

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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.)	

REPLY BRIEF

OF

**THE OHIO GAS MARKETERS GROUP AND
RETAIL ENERGY SUPPLY ASSOCIATION**

November 21, 2012

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Pursuant to the Attorney Examiner’s direction at the close of the hearing, the Ohio Gas Marketers Group and the Retail Energy Supply Association (“OGMG/RESA”) respectfully submits this Reply Brief. This Reply Brief responds primarily to the arguments raised by Ohio Partners for Affordable Energy (“OPAE”).

I. INTRODUCTION

OPAE argues that the Joint Motion should be dismissed on legal grounds and that the evidence of record does not support granting the Joint Motion. This Reply Brief will demonstrate why OPAE is wrong on both counts and why the Joint Motion should be granted.

II. ARGUMENT

A. The Joint Motion does not violate Ohio law and should not be dismissed.

1. The Joint Motion does not violate Section 4929.08(A), Revised Code.

At pages 2-7 of its Initial Brief, OPAE argues that the Joint Motion should be dismissed because it violates Section 4929.08(A), Revised Code. OPAE argues that the Joint Motion relies on findings that the Commission did not make in the 2008 Exemption Order, that the Joint Motion did not describe how the Joint Movants were adversely affected by the Commission’s

findings in the 2008 Exemption Order and that the Joint Motion's request for modification of the 2008 Exemption Order is not in the public interest. As stated in our Initial Brief at pp. 4-6, the Commission made findings in its June 18, 2008 Opinion and Order that are no longer valid.

Specifically, it stated:

- DEO expects that this latter auction (March 2010) will be the final auction and that, once this term expires, Choice-eligible customers will be required to enter into a direct retail relationship with a supplier or aggregator to receive commodity service. Exemption Order, pp. 8-9.
- We further find that phase 2 represents a reasonable structure through which to further the potential benefits of market-based pricing of the commodity sales by the company. Exemption Order, p. 20.

With respect to the first bullet point above, OPAE argues that this was DEO's anticipation, not the Commission's Finding. (OPAE Initial Brief, p. 3). But there can be no doubt that the Commission implicitly adopted and relied upon this expectation and other statements made in DEO's application, the stipulation and the testimony in issuing its June 18, 2008 Exemption Order. The Commission summarized in detail the DEO application. See pages 5-12 of the June 18, 2008 Exemption Order. It summarized the Stipulation in detail in its June 18, 2008 Exemption Order. See pages 12-16. It considered the Stipulation in light of the governing statutes. See pages 16-20 of its June 18, 2008 Exemption Order.

At page 20 of its June 18, 2008 Exemption Order, the Commission specifically stated: "Upon review of DEO's arguments, the Commission agrees that this application, as modified by the Stipulation, complies with and supports the policy of the state of Ohio." The Commission went on to indicate that it had reviewed the Stipulation and determined that it should be approved in its entirety. By virtue of that approval, the Commission admitted into evidence DEO Exhibits 1 through 15, as well as Joint Exhibit 2, with the understanding that each exhibit is amended in accordance with the Stipulation.

Thus, the expectation that the March 10, 2010 auction would be the final auction and that, once its term expired, Choice eligible customers would be required to enter into a direct relationship with a supplier or aggregator to receive commodity service, was the Commission's expectation and finding and is no longer valid. The evidence overwhelmingly demonstrates that without any modification, Phase 2 will go on because it had reached a plateau. (DEO Ex. 1.0, p. 6).

With respect to the second bullet point, OPAE argues that there is a difference between the phrase "further the potential benefits of market-based pricing of commodity sales by the company" and the phrase "fully competitive market". (OPAE Initial Brief, p. 5) The phrase "potential benefits" is not a frozen or static concept. "Potential benefits" recognizes that the fruits of a market-based pricing will continue to expand as more and more barriers to competition are removed. This concept was discussed thoroughly by Mr. Murphy and Mr. Parisi.

DEO witness Murphy explained that despite the expectation that Phase 2 would end in March, 2011, it has become clear that there is a core of non-residential customers who will continue to rely on the SCO rate and thereby hinder DEO's exit of the merchant function and the formation of a more competitive natural gas commodity market. After steadily increasing from 2000 to 2008, non-residential enrollment in Energy Choice has held relatively steady at between approximately 46,000 and 49,000 from 2009 to 2012. Obviously, the March 2010 SCO service auction was not the last one. He also explained that Phase 2 is no longer furthering the potential benefits of market-based pricing and in fact may be hindering the further development of the market. (DEO Ex. 1.0, p. 6.)

