ohio Gas Company d/b/a  
6 Dominion East Ohio (“DEO” or “Company”) as Managing Director, Commercial  
7 Operations. My business address is 1201 East 55th Street, Cleveland, Ohio 44103.

8 **Q2. What is the purpose of your testimony?**

9 A. My testimony describes the Stipulation and Recommendation (“Stipulation”) that was  
10 filed in this case on June 15, 2012, and the background and history of DEO’s Energy  
11 Choice program. I will also explain which provisions of the Commission’s earlier order  
12 require modification and how granting the Joint Motion to Modify Exemption Order will  
13 further state energy policy. Finally, I will address the compliance of the Stipulation with  
14 the Commission’s three-part standard for approval of a stipulation.

15 **II. DESCRIPTION OF THE STIPULATION**

16 **Q3. Please describe the Stipulation.**

17 A. The major step taken in this Stipulation is to propose that in April 2013, Choice-eligible  
18 non-residential customers will no longer receive Standard Choice Offer (“SCO”)   
19 commodity service. At that time, non-residential customers who have not selected a new  
20 competitive retail natural gas (“CRNG”) supplier will be assigned to one at the supplier’s  
21 monthly variable rate (“MVR”). Customers will retain the right to enter into a new  
22 arrangement with the same or another CRNG supplier, or they may participate in an opt-  
23 out governmental aggregation program.

1 In certain situations (involving new customers, certain relocating customers, or  
2 customers restoring service after disconnection), the customer will receive at least one  
3 Standard Service Offer (“SSO”) bill. After this, the customer either may enroll with a  
4 CRNG supplier or participate in an opt-out governmental aggregation program or, after a  
5 second SSO bill, may be assigned to a supplier at the supplier’s MVR, as mentioned  
6 above.

7 **Q4. What process is proposed for the initial assignment of customers to a CRNG**  
8 **supplier?**

9 A. As it does today, DEO will maintain a list of suppliers who have registered to provide  
10 MVR commodity service. Customers will be assigned to suppliers on this list on a  
11 rotating basis.

12 **Q5. Does the Stipulation contain any provisions regarding residential customers?**

13 A. Yes. The Stipulation imposes several limitations and procedural requirements on any  
14 future application to exit the merchant function for residential customers. Ohio  
15 Consumers’ Counsel (“OCC”) and the Ohio Gas Marketer’s Group (“OGMG”) agree that  
16 they shall not file such a request for DEO with an effective date prior to April 1, 2015.  
17 And DEO agrees that it shall not file any request to exit the merchant function for  
18 residential customers before that date.

19 DEO also agrees that, if it later files such a request, it shall propose a transition  
20 that includes an additional one-year SSO/SCO auction that gives residential customers  
21 the option to receive SCO service for the year over which the auction results are  
22 approved. The Stipulation also commits the signatory parties to certain positions in the  
23 event a non-signatory party files a similar request prior to April 1, 2015. DEO also  
24 commits to provide advance notice of any such request, and to provide OCC with

1 information to enable OCC to analyze the impact of an exit from the merchant function  
2 on non-residential customers.

3 **III. BACKGROUND TO THE STIPULATION**

4 **Q6. What factors led the Company to file a joint motion to modify the stipulation**  
5 **approved in Case No. 07-1224-GA-EXM?**

6 A. This proceeding represents the continued progression of DEO's decision to exit the  
7 merchant function, a process that began in 2005. That year, desiring to focus on its  
8 fundamental role as a local distribution company, DEO sought approval of Phase 1 of its  
9 transition plan to exit the merchant function. The Commission approved Phase 1 in 2006.  
10 *See* Case No. 05-474-GA-ATA. Before Phase 1, DEO purchased and priced the natural  
11 gas commodity for its customers using the gas cost recovery ("GCR") mechanism. Phase  
12 1 replaced the GCR mechanism with an SSO gas cost rate based on month-end settlement  
13 prices for natural gas futures contracts traded on the New York Mercantile Exchange  
14 ("NYMEX"). DEO secured the natural gas supply using an auction in which suppliers  
15 bid for the right to provide tranches of DEO's load. These auctions established the SSO  
16 rate. Phase 1 was an important first step in allowing competitive markets to replace a  
17 function previously carried out by the regulated utility.

