

**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)

**REPLY OF THE RETAIL ENERGY SUPPLY ASSOCIATION TO
THE MEMORANUM CONTRA ITS INTERVENTION BY
OHIO PARTNERS FOR AFFORDABLE ENERGY**

Now comes the Retail Energy Supply Association (RESA)¹, who, pursuant to Rule 4901-1-12(B)(2) of the Ohio Administrative Code, respectfully submits this reply to the September 13, 2012 Ohio Partners for Affordable Energy (“OPAE”) memorandum contra the motions to intervene. RESA submits that its motion to intervene should be granted and the arguments of the OPAE should be rejected.

I. INTRODUCTION

The June 18, 2008 Opinion and Order in Case No. 07-1224-GA-EXM (“Exemption Order”) granted an exemption, pursuant to Section 4929.04, Revised Code, 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.

On June 15, 2012, DEO and the Ohio Gas Marketer’s Group (“OGMG”) filed a joint motion requesting that the Commission modify the Exemption Order pursuant to Section 4929.08(A), Revised Code to allow DEO, beginning in April 2013, to discontinue the availability of Standard Choice Offer (“SCO”) service to Choice-eligible General Sales Service –

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus; Reliant Energy Northeast LLC and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

Non-Residential, Large Volume General Sales Service, Energy Choice Transportation Service – Non-Residential and Large Volume Energy Choice Transportation Service customers (collectively “Non-Residential Customers”). Both DEO and the OGMG propose that such Non-Residential Customers receive commodity service from the next available competitive retail natural gas (“CRNG”) supplier on a rotating list maintained by DEO pursuant to the CRNG Supplier’s then-applicable monthly variable rate (“MVR”).

On June 28, 2012, the Ohio Partners for Affordable Energy (“OPAE”) filed a motion seeking leave to intervene in this matter as well as a motion to dismiss the June 15, 2012 joint motion. DEO and the Ohio Gas Marketers Group each filed a memorandum contra on July 13, 2012. OPAE filed a reply on July 19, 2012.

On July 27, the Attorney Examiner issued an Entry setting forth a procedural schedule. Motions to intervene and the filing of comments and/or memorandum contra the June 15, 2012 motion were to be filed by August 30. Reply comments, replies to memorandum contra the June 15, 2012 motion and direct testimony by the joint movants was to be filed by September 13, 2012. Staff testimony and intervenor testimony was due to be filed on September 27, 2012. The hearing on the stipulation was scheduled for October 9, 2012 at 10:00 AM in Hearing Room 11-C. Notice of the case was to be published by August 15, 2012. OPAE’s motion to intervene was granted.

On August 30, the Staff and OPAE each filed comments. Motions to intervene were also filed by the Office of the Consumers’ Counsel, Direct Energy Services, LLC/Direct Energy Business, LLC, and the Retail Energy Supply Association on August 30. On September 13, OPAE filed its memorandum contra to the three August 30 motions to intervene.

The Retail Energy Supply Association (RESA) submits this reply to the September 13, 2012 OPAE memorandum contra.

II. ARGUMENT

A. RESA meets the criteria for intervention.

At page 3 of its memorandum contra, OPAE argues that RESA's motion to intervene fails to meet the statutory criteria for intervention and should be denied. OPAE's chief argument is that some of the RESA members are also OGMG members, the RESA and OGMG have the same interest and that RESA and OGMG have the same attorney. As detailed below RESA and OGMG are two different trade associations and while some competitive retail suppliers belong to both groups, the membership lists are far from identical. Further, the two trade associations have different missions. RESA is a national organization focused on natural gas and electric retail sales issues and includes suppliers that are not active in Ohio, while the OGMG is only focused on natural gas issues, only involves Commissioned licensed competitive retail natural gas suppliers, and OGMG has a more narrowed focus on the details of marketing, supplying, billing, collections, utility interface and other day to day issues. OPAE's argument is flawed and must be rejected for the interests of OGMG and RESA are different, there is no claim that OPAE is harmed in any fashion by both groups participating in the hearing and representation by the same counsel is not a reason to reject intervention. In fact, joint representation of intervenors with similar interests may aid in the efficient prosecution of the matter.

As to the first point RESA's members include Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy;

Liberty Power; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus; Reliant Energy Northeast LLC and TriEagle Energy, L.P. As indicated in the motion to intervene, the comments expressed represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

The Ohio Gas Marketers Group includes Commerce Energy dba Just Energy, Constellation NewEnergy, Inc. – Gas Division, Direct Energy Services, LLC, Interstate Gas Supply, Inc. and SouthStar Energy LLC.² A comparison of these list, which were disclosed in the pleadings that preceded OPAE's memorandum contra, indicated that a majority of RESA members are not members of OGMG. More important, in the Joint Application and in the RESA intervention petition clear statements are made that the positions taken by the trade association may not reflect position of member. Thus, the implied unanimity of position between OGMG and RESA because some of the members is inaccurate, a fact that should have been apparent to OPAE prior to making its pleading.

Section 4903.221, Revised Code, states that the Commission, in ruling upon applications to intervene, shall consider the nature and extent of the prospective intervenor's interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings; and whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

RESA has demonstrated that it meets those criteria in its August 30, 2012 motion to intervene. It is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome

² The composition of the OGMG has changed since the filing of the OGMG's pleading of July 13, 2012.

than regulated utility structure. Several RESA members are certificated as competitive retail natural gas service providers active in the Ohio retail natural gas market and providing service to residential, commercial, industrial and governmental aggregated customers. Others RESA members are not active and look to RESA to lift current regulatory and utility barriers that prevent or deter them from doing business in Ohio. Thus, all of RESA's members both those active in Ohio and those that are not have existing and potential business interests in the state that will be affected by the outcome of the proceeding. Finally, RESA and OGMG have been and will continue to work together in a efficient manner, including consolidation of pleadings, presentation of witnesses and joint briefs so long as there is not position difference between the two trade associations. OPAE has not and could not make the claim that having both trade associations in the proceeding will unduly delay the proceeding or otherwise harm OPAE. On the other hand, RESA with its national prospective may bring a valuable prospective to the matter at bar and improve the record.

B. Arguments that the “Joint Motion” should be dismissed have nothing to do with whether the motions to intervene should be denied or granted; OPAE’s arguments must be rejected.

At pages 3-8 of its September 13, 2012 pleading, OPAE argues that the motions to intervene should be denied because the joint motion should be dismissed. Intervention should not be dependent upon whether the Joint Motion has merit or not. OPAE has already filed its motion to dismiss on June 28, 2012. DEO and OGMG fully addressed that motion in their respective July 13, 2012 pleadings. The June 28, 2012 Motion to Dismiss is still pending. OPAE should not be permitted to re-argue a second motion to dismiss while the first motion is still pending. The Commission should reject OPAE’s argument here.

The Commission should not allow OPAE's motion to dismiss arguments to cloud the issue of intervention. RESA has a real and substantial interest in this proceeding and its motion to intervene should be granted.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 20th day of September, 2012 by electronic mail.



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Summary: Reply Reply of the Retail Energy Supply Association to the Memorandum Contra
Its Intervention by Ohio Partners for Affordable Energy electronically filed by M HOWARD
PETRICOFF on behalf of Retail Energy Supply Association