OGMG/RESA witness Parisi testified that the most notable change in circumstances since the Commission's last Order in Case No. 07-1224-GA-EXM is the continuing load migration which is the result of the success of the transition efforts thus far. He testified that less than two percent of the through-put into the East Ohio system is being served by the SCO. More than eighty percent of Choice-eligible residential and non-residential customers are being served by competitive retail natural gas suppliers. The residual SCO load has reached a plateau over the last few years. He believed that this leveling reflected the recalcitrance of the remaining small portion of the market that simply does not respond.

He pointed out that the customers that receive the auction-driven SCO service do so without paying the full cost of the auction. The cost of the auction is subsidized and paid by all customers as part of East Ohio's base rates. Mr. Parisi testified that when such few residual non-migrated customers remain, it was fair to question whether there is a more efficient method of supplying the default natural gas load that would be consistent with the statutory directive to move to market-based pricing and service. He believed and testified that the more efficient method was to apply the MVR. (OGMG/RESA Ex. 3, pp. 5-6.) Clearly, the Joint Movants have demonstrated the fact that certain of the Commission's previous findings are no longer valid.

Since it is clear that the facts – including the expectation of the Commission (as well as the utility) have changed since the 2008 Opinion and Order, what is left of OP&E's legal argument essentially the claim that a fact relied upon by the Commission is not a "finding" unless the Commission in its Opinion and Order or Final Order labeled the fact a "finding". Such a restriction is not contained in Section 4928.08, Revised Code. Further, the word "finding" is not defined in definition section 4929.01, Revised Code, so it must be given its common usage which is "(a) the results of a judicial examination or inquiry; (b) the results of an

investigation – usually used in the plural”.¹ OP&A’s form over substance argument should be rejected by the Commission. The clear intent of the wording of statute is to allow the Commission to change the order when the facts mandate if such is in the public interest.

2. The Joint Movants have demonstrated how they have been adversely affected.

Contrary to OP&A’s argument at pages 6-7 of its initial brief, the Joint Movants did in fact demonstrate how they were adversely affected. DEO witness Murphy testified that there is a core of non-residential customers who will continue to rely on the SCO rate and thereby hinder DEO’s exit of the merchant function and the formation of a more competitive natural gas commodity market. (DEO Ex. 1.0, p. 6.) This adversely affects not only DEO, but all Ohioans who lose out when the energy policy objectives of the state are not met. Mr. Parisi explained that customers that receive the auction-driven SCO service do so without paying the full cost of the auction. The cost of the auction is subsidized and paid by all customers as part of East Ohio’s base rates. (OGMG/RESA Ex. 3, p. 6.) OP&A witness Harper testified that subsidies can disrupt markets and that one cannot have perfect competition if subsidies exist. (TR. 116.) Everyone is adversely affected by such subsidies. Thus, the Joint Movants have demonstrated that they will be adversely affected if the Exemption Order is not modified.

3. Modifying the Exemption Order as proposed is in the public interest.

OP&A claims that the Joint Movants have not demonstrated that modification of the 2008 Exemption Order would be in the public interest. OP&A is wrong. At page 7, the OGMG/RESA demonstrated how the proposed modification would comport with the policy of this state as set forth in Section 4929.02(A)(4), (5), (6) and (7), Revised Code. In addition, OGMG/RESA witness Parisi testified as to the benefit of uniformity and the creation of an incentive for existing

¹ Webster’s New Collegiate Dictionary, Merriam Press, 3rd Edition.

suppliers to contribute more assets to the East Ohio market and for new suppliers to enter the Ohio market. (OGMG/RESA Ex. 3, p. 7.) OGMG/RESA witness Ringenbach also testified that if the Stipulation were to be adopted, suppliers would not only compete on the cost of service (price) but will also be encouraged to develop new products and services to distinguish their natural gas service and attract customers. She also testified that full competition would result in retail suppliers having offices and personnel in Ohio that will not only create jobs and tax revenues, but also additional participation in charitable and community activities. (OGMG/RESA Ex. 2, pp. 5-6.) OPAE's arguments should be rejected.

