

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Motion to)	
Modify the December 2, 2009 Opinion)	
and Order and the September 7, 2011)	Case No. 12-2637-GA-EXM
Second Opinion and Order in)	
Case No. 08-1344-GA-EXM.)	

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MOTION TO INTERVENE 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 case 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. The reasons for granting this motion to intervene are contained in the memorandum attached hereto and incorporated herein.

Respectfully submitted,

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**OHIO PARTNERS FOR AFFORDABLE ENERGY’S
MEMORANDUM IN SUPPORT OF THE 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 Regulations contained in Rule 4901-1-11 of the Ohio Administrative Code. The above-referenced Joint Motion made by Columbia Gas of Ohio, Inc. (“Columbia”), the Staff of the Commission, the Ohio Gas Marketers Group, the Retail Energy Supply Association, and Dominion Retail, Inc., asks the Commission to modify the terms of two exemption orders, the Opinions and Orders in Case No. 08-1344-GA-EXM of December 2, 2009 and September 7, 2011.

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 with a stated purpose of advocating for affordable energy policies for low and moderate income Ohioans; as such, OPAE has a real and substantial interest in this matter, which will affect the affordability of natural gas service for low and moderate-income residential customers of Columbia,

especially during the winter heating season. In addition, OPAE includes as members non-profit organizations located in Columbia's service area that will be affected by the Joint Motion.¹ Moreover, many of OPAE's members are community action agencies. Under the federal legislation authorizing the creation and funding of these agencies, originally known as the Economic Opportunity Act of 1964, community action agencies are charged with advocating for low-income residents of their communities.²

OPAE also provides essential services in the form of bill payment assistance programs and weatherization and energy efficiency services to low income customers of Columbia. OPAE members are also non-residential ratepayers of Columbia. Further, OPAE has been recognized by the Commission in the past as

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

² See 42 U.S.C. 672:

The purposes of this subtitle are--

(1) to provide assistance to States and local communities, working through a network of community action agencies and other neighborhood-based organizations, for the reduction of poverty, the revitalization of low-income communities, and the empowerment of low-income families and individuals in rural and urban areas to become fully self-sufficient (particularly families who are attempting to transition off a State program carried out under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.)); and

(2) to accomplish the goals described in paragraph (1) through--

(A) the strengthening of community capabilities for planning and coordinating the use of a broad range of Federal, State, local, and other assistance (including private resources) related to the elimination of poverty, so that this assistance can be used in a manner responsive to local needs and conditions;

(B) the organization of a range of services related to the needs of low-income families and individuals, so that these services may have a measurable and potentially major impact on the causes of poverty in the community and may help the families and individuals to achieve self-sufficiency;

(C) the greater use of innovative and effective community-based approaches to attacking the causes and effects of poverty and of community breakdown;

(D) the maximum participation of residents of the low-income communities and members of the groups served by programs assisted through the block grants made under this subtitle to empower such residents and members to respond to the unique problems and needs within their communities; and

(E) the broadening of the resource base of programs directed to the elimination of poverty so as to secure a more active role in the provision of services for--

(i) private, religious, charitable, and neighborhood-based organizations; and

(ii) individual citizens, and business, labor, and professional groups, who are able to influence the quantity and quality of opportunities and services for the poor.

an advocate for consumers and particularly low-income consumers, all of whom will be affected by the outcome of this case.

OPAE's primary interest in this case is to protect the interests of low and moderate income residential customers and non-residential OPAE members whose provision of service will be affected by this Joint Motion. OPAE has identified several issues with the Joint Motion. These issues are as follows.

First, the Joint Motion does not comply with Ohio Revised Code Section 4929.08(A) and the Commission's administrative rule that provides for procedures to comply with the statute for modification of exemption orders. 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 complainant seeking 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 Ohio Administrative Code Rule 4901:1-19-12 for modification of an exemption order. There is no detailed description of the exact nature of the violation. It is not a complaint describing why the findings of the two exemption orders are no longer valid. It does not explain how the complainants are adversely affected by the two exemption orders. It does not describe any violations of the exemption orders. There is no supporting documentation of the complaint's allegations. The Joint Motion is legally and procedurally deficient under Ohio Revised Code Section 4929.08(A) and the current administrative rule for complaints to modify an existing exemption order.

