

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application to )  
Modify, in Accordance with Section )  
4929.08, Revised Code, the Exemption ) Case No. 12-1842-GA-EXM  
Granted to The East Ohio Gas Company )  
d/b/a Dominion East Ohio in Case No. )  
07-1224-GA-EXM. )

OPINION AND ORDER

The Commission, having considered the record in this matter and the stipulation and recommendation submitted by the signatory parties, and the evidence of record in this case, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Whitt Sturtevant LLP, by Mark A. Whitt, Andrew J. Campbell, and Gregory L. Williams, PNC Plaza, Suite 2020, 155 East Broad Street, Columbus, Ohio 43215, on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, Columbus, Ohio 43216, on behalf of the Ohio Gas Marketers Group.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, Columbus, Ohio 43216, on behalf of the Retail Energy Supply Association.

Mike DeWine, Ohio Attorney General, by Devin D. Parram and Stephen A. Reilly, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio, 43215, on behalf of the Staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by Larry S. Sauer and Joseph P. Serio, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential utility consumers of The East Ohio Gas Company d/b/a Dominion East Ohio.

David C. Rinebolt and Colleen L. Mooney, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45839, on behalf of Ohio Partners for Affordable Energy.

OPINION:I. History of the Proceeding

The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) is a natural gas company as defined by Section 4905.03(5), Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission, pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

On April 8, 2005, DEO filed an application requesting an exemption pursuant to Section 4929.04, Revised Code, and seeking approval of phase one of its plan to exit the merchant function. *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a Plan to Restructure Its Commodity Service Function*, Case No. 05-474-GA-ATA (05-474). By opinion and order issued on May 26, 2006, in 05-474, the Commission approved DEO's application, as modified by the stipulation filed in that case, to undertake phase one of its proposal to test alternative, market-based pricing of commodity sales.

On June 18, 2008, in *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 07-1224-GA-EXM (07-1224), the Commission authorized DEO to implement phase two of its plan to exit the merchant function, in which DEO implemented a standard choice offer (SCO), wherein suppliers bid for the right to supply gas in tranches to choice-eligible customers at a retail level.

On June 15, 2012, a joint motion to modify the order issued on June 18, 2008, in 07-1224 (07-1224 order), pursuant to Section 4929.08, Revised Code, was filed by DEO and the Ohio Gas Marketers Group (OGMG) (DEO Ex. 2). A stipulation and recommendation (Stipulation) signed by DEO, the Ohio Consumers' Counsel (OCC), and OGMG was also filed on June 15, 2012 (Jt. Ex. 1).

On June 28, 2012, Ohio Partners for Affordable Energy (OPAE) filed a motion for intervention, along with a motion to dismiss. By entry issued on July 27, 2012, the attorney examiner set a procedural schedule in this case and granted OPAE's motion to intervene. The July 27, 2012, entry also directed DEO to publish notice of the motion to discontinue providing commodity service to choice-eligible nonresidential customers and the hearing in a newspaper of general circulation in each county of DEO's service area. On October 9, 2012, DEO filed proof of publication of the public notice (DEO Ex. 3). Motions to intervene filed by OCC and the Retail Energy Supply Association (RESA) were granted by attorney examiner entry issued on October 9, 2012.

Comments on the joint motion to modify were filed on August 30, 2012, by Staff and OPAE (Staff Ex. 2; OPAE Ex. 5). Reply comments were filed by OCC, DEO, and jointly by OGMG and RESA, on September 13, 2012 (OCC Ex. 3; DEO Ex. 4; OGMG/RESA Ex. 4).

The hearing was held on October 16 and 17, 2012. No members of the public were present to testify at the hearing. At the hearing, DEO witness Jeffrey Murphy (DEO Ex. 1) testified in support of the Stipulation. Additional testimony was provided by OPAE witness Stacia Harper (OPAE Ex. 1), Staff witness Barbara Bossart (Staff Ex. 1), OGMG/RESA witnesses Teresa Ringenbach and Vincent Parisi (OGMG/RESA Exs. 2 and 3, respectively), and OCC witness Bruce Hayes (OCC Ex. 2). Briefs in this matter were filed by DEO, OPAE, OCC, Staff, and jointly by RESA and OGMG on November 13, 2012. Reply briefs were filed on November 21, 2012, by DEO, Staff, OPAE, and, jointly, by OGMG and RESA.