18 **Q7. Has this progression continued since Phase 1?**

19 A. Yes. In December 2007, DEO sought Commission approval of Phase 2, which the  
20 Commission approved on June 18, 2008. *See* Case No. 07-1224-GA-EXM. I will refer  
21 to this order as the Exemption Order. In Phase 2, DEO began providing SCO service for  
22 Choice-eligible customers, while retaining SSO service for non-Choice-eligible  
23 customers. Suppliers that prevailed in the auction for SCO commodity service supplied  
24 commodity to specific Choice-eligible customers, as opposed to tranches of wholesale

1 load as had occurred under Phase 1. And SCO customers' bills began informing them  
2 which supplier provided their commodity.

3 **Q8. How long was Phase 2 intended to last?**

4 A. As the Commission noted in the Exemption Order, DEO expected that the auction  
5 covering the period ending March 31, 2011, would "be the final auction and that, once  
6 this term expires, choice-eligible customers will be required to enter into a direct retail  
7 relationship with a supplier or aggregator to receive commodity service." Exemption  
8 Order at 8–9. To that end, the stipulation approved by the Commission in that case  
9 provided that additional proceedings were necessary "before moving from the SCO  
10 commodity service market to a market in which choice-eligible customers will be  
11 required to enter into a direct retail relationship with a supplier or governmental  
12 aggregator." *Id.* at 15.

13 **Q9. Was the auction for the period ending March 31, 2011, the last SCO auction?**

14 A. No. An additional SCO auction was held on March 1, 2011, and a combined SSO-and-  
15 SCO auction was held on February 12, 2012. Service is to be provided under the latter  
16 auction until March 31, 2013. *See* 07-1224 Order at 3 (Feb. 29, 2012).

17 **Q10. How does the present stipulation fit with the past phases?**

18 A. As with every step since 2005, the Stipulation represents another cautious, incremental  
19 step in DEO's exit of the merchant function. The Stipulation will not change anything  
20 for residential customers. Choice-eligible, non-residential customers will no longer have  
21 the option of receiving SCO service. This will result in DEO's "full exit" of the  
22 merchant function with respect to Choice-eligible non-residential customers.

1 **Q11. How many Choice-eligible non-residential customers remain on SCO service?**

2 A. SCO service has been available to non-residential customers since the first SCO auction  
3 in 2009. Most non-residential customers (over 80 percent or approximately 64,000) have  
4 chosen a CNRG supplier or participate in an opt-out governmental aggregation program.  
5 Thus, comparatively few customers (under 20 percent or 14,000) continue to receive  
6 SCO service.

7 **Q12. How many Choice-eligible residential customers remain on SCO service?**

8 A. As of the August 2012 enrollment period, roughly 16 percent of Choice-eligible  
9 residential customers, or 150,000, were receiving SCO service. In comparison, 29  
10 percent or 280,000 were served through aggregation, and 55 percent or 520,000  
11 participated in Energy Choice.

12 **IV. STATUTORY REQUIREMENTS**

13 **Q13. To modify an exemption order, the Commission under R.C. 4929.08(A)(1) must**  
14 **“determine[] that the findings upon which the [exemption] order was based are no**  
15 **longer valid.” Which findings of the Exemption Order do you consider no longer**  
16 **valid?**

17 A. In issuing the Exemption Order, the Commission specifically noted the expectation that  
18 the March 2010 auction would “be the final auction and that, once [its] term expires,  
19 choice-eligible customers will be required to enter into a direct retail relationship with a  
20 supplier or aggregator to receive commodity service.” Exemption Order at 8–9. The  
21 Commission expressly relied on DEO’s “application, the stipulation, and the testimony  
22 on record” in approving Phase 2, *id.* at 20, which set forth this expectation. The  
23 Commission also found “that phase 2 represents a reasonable structure through which to  
24 further the potential benefits of market-based pricing of the commodity sales by the  
25 company.” Exemption Order at 20.

1   **Q14. How is it that these findings are no longer valid?**

2   A.   Despite the expectation that Phase 2 would end in March 2011, which was recognized  
3       and relied upon in the Exemption Order, it is becoming increasingly clear that there is a  
4       core of non-residential customers who will continue to rely on the SCO rate and thereby  
5       hinder DEO's exit of the merchant function and the formation of a more competitive  
6       natural gas commodity market. After steadily increasing from 2000 to 2008, non-  
7       residential enrollment in Energy Choice has held relatively steady at between  
8       approximately 46,000 and 49,000 from 2009 to 2012. Thus, despite the expectation that  
9       the March 2010 SCO service auction would be the last, this has not come to pass.