4. The Joint Motion comports with the state's energy policy.

OPAE also argues that the Joint Motion should be dismissed because it violates the state's energy policy as set forth in Section 4929.02(A), Revised Code. This is simply untrue.

At least four of the energy policy objectives of this state will be met if the Commission grants the Joint Motion. These policy objectives are set forth in Section 4929.02(A)(4), (5), (6) and (7), Revised Code which provide:

- (A) It is the policy of this state too, throughout this state: ...
- (4) Encourage innovation and market access for cost-effective supply and demand-side natural gas services and goods;
- (5) Encourage cost-effective and efficient access to information regarding the operation of the distribution systems of natural gas companies in order to promote effective customer choice of natural gas services and goods;
- (6) Recognize the continuing emergence of competitive natural gas networks through the development and implementation of flexible regulatory treatment; and
- (7) Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905 and 4909 of the Revised Code.

With respect to subsection (A)(4), DEO witness Murphy testified that discontinuing SCO service will directly increase the entrance of customers into the commodity market, thus spurring market entry, additional competition, and the development of the natural gas supply market. (DEO Ex. 1, pp. 6-7.)

With respect to subsection (A)(5), Staff witness Barbara Bossart testified that the Staff believed that educational materials should be provided to non-residential customers in order for them to make a fully informed decision on who should supply their natural gas. (Staff Ex. 1, p. 3.)

With respect to subsection (A)(6), DEO witness Murphy testified that granting the Joint Motion would further this provision of state policy because it appears that SCO service, although serving as an important step in the process, may now be hindering the continuing emergence of competitive natural gas markets. (DEO Ex. 1, p. 6.)

With respect to subsection (A)(7), DEO witness Murphy explained that granting the Joint Motion would further this objective as well. He testified that several years into Phases 1 and 2, it appears that as long as SCO service remains an option, some customers -- for any number of reasons -- will not exercise their ability to choose a CRNG supplier. Discontinuing SCO service will accordingly encourage customers and suppliers to enter into direct retail relationships. (DEO Ex. 1, p. 7.)

5. The Joint Motion has not violated the Commission's rules or process for adopting rules.

OPAE argues that the Joint Motion should be dismissed because it violates Rule 4901:1-19-12 of the Ohio Administrative Code and ignores the Commission's process for the adoption of administrative rules.

Rule 4901:1-19-12 of the Ohio Administrative Code addresses the abrogation or modification of an Order granting an exemption. This rule states as follows:

- (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.

Subsections (B), (C), and (D), all prescribe obligations for the Commission's docketing division or the Commission itself. Subsections (A)(1)(a) and (b) are not applicable because there is no claim in the Joint Motion that Dominion East Ohio had failed to comply with its separation plan or its code of conduct.

The Joint Movants have demonstrated in their Joint Motion, Stipulation and testimony how they will be adversely affected by such exemption if it is not modified, the findings of the Commission's Exemption Order which are no longer valid and why, and the modifications of the Exemption Order that will be in the public interest. The Joint Movants have provided testimony supporting these allegations and the form of the remedy requested.

The Commission should find that the Joint Movants have in fact complied with the applicable portions of Rule 4901:1-19-12 of the Ohio Administrative Code.

OPAE goes on to argue that the Joint Movants are ignoring the Commission's process for the adoption of administrative rules because Case No. 11-5590-GA-ORD is pending. It must be remembered that the Commission issued its Entry on July 2nd directing that the staff's comment summary, recommendations, drafts of the proposed rules, and Business Impact Analysis be submitted to the Office of the Common Sense Initiative after the Joint Movants filed their Joint Motion. There is simply nothing in the statutes or the administrative code that required the Joint Movants to wait until after a Commission's rulemaking proceeding is over before it could file its Joint Motion. This argument should be rejected.

B. The Joint Motion is supported by the evidence of record.

1. The Joint Motion is not a ploy, but an earnest request to comply with the state's energy policy.

At pages 13-17 of its Initial Brief, OPAE argues that the Joint Motion is a ploy to rewrite the Commission's 2008 Exemption Order as requiring an exit of the merchant function. This is not true.

The Joint Movants are seeking to modify the Exemption Order. Section 4929.08, Revised Code permits such a modification if the process is followed. The Joint Movants have met the statutory criteria by demonstrating that certain previous Commission findings upon which the Exemption Order was based is no longer valid, that the joint motion was filed by persons adversely affected, that there was a notice and hearing, the proposed modification is in the public interest, and that the modification is not made more than eight years after the effective date of the Exemption Order. There is no ploy to re-write the Exemption Order. OPAE's argument must be rejected.