## II. Applicable Law

Section 4929.08, Revised Code, provides, in pertinent part, that:

- (A) The public utilities commission has jurisdiction over every natural gas company that has been granted an exemption or alternative rate regulation under section 4929.04 or 4929.05 of the Revised Code. As to any such company, the commission, upon its own motion or upon the motion of any person adversely affected by such exemption or alternative rate regulation authority, and after notice and hearing and subject to this division, may abrogate or modify any order granting such an exemption or authority only under both of the following conditions:
  - (1) The commission determines that the findings upon which the order was based are no longer valid and that the abrogation or modification is in the public interest;
  - (2) The abrogation or modification is not made more than eight years after the effective date of the order, unless the affected natural gas company consents.

Rule 4901:1-19-12, O.A.C., sets forth the procedures for the filing of an application for abrogation or modification of a Commission order that granted an exemption. This rule requires the applicant in such a case to, at a minimum, provide a

detailed description of the nature of the violation, supporting documentation for the applicant's allegations, and the form of remedy requested. In addition, paragraph (D) of this rule states that the Commission shall order such procedures as it deems necessary in its consideration for modifying or abrogating such order.

Section 4929.02, Revised Code, sets forth the state policies to be considered, as follows:

- (1) Promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods.
- (2) Promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs.
- (3) Promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers.
- (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 markets through the development and implementation of flexible regulatory treatment.
- (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.
- (8) 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.

- (9) Ensure that the risks and rewards of a natural gas company's offering of nonjurisdictional and exempt services and goods do not affect the rates, prices, terms, or conditions of nonexempt, regulated services and goods of a natural gas company and do not affect the financial capability of a natural gas company to comply with the policy of this state specified in this section.
- (10) Facilitate the state's competitiveness in the global economy.
- (11) Facilitate additional choices for the supply of natural gas for residential consumers, including aggregation.

### III. Summary of the Motion to Modify and Comments

On June 15, 2012, a joint motion to modify the order issued in 07-1224, pursuant to Section 4929.08, Revised Code, was filed by DEO and OGMG (collectively, joint movants). In their motion, joint movants explain that the proposed modification would allow DEO to discontinue the availability of its SCO to choice-eligible nonresidential customers beginning in April 2013. In its definition of nonresidential customers, DEO includes General Sales Service - Nonresidential (GSS-NR), Large Volume General Sales Service (LVGSS), Energy Choice Transportation Service - Nonresidential (ECTS-NR), and Large Volume Energy Choice Transportation Service (LVECTS) customers. Joint movants propose that nonresidential customers receive commodity service from the next available competitive retail natural gas service (CRNGS) provider on a rotating list maintained by DEO pursuant to the CRNGS provider's applicable monthly variable rate (MVR). (DEO Ex. 2.)

In its initial comments, OPAE argues that the joint motion should be dismissed because it is not authorized by Section 4929.08(A), Revised Code. In particular, OPAE argues that the joint motion does not meet the criteria that it be premised upon findings that are no longer valid. Moreover, OPAE asserts that DEO is not adversely affected by the continuance of SCO service. OPAE also avers that the joint motion is inconsistent with Ohio policy because customers, who still take SCO service and have not chosen a marketer, clearly do not want to choose a marketer, leading OPAE to argue that the state's policy should not force a customer to choose a CRNGS provider. Finally, OPAE argues that no representative of the affected customer group, nonresidential customers, has signed the Stipulation. (OPAE Ex. 5 at 2-10.)

Staff, in its initial comments, states that it generally supports the Stipulation, but argues that DEO should be required to undertake a comprehensive consumer education program in advance of any exit of the merchant function. Staff also suggests the Commission should clarify that nothing would prevent it from

reestablishing the SCO or other pricing mechanism's if DEO's exit of the merchant function proves to be unjust or unreasonable. (Staff Ex. 2 at 3.) In reply comments, OCC express support for Staff's suggestion of a comprehensive consumer education program (OCC Ex. 3 at 4). In its reply comments, DEO accepts Staff's customer education recommendations (DEO Ex. 4 at 1).

OGMG and RESA filed joint reply comments in which they disagree with OPAC's assertions that the joint motion is not authorized by Section 4929.08(A), Revised Code, and argue that existence of the SCO mechanism prevents development of a fully-competitive marketplace. Moreover, OGMG and RESA argue that development of a fully-competitive market is within the policies of the state of Ohio. (OGMG/RESA Ex. 4 at 3-5.)