10           It has also become clear that Phase 2 is no longer "further[ing] the potential  
11       benefits of market-based pricing," *id.*, and in fact may be hindering the further  
12       development of the market. As these premises of the order no longer appear valid, the  
13       Joint Movants propose modifying the Exemption Order pursuant to R.C. 4929.08(A), as  
14       set forth in the Stipulation.

15   **Q15. In your opinion is the proposed modification in the public interest?**

16   A.   Yes. Granting the Joint Motion will further a number of provisions of state policy. For  
17       example, R.C. 4929.02(A)(6) states that Ohio's policy is to "[r]ecognize the continuing  
18       emergence of competitive natural gas markets through the development and  
19       implementation of flexible regulatory treatment." As discussed above, it appears that  
20       SCO service, although serving as an important step in the process, may now be hindering  
21       the continuing emergence of competitive natural gas markets.

22           Likewise, granting the Joint Motion will also further Ohio's policy to  
23       "[e]ncourage innovation and market access for cost-effective supply- and demand-side  
24       natural gas services and goods." R.C. 4929.02(A)(4). Discontinuing SCO service will

1 directly increase the entrance of customers into the commodity market, thus spurring  
2 market entry, additional competition, and the development of the natural gas supply  
3 market.

4 Granting the Joint Motion will also “[p]romote an expeditious transition to the  
5 provision of natural gas services and goods in a manner that achieves effective  
6 competition and transactions between willing buyers and willing sellers.” R.C.  
7 4929.02(A)(7). Several years into Phases 1 and 2, it appears that as long as SCO service  
8 remains an option, some customers—for any number of reasons—will not exercise their  
9 ability to choose a CRNG supplier. Discontinuing SCO service will accordingly  
10 encourage customers and suppliers to enter into direct retail relationships.

11 **Q16. Does effective competition currently exist in DEO’s service area?**

12 A. Yes. The number and size of suppliers in DEO’s service territory reveal a highly  
13 competitive market. DEO presently has 50 suppliers offering commodity service to its  
14 traditional transportation market and 28 suppliers providing commodity service in the  
15 Energy Choice program. The number of suppliers competing for market share ensures  
16 that offers must be made at competitive prices, terms, and conditions. The Commission’s  
17 “Apples-to-Apples” chart applicable to DEO confirms that a wide range of prices, terms,  
18 and conditions are available for customers to meet their commodity-sales-service needs.

19 **Q17. Do these suppliers possess sufficient capacity to serve DEO’s non-residential load?**

20 A. Yes, more than enough. Energy Choice suppliers are of sufficient size and capability to  
21 consistently meet DEO’s comparable capacity requirements; in fact, some suppliers hold  
22 considerably more firm capacity than is required to meet the minimum thresholds set  
23 forth in the Company’s terms and conditions of Energy Choice pooling service.

1 **Q18. Are there any other benefits to be achieved by granting the Joint Motion?**

2 A. Yes. Like Phases 1 and 2 before it, the proposed Stipulation represents a cautious,  
3 incremental step towards exiting the merchant function. The elimination of SCO service  
4 will directly affect only a relatively small subset of DEO's customers, namely, non-  
5 shopping, non-residential Choice-eligible customers, which account for 1.2 percent of  
6 DEO's total customer base. Further, these customers will not be locked into any  
7 particular rate agreement. While reassigned customers would initially take service at the  
8 supplier's monthly variable rate, they would maintain the option of switching to a  
9 different CRNG supplier, entering a different agreement with the assigned supplier, or  
10 participating in an opt-out governmental aggregation program.

11 Also, DEO has committed not to file for approval of a full exit for residential  
12 customers until at least April 1, 2015. This "wait and see" approach will allow interested  
13 parties and the Commission to determine whether a full exit might produce benefits that  
14 would also be achievable for residential customers. To that end, DEO has agreed to  
15 provide OCC with information to enable it to study and examine the effects of the  
16 proposed non-residential exit. (*See* Stip. at 4–5.) This and other information that will be  
17 gleaned from a full exit for non-residential customers will provide valuable insight into  
18 whether it would be appropriate to fully exit the merchant function for residential  
19 customers, whether DEO (or another LDC) eventually seeks to do so.