2. The Joint Motion is consistent with the state's energy policy.

At pages 18-28 of its Initial Brief, OPAE argues that the evidence of record shows that the Joint Motion is inconsistent with the policy of Ohio as set forth in Section 4929.02, Revised Code. OPAE argues that the State's energy policy promotes effective competition, reasonable prices, choices and innovation. It goes on to argue that there is already effective competition in Dominion's service area in compliance with the State's energy policy. It also argues that the SCO is a competitive option that provides many benefits to consumers.

Although the OGMG and RESA agree that the State's energy policy promotes effective competition, reasonable prices, choices and innovation, we disagree with the notion that the Joint Motion is somehow inconsistent with Section 4929.02 Revised Code. While we agree that there

is competition in Dominion's service area, the OGMG and RESA believe that effective competition can be enhanced with the approval of the Joint Motion. The OGMG submits that the elimination of the SCO as a competitive option for non-residential customers will provide many more benefits to consumers than will its retention. The record supports the adoption of the Joint Motion.

DEO witness Murphy testified that it appeared that as long as SCO service remains an option, some customer – for any number of reasons – will not exercise their ability to choose a CRNG supplier. Discontinuing SCO's service will accordingly encourage customers and suppliers to enter into direct retail relationships. He agreed that effective competition currently exists in DEO's service area and that suppliers possess sufficient capacity to serve DEO's non-residential load. But he went on to testify that the proposed Stipulation represented a cautious, incremental step toward exiting the merchant function. He believed that the elimination of SCO service will directly affect only a relatively small subset of DEO's customers, namely, non-shopping, non-residential Choice eligible customer which account for 1.2% of DEO's total customer base. He explained that these customers will not be locked into any particular rate agreement; while reassigned customers would initially take service at the supplier's monthly variable rate, they would maintain the option of switching to a different CRNG supplier, entering a different agreement with the assigned supplier, or participating in an opt-out governmental aggregation program. (DEO Ex. 1.0, pp. 7-8.)

He also testified that this "wait and see" approach will allow interested parties and the Commission to determine whether a full exit might produce benefits that would also be achievable for residential customers. To that end, DEO agreed to provide OCC with information to enable it to study and examine the effects of the proposed non-residential exit. This

information that will be gleaned from a full exit of non-residential customers will provide valuable insight into whether it would be appropriate to fully exit the merchant function for residential customers, when DEO (or another LDC) eventually seeks to do so. (DEO Ex. 1.0, p. 8.)

OGMG/RESA witness Parisi also testified as to the benefits in having all Choice eligible commercial customers in the MVR program as opposed to having them continue to be served by the SCO auction. He explained that there would be a benefit of uniformity, namely, that it would be easier for Suppliers to provide quotes to commercial customers, and for the Commission's call center to answer questions if all commercial customers were treated alike. He explained that some Choice eligible customers are currently on the MVR now and if the Joint Motion were to be approved, all Choice eligible customers would be on the MVR. A second benefit would be that there would be an incentive created for existing suppliers to contribute more assets to the East Ohio market and for new suppliers to enter Ohio. (OGMG/RESA Ex. 3, p. 7.)

Mr. Parisi also explained that Choice eligible customers who have never shopped before will not need to do anything different than they do today. The price that they will pay will be similar, since market based variable rates are often New York Mercantile Exchange close based which is also the basis for the SCO price. He did explain the one difference would be with respect to basis which is the portion of a retail customer's price that is most affected by whether local gas is used. He noted that East Ohio has an extensive local gathering system so Ohio supplies are readily available for delivery in the East Ohio system. Finally, he explained that there is no difference between the SCO and MVR program in terms of ongoing obligation to buy from the default supplier or exit fees. Under the MVR or the SCO, Mr. Parisi explained that a

customer upon request can leave the default supply program with the next administratively available meter reading and there is never an exit fee. (OGMG/RESA Ex. 3, p. 7.)

OGMG/RESA witness Ringenbach also testified as to the benefits of adopting the Stipulation. She testified that there will be at least two years of experience with non-residential Choice eligible customers being served under the MVR process before it would be applied to any residential customers. It will permit East Ohio and the OCC to monitor customer reaction to the MVR process before moving on to an exit of the merchant function for residential customers. (OGMG/RESA Ex. 2, p. 4.)