Moreover, the Commission is currently considering the adoption of new 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 Columbia under which residential and non-residential customers could be forced eventually to purchase natural gas directly from a marketer. If the customers do not choose a marketer, Columbia will chose one for them. There would be no standard choice offer ("SCO") available to residential and 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 proposed rules for applications to exit the merchant function are not in effect. The Joint Motion ignores not only the current administrative rule for modifications to exemption orders but also disregards all the efforts to adopt administrative rules to set up a process for an application to exit-the-merchant function. If the Joint Motion is granted, Columbia will have achieved an exit for non-residential customers and eventually for residential customers in violation of the statute and existing rule and before any of the new rules take effect. This is unlawful, inefficient, a waste of time, and unfair. The Commission should require a proper filing be made under Ohio Revised Code Section 4929.08(A) and Administrative Code Rule 4901:1-19-12 or require that

Columbia await the adoption of the proposed rules for applications to exit-the-merchant function.

Second, Columbia's exit from the merchant function would result in customers no longer having the option of taking a utility-provided default service, in this case the SCO, which is a market-based rate established through an open competitive auction process that has been successful in providing customers with a low-priced option for the purchase of natural gas. If an exit were to occur in the future, customers would be required to take service from one of the marketers that signed the Stipulation and Recommendation attached as Joint Exhibit 1 to the Joint Motion or other marketers. Since the inception of the Columbia Choice program, participating choice customers have paid nearly \$545 million more for natural gas than they would have paid if they had remained Columbia's gas cost recovery ("GCR") customers. Of this amount, customers paid \$348 million more during the most recent audit period. *In re Columbia 2010 GCR Case*, Case No. 10-221-GA-GCR, Report to the Public Utilities Commission of Ohio on the Management and Performance Audit of Gas Purchasing Practices and Policies of Columbia Gas of Ohio, Inc., at 6-4 (November 18, 2010).

Removing the SCO competitive option as a choice available to customers is not only costly to customers, it also is counter to the policy of the State of Ohio that promotes the availability to consumers of natural gas services that provide the customers with supplier, price, terms, conditions, and quality options they elect to meet their respective needs. Revised Code Section 4929.02(A)(2). The Commission should not remove competitive options available to consumers.

Third, another issue with the Joint Motion is the mixing of matters unrelated to the existence of SCO service. OPAE opposes the treatment of these unrelated matters in the Stipulation and Recommendation attached to the Joint Motion as Joint Exhibit 1. OPAE opposes the Stipulation's proposed

allocation of the revenues from off-system sales in a way that provides insufficient benefits to customers. There is also the issue of the extent to which the proposed renewal of interstate pipeline capacity from Columbia's own affiliate (and the associated costs for customers) is needed to provide service at just and reasonable rates.

Finally, the Stipulation and Recommendation attached to the Joint Motion as Joint Exhibit 1 is signed by no customer group proposed to be affected by the modification of the exemption orders. No customer group has signed this Stipulation at all. Therefore, the Stipulation and Recommendation is not an agreement among persons of different interests. The Stipulation is not the product of serious bargaining. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992).

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 adequately represent the interests of OPAE. OPAE is a rare organization that serves as an advocate for low and moderate-income residential customers and OPAE members who are non-residential customers. OPAE is also a service provider. No other party represents this group of interests. 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 expeditious resolution of the issues raised by this Joint Motion.

Therefore, OPAE is entitled to intervene in this matter with the full powers and rights granted by statute and by the provisions of the Commission's Code of Rules and Regulations to intervening parties.

Respectfully submitted,

/s/Colleen L. Mooney

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum in Support was served electronically upon the parties identified below on this 10th day of October 2012.

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