20 **V. RESPONSE TO COMMENTS**

21 **Q19. In its comments filed on August 30, 2012, Staff proposes that DEO be required to**  
22 **provide specific customer education materials. Does DEO accept this**  
23 **recommendation?**

24 A. Yes. It should be noted, however, that this requirement underscores the need for a  
25 prompt decision in this case. Pricing under the current SCO auction will end in roughly

1 five-and-a-half months, on March 31, 2013. Staff recommends that DEO provide two  
2 rounds of notice and educational material, with the last notice at least 60 days before  
3 April 1, 2013. This suggests that the first notice will need to be *sent* as early as  
4 December 31, 2012. That date is only about two-and-a-half months from October 9,  
5 2012, the date of the scheduled hearing. Given the time needed for post-hearing briefs,  
6 an initial Commission order, and possible rehearing, Staff's proposed notice timing poses  
7 significant challenges.

8 **Q20. Staff also states that any order in this case should “clarify that nothing precludes**  
9 **the Commission from re-establishing the SCO or other pricing mechanism if it**  
10 **determines that Dominion’s exit is unjust or unreasonable for non-residential or**  
11 **residential customers.” Does DEO accept this recommendation?**

12 A. While DEO agrees with the broader thrust of this comment, it would respectfully suggest  
13 a different formulation. DEO agrees that Ohio law permits the Commission to abrogate  
14 or modify exemption orders under certain conditions. To say in effect that “nothing”  
15 precludes modification or abrogation would arguably ignore the limitations imposed by  
16 statute and any other limitations applicable to the Commission. DEO recommends that  
17 Staff's recommendation might be rephrased to state, in effect, that the Commission  
18 retains authority to modify or abrogate the order in this case as set forth in R.C. 4929.08.

19 **VI. THE STIPULATION’S COMPLIANCE WITH COMMISSION STANDARDS**

20 **Q21. What facts should the Commission consider in deciding whether the Stipulation is a**  
21 **product of serious bargaining among capable, knowledgeable parties?**

22 A. In my experience, each of the signatory parties has a history of active participation in  
23 Commission proceedings and is represented by experienced and competent counsel.  
24 Negotiations required numerous meetings and took place over several months, resulting  
25 in numerous concessions, as evidenced by the Stipulation. The Signatory Parties  
26 represent the interests of an LDC, of marketers and suppliers, and of residential

1 customers. And other groups and representatives of other customer classes—including  
2 Staff, Ohio Partners for Affordable Energy (“OPAE”), and Industrial Energy Users-  
3 Ohio—had the opportunity to participate in settlement negotiations and to review drafts  
4 of the Stipulation.

5 **Q22. In its motion to dismiss filed in this case on June 28, 2012, OPAE suggested that it**  
6 **was “excluded from the negotiations that led to the Stipulation filed in this case.” Is**  
7 **that true?**

8 A. No. DEO through counsel repeatedly invited OPAE to review drafts of the Stipulation  
9 and to participate in negotiations. And I personally contacted David Rinebolt, one of the  
10 counsel for OPAE, to follow-up on a draft Stipulation distributed on January 17, 2012,  
11 nearly five months before the final version was filed with the Commission. There was  
12 never an intent to exclude any party from participating in negotiations, and OPAE had  
13 ample opportunity to participate.

14 **Q23. What facts should the Commission consider in deciding whether the settlement, as a**  
15 **package, benefits ratepayers and the public interest?**

16 A. As I explained in detail in Sections II through IV of my testimony, the settlement directly  
17 furthers several provisions of state policy, while taking a careful, incremental step  
18 affecting only a subset of non-residential customers to explore whether and how a full  
19 exit from the merchant function may benefit all customers.

20 **Q24. What facts should the Commission consider in deciding whether the Stipulation**  
21 **violates any important regulatory principle or practice?**

22 A. As explained above, the Stipulation promotes state policy and benefits ratepayers and the  
23 public interest. Moreover, as noted above, the Commission retains authority to modify or  
24 abrogate exemption orders to the extent a non-residential exit were found to pose any  
25 problems.

1   **VII.    CONCLUSION**

2   **Q25.   Does this conclude your direct testimony?**

3   A.     Yes.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Direct Testimony of Jeffrey A. Murphy was served by electronic mail to the following persons on this 13th day of September, 2012:

stephen.reilly@puc.state.oh.us  
devin.parram@puc.state.oh.us  
serio@occ.state.oh.us  
sauer@occ.state.oh.us  
BarthRoyer@aol.com  
cmooney2@columbus.rr.com  
mhpetricoff@vorys.com  
smhoward@vorys.com  
sam@mwncmh.com  
joliker@mwncmh.com  
fdarr@mwncmh.com  
cgoodman@energymarketers.com  
tobrien@bricker.com  
joseph.clark@directenergy.com

/s/ Andrew J. Campbell  
One of the Attorneys of The East Ohio Gas  
Company d/b/a Dominion East Ohio

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