She also explained that by using a competitive market to supply retail customers with natural gas, suppliers will constantly be searching for more efficient ways of supplying natural gas as on a daily basis. The Suppliers will be competing against each other for the retail customers and the competition will not be just on price. Using Texas and Georgia as examples, she testified that Suppliers will be developing new products and services to distinguish their natural gas service. In addition, she explained that retail Suppliers will have offices and personnel in Ohio and not only will that create jobs and tax revenues, but will promote further participation in charitable and community activities. (OGMG/RESA Ex. 2, pp. 5-6.)

Ms. Ringenbach explained that at least five items should be studied as a part of the non-residential exit proposed by the Joint Motion. This study will ultimately benefit residential customers. These five items include 1) whether Suppliers during this period brought new and varied products in the market; 2) if new and varied products are not introduced, are there barriers to development that inhibited development of new products and services and whether such barriers can be remedied; 3) whether the Suppliers are gearing up their work force and Ohio located assets with increased investment; 4) whether the switch to MVR causes an increases in

the number of complaint to the Commission's call center that are legitimately connected to the MVR such as concerns related to price gouging or customer confusion and whether those concerns appear to be warranted, and finally, 5) whether the Suppliers directly or indirectly have caused an additional investment in the community.

Based on the record before it, the Commission must reject OPAE's argument that the Joint Motion is inconsistent with the policy of Ohio and that the retention of the SCO as a competitive option will bring more benefits to consumers than its elimination.

3. The Joint Movants have properly interpreted the state's energy policy.

At pages 28-29 of its Initial Brief, OPAE argues that the Marketer's purpose in sponsoring the Joint Motion is to expand their customer base and to increase profits at the expense of consumers. OPAE accuses the Joint Movants of interpreting State policy as requiring less choice and higher prices for consumers. This accusation has no record support. OPAE witness Stacia Harper testified in opposition to the Joint Motion. One of the reasons she opposed eliminating the SCO option was that she believed that SCO prices were lower than competitive retail natural gas supplier's direct offers as a result of the auction process. The record did not support that belief. On cross-examination, Ms. Harper admitted that for a recent month, two of the three variable plans offered by competitive retail natural gas suppliers on the Apple to Apples chart had prices lower than the SCO. (Tr. 133-134.)² OGMG/RESA witness Ringenbach confirmed that fact. (Tr. 156-157.) Ms. Harper also testified that competitive retail natural gas suppliers do not have much reason to offer a price below the SCO. However, she conceded that if one eliminated the SCO price, as proposed in the Joint Motion, there would be nothing to prevent competitive natural gas providers from making offers below that "SCO floor." (Tr. 145.)

² The record reflects that both of the lower cost suppliers were members of OGMG/RESA. Tr. 133-135.

4. There is no evidence that suggests that the elimination of the SCO option will result in a nightmare for customers.

At pages 29-32 of its Initial Brief, OPAE argues that the elimination of the SCO will be a nightmare for customers considering their natural gas choices. The record clearly does not support this argument. First of all, there is no testimony from anyone that the elimination of the SCO will be a nightmare for customers considering their natural gas choices. Secondly, Staff witness Barbara Bossart addressed the Staff's expectations regarding customer education as it relates to the exit from the merchant function for non-residential customers of Dominion East Ohio. These expectations are laid out in her testimony. (Staff Ex. 1, pp. 2-6.) The OGMG/RESA is in agreement with these expectations and understand that Dominion also agrees and will be working with the staff to fulfill such expectations. Finally, OPAE's argument waffles between customers reviewing the apples chart and choosing SCO to under an MVR customers have no ability to compare offers. Under the stipulation non-residential customers will continue to receive a monthly variable price should they do nothing to switch to another supplier. Just as today customers will find their SCO price on their bill and PUCO apples chart or by calling the utility or SCO supplier, under an MVR the customer price will be on the apples chart, on their bill or available by calling their MVR supplier. OPAE's argument must be rejected.

