

In the Matter of the Joint Motion to )  
 Modify the June 18, 2008 Opinion and ) Case No. 12-1842-GA-EXM  
 Order in Case No. 07-1224-GA-EXM. )

files an application for authority from the PUCO to do so and (2) the PUCO grants Dominion the authority to exit the merchant function.

On June 15, 2012, Dominion and OGMG jointly filed at the Commission a Joint Motion to modify a prior PUCO to grant an exemption. The exemption would mean that Dominion could seek to eliminate the option for commercial (non-residential) customers to purchase their natural gas through the Utility. Dominion and OGMG attached to their Joint Motion the Settlement that OCC signed with them. But OCC did not sign the Joint Motion.

On August 30, 2012, OCC, Retail Energy Supply Association (“RESA”), and Direct Energy Services, LLC and Direct Energy Business, LLC filed their Motions to Intervene. On September 13, 2012, OPAE filed a Memorandum Contra to the motions of OCC and others to intervene. OCC herein files its Reply to the issues raised in OPAE’s memorandum contra, specifically addressing arguments against OCC’s intervention.

## **II. ARGUMENT**

This case began with Dominion and OGMG filing the Settlement they signed with OCC. In its Memorandum Contra, OPAE acknowledged that OCC signed the Stipulation and Recommendation in this case.<sup>3</sup> But OPAE next claims “OCC has no interest in this proceeding.”<sup>4</sup> To prevail on such a counter-intuitive premise—that a signatory to a settlement should be denied participation in the case about the Settlement—the movant should be expected to provide the PUCO with persuasive authority. OPAE provided none.

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<sup>3</sup> Memorandum Contra at 2 (September 13, 2012).

<sup>4</sup> Memorandum Contra at 2 (September 13, 2012).

Moreover, OPAE purports to state OCC's position in this proceeding. Dominion and OGMG were careful to avoid any mischaracterization of OCC's position, by noting, with regard to OCC, that: "[w]hile OCC supports approval of the Stipulation, the Joint Movants would make clear that the legal position set forth in the attached Memorandum in Support is theirs only.

But in its Memorandum Contra, OPAE boldly characterizes OCC's position.

OPAE states:

OCC, in its attempt to protect residential customers from the bill increases that will result from a modification of the exemption order, **is apparently willing to subject non-residential customers to marketers they do not want and to higher rates.**<sup>5</sup>

OPAE's claim is incorrect and mischaracterizes OCC's position. The fact is that OCC did not present the PUCO with a position on whether the PUCO should or should not continue to require Dominion to make available to non-residential customers the option of purchasing natural gas through Dominion. The Stipulation is very clear on this point.<sup>6</sup>

The Stipulation that OCC signed bars Dominion from abandoning its merchant function for at least four years for residential customers, meaning Dominion must continue providing residential customers with the option to purchase their natural gas through Dominion during that time.<sup>7</sup> After that time period, Dominion cannot leave its merchant function unless (1) it files an application for authority from the PUCO to do so and (2) the PUCO grants Dominion the authority to exit the merchant function after

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<sup>5</sup> OPAE Comments at 10 (August 30, 2012). (Emphasis added).

<sup>6</sup> Stipulation and Recommendation at 2 (June 15, 2012).

<sup>7</sup> Stipulation and Recommendation at 3 (June 15, 2012) ("DEO agrees that it shall not file a request for Commission approval to exit the merchant function for Residential Customers prior to April 1, 2015. DEO further agrees that, in the event it subsequently files such a request, it shall propose a transition that includes an additional one-year SSO/SCO auction that gives Residential Customers the option to receive SCO service for the year over which the auction results are approved.")

interested parties present their cases to the PUCO. Dominion is not required to ever seek an exit from the merchant function. .

But OPAE mistakenly seems to leap from OCC's protection of and focus on residential consumers to conclude that the absence of these terms for non-residential customers means that OCC is supporting an exit of the merchant function for non-residential customers and "higher rates" for non-residential customers. OPAE's assertions are untrue. OCC did not support an exit of the merchant function for non-residential customers. And, in any event, OPAE's premise about OCC's intentions regarding service for non-residential customers (whether or not OPAE is mistaken) is not a reason based in law or rule to deny intervention to OCC.

OCC's participation will lead to fully developing the evaluation of a non-residential exit, if such an exit were to occur, and will not unduly prolong the proceeding. But again, contrary to OPAE's assertion, OCC did not state (and OCC will not state in this case) that an exit should occur for non-residential customers. And again, what OPAE is raising, even if true, would not be a reason to deny OCC's intervention under law and rule.

Finally, the nature and extent of OCC's interest is different than that of any other party, which is a consideration for the Commission when deciding intervention status pursuant to R.C. 4903.221(B). Dominion and the Ohio Gas Marketers Group filed a Joint Motion stating: "[t]he information gleaned from a full exit for [non-residential] customers will provide valuable insight into whether it would be appropriate to fully exit the merchant function for residential customers, should [Dominion] or another LDC

eventually seek to do so.”<sup>8</sup> Indeed, Dominion and OGMG filed a Settlement that OCC signed. OCC explained how that and other circumstances warrant OCC’s intervention under law and rule. OPAE has not explained how the circumstances do not warrant OCC’s intervention under law and rule. We respectfully submit that the circumstances obviously do justify OCC’s intervention.

OCC’s interest is especially different than that of the utility and a competitive retail natural gas supplier (“CRNGS”) -- the other signatory parties to the Stipulation -- whose advocacy includes the financial interest of their stockholders. Therefore, OCC’s Motion to Intervene should be granted.

### **III. CONCLUSION**

For all the reasons stated above, OCC’s Motion to Intervene should be granted in this proceeding.

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<sup>8</sup> Joint Motion at 1 (June 15, 2012).

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Reply Memorandum* has been served on the persons stated below via electronic service this 20th day of September, 2012.

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