5. The record shows that the SCO is a subsidized product that should be eliminated.

At pages 33-35 of its Initial Brief, OPAE disputes the argument that the SCO is a "subsidized" product, instead arguing that the auctions benefit marketers and consumers. Despite its claim that there is no evidence that the SCO is a "subsidized" product, the record states otherwise. OGMG/RESA witness Ringenbach testified that default service is subsidized by customers who do not take that product. She explained that while suppliers have provided a

significant amount of money to educate and market to customers, SCO customers are not paying for such marketing costs or customer education dollars. (Tr. 181.) Likewise, Dominion employees' time and efforts in addition to the cost of the auction itself is not being recovered through the SCO price but is rather being subsidized by everyone else. (Tr. 181-182.) She explained that there are certified natural gas suppliers who are paying for customer education costs but who are not the winning SCO suppliers. (Tr. 183.) While Direct, IGS and Integrys contributed to a customer education fund dedicated to telling customers about the SCO (and not about all the other choices) SCO customers saw none of these costs in their price. . (Tr. 183-184.)

OGMG/RESA witness Parisi testified that the problem with the SCO price is that it is a subsidized price. He confirmed that the cost of the auctions themselves are paid for by everyone. The time and resources and effort that is spent by Dominion East Ohio in creating, maintaining, defending and then ultimately supplying the SCO are costs that are recovered through base rates and therefore paid by all customers. (Tr. 221-222.) The value to customers in retaining a default service without having to engage in the market and ultimately selecting what best fits them has costs that are not captured anywhere in that default service. (Tr. 222.)

OPAE compares the SCO suppliers not paying for customer acquisition costs as a benefit. However, the benefit is only to customers who receive SCO service. Customers who switch to another supplier (which make up a super majority of Dominion) are paying for a service they do not receive. SCO suppliers are getting free customers without the need to invest in marketing, employees, or community to grow a business within Ohio.

The fact of the matter is that the record demonstrates that the SCO is a subsidized product; one of the policy objectives of the state is to promote effective competition in the

provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods. OPAE's argument that the SCO is not a subsidized product must also be rejected.

6. Lack of customer engagement is the problem and can be remedied by eliminating the SCO option.

At pages 35-37 of its Initial Brief, OPAE claims that the current lack of growth in natural gas markets is not caused by the SCO service and cannot be remedied by the elimination of it. OPAE claims that the current economic and environmental conditions have contributed to less growth in sales, fewer customers, declining prices and possibly lower profits for suppliers. OPAE claims that the marketers want to eliminate the SCO competitive option so that they can have private control of prices.

As pointed out in the testimony of witness Ringenbach this is the next step in a process that began more than eight years ago. It is not a shift in philosophy of Dominion or the marketers. Rather the drive to greater use of market forces and less regulation has been a continuous incremental process regardless of whether the natural gas market were going up or coming down over the past eight years. In sharp contrast, OPAE who has now come to embrace the SCO and the SSO when market prices started coming down, previously opposed auctions. OGMG\RESA believe that OPAE in time will come to find the MVR and other steps towards increased use of the market and reduced use of regulation will continue to produce benefits for members of the public.

As pointed out in the testimony of witness Ringenbach this is the next step in a process that began more than eight years ago. It is not a shift in philosophy of Dominion or the marketers. Rather the drive to greater use of market forces and less regulation has been a continuous incremental process regardless of whether the natural gas market was going up or

coming down over the past eight years. In sharp contrast, OP&A who has now come to embrace the SCO and the SSO, previously has opposed it³. OGMG/RESA believe that OP&A in time will come to find the MVR and other steps towards increased use of market forces and reduced regulation will produce benefits for members of the public.

While OGMG/RESA witness Parisi acknowledged that the general trend of the retail price adjustment for the SCO auction has generally declined, the important point is that what is good for consumers is to be engaged in the market. He testified that probably the most critical component of effective competition and ultimately having consumers take the full advantage of the market is to be engaged in the market. He maintained that we are still in a very volatile natural gas market and we are seeing prices trend upward again currently. (Tr. 217-218.) A comparison of the gasoline market with the natural gas market illustrated Mr. Parisi's point. In order for a customer to ultimately be able to turn on the ignition and drive a non-electric automobile down the road, an individual must have gasoline in the tank. There is no automatic default service that comes to the individual's house and fills up the gas tank with gasoline. The individual has to engage in the market if the individual is ultimately to be able to drive the vehicle. This isn't the case with the natural gas market. An individual who takes natural gas service and who does nothing will receive default service. Mr. Parisi believed that this lack of engagement in the market continues to be a significant barrier to competition in the natural gas market. (Tr. 218.)

³ OP&A opposed the DEO proposal for Phase 1 and 2 in In Re Dominion East Ohio, Case No. 05-474-GA-ATA, Opinion and Order, May 26, 2006. OP&A stated that the Company failed to provide any evidence that a more competitive market will result from Phase 1 or 2. See the January 9, 2006 Initial Post-Hearing Brief of OP&A in Case No. 05-474-GA-ATA, at p. 4. Yet today, the OP&A's decision is that an auction is a good procurement tool. (TR. 109) Although OP&A neither signed nor opposed the Stipulation in In Re Dominion East Ohio, Case No. 07-1224-GA-UNC, it now supports the use of the Standard Choice Offer. (TR. 109)

Ms. Ringenbach also addressed the argument that the marketers want to eliminate the SCO option in order to have private control of prices. She testified that suppliers will not be able to charge excessive prices under the proposed structure. In any market, competition brings competitive pressure and suppliers have the ability to undercut their competition or offer products with greater value to attract customers. She also indicated that the Staff will have the ability to check prices against publically available data including BTU conversion factors and capacity costs along with NYMEX. She also recommended that individual suppliers be able to request customer lists that show who the MVR supplier customers are served by. This will allow for more focused and targeted offers. In addition, she noted that if an MVR supplier is charging prices that are above market rates, that supplier's customer will become a target for other suppliers. (OGMG/RESA Ex. 2, p. 7)

With respect to the MVR prices, Ms. Ringenbach testified that while the Commission would not have direct authority over MVR prices by suppliers, there would still be several tools available to protect customers. She stated that the current consumer protection rules will continue to apply to customers served under an MVR, excluding the affirmative consent rules since customers are assigned under the tariff. In addition, she stated that because all MVR prices are posted on the PUCO website the Commission will be able to detect if prices are completely out of line with New York Merchantile Exchange closing prices. She also emphasized that there are multiple options for a customer to leave MVR service at any time and if a customer is not satisfied with the price they are charged, they always have the option of switching to a different supplier. (OGMG/RESA Ex. 2, p. 8.)

7. SCO service has served a useful purpose, but its retention is a significant barrier to consumers being able to experience the benefits of an even more competitive market.

OPAE argues that SCO service fits perfectly with the competitive market envisioned by the State's energy policy. It argues that the elimination of SCO service will limit competition, increase prices and maximize marketers' profits. But the record demonstrates otherwise. Ms. Ringenbach explained that marketers will be competing against each other for retail customers for not only price, but also for more varied products involving smart metering, conservation and approved alternative forms of payment. (OGMG/RESA Ex. 2, p. 5.) On cross-examination, OPAE witness Harper conceded that for a recent month, two of the three variable plans offered by competitive retail natural gas suppliers on the Apples to Apples chart had lower prices than the SCO. (Tr. 133-134.) Further, she admitted that if the SCO price were to be eliminated as proposed in the Joint Motion, there would be nothing to prevent competitive natural gas providers from making offers below that "SCO floor." (Tr. 145.) The time has come to take the next small incremental step of eliminating SCO service so that customers can be engaged in the market and experience the full benefits of an even more competitive market.

III. CONCLUSION

The Joint Motion is authorized by Section 4929.08(A), Revised Code. It comports with Ohio's Natural Gas Policy as set forth in Section 4929.02(A), Revised Code. Granting the Joint Motion will also produce additional benefits that are in the public interest and will allow the Commission to understand the consequences of a fully-competitive market before there is any further movement toward a fully-competitive residential market. Joint Exhibit 1 attached to the Joint Motion meets the Commission's three-pronged test for evaluating Stipulations and should be approved.

Respectfully submitted,



M. Howard Petricoff
Stephen M. Howard
VORYS, SATER SEYMOUR AND PEASE LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

Counsel for Ohio Gas Marketers Group and Retail
Energy Supply Association

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail on the following persons this 21st day of November, 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
sam@mwncmh.com
joliker@mwncmh.com
fdarr@mwncmh.com
cgoodman@energymarketers.com
tobrien@bricker.com
whitt@whitt-sturtevant.com
joseph.clark@directenergy.com
Campbell@whitt-sturtevant.com
drinebolt@aol.com
Williams@whitt-sturtevant.com



M. Howard Petricoff

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