#### IV. Section 4929.08, Revised Code

In its motion to dismiss, and also in its brief, OPAC asserts that the joint motion does not comply with Section 4929.08(A), Revised Code, and is procedurally defective because joint movants cannot set forth Commission findings that are no longer valid in the 07-1224 order. OPAC argues that the findings that joint movants rely on were not actual Commission findings, but instead statements made in DEO's application, which joint movants are now claiming were Commission findings. Accordingly, OPAC concludes that the joint motion is improper. Instead, OPAC asserts that DEO is attempting to circumvent the requirement that it file a separate application to exit the merchant function for nonresidential customers by filing a motion to modify the exemption granted in 07-1224. OPAC also claims that the joint motion does not explain how the movants are adversely affected by the current order. OPAC submits that the joint motion is not in compliance with Rule 4901:1-19-12, O.A.C., and that the joint motion is out of compliance with the Commission's most recent ongoing review of its rules.<sup>1</sup> (OPAC Br. at 2-6.)

In response, and in support of the joint motion to modify, DEO witness Murphy explains that the findings upon which the exemption order was based are no longer valid. Citing to the initial exemption order issued in 07-1224, DEO points out that the initial expectation was that the last SCO auction would occur in 2010, with phase two ending in March 2011. However, DEO explains that as the March 2011 date approached, it became apparent that a certain set of nonresidential customers would remain on the SCO as long as it was available; thus, leading to a plateau in the competitive market in the DEO territory. Therefore, DEO concludes that phase two will not end on its own, as expected, but will continue indefinitely, unless the order in 07-1224 is modified. (DEO Ex. 1 at 6; DEO Br. at 5.)

---

<sup>1</sup> See *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.

Second, DEO explains that, contrary to the Commission's finding in 07-1224, phase two, as approved in 07-1224, no longer represents a reasonable structure through which to further the potential benefits of market-based commodity pricing. Rather, DEO asserts that the availability of SCO service is hindering the continued development of the market in DEO's territory. Specifically, DEO points to Mr. Murphy's testimony that SCO enrollment has held steady for approximately three years at 20 percent. Mr. Murphy explains that the presence of the SCO potentially distorts the market and precludes the development of a fully-competitive market. (DEO Br. at 5-6; DEO Ex. 1 at 5; Tr. at 69-98.) RESA and OGMG agree with DEO's arguments, citing the testimony of both DEO witness Murphy and RESA/OGMG witness Parisi who explains that customer migration has stalled out, and is hindering continued development of the competitive marketplace (DEO Ex. 1 at 6; OGMG/RESA Ex. 3 at 5-6).

OGMG and RESA rely on the testimony of Mr. Murphy to show that joint movants are adversely affected. Specifically, Mr. Murphy testified that a core of nonresidential customers have continued to rely on the SCO, thereby, hindering both DEO's ability to fully exit the merchant function, and hindering the development of a more competitive market. OGMG and RESA argue that this adverse effect not only affects DEO, but all customers who could potentially be losing out. Further, Mr. Parisi testified that, under the current structure, customers taking SCO service are having the cost of procurement subsidized by all customers, which has an adverse effect on customers not benefiting from the auction pricing, but paying the cost of the auction. (OGMG/RESA Br. at 5; DEO Ex. 1 at 6; OGMG/RESA Ex. 3 at 6.)

With respect to the procedural deficiencies claimed by OP AE, DEO argues that OP AE has not shown how any party is prejudiced by its perceived noncompliance with Rule 4901:1-19-12, O.A.C. Moreover, DEO asserts that it is not and has not been the practice of this Commission to expect compliance with proposed changes to its rules while they are under review and not finalized. (DEO Reply Br. at 7-9.)

With regard to OP AE's assertions that the filing violates the Commission's rules in Chapter 4901:1-19, O.A.C., the Commission finds OP AE's arguments to be without merit. While it is true the Commission has been considering revisions to this chapter of the code, in accordance with the five-year review requirement, the current rules provide the necessary direction as to what an applicant must include in an application for modification of an exemption order, such as the one filed by the joint movants, pursuant to Section 4929.08, Revised Code.

In considering OP AE's argument that the joint motion is procedurally defective, the Commission finds that joint movants have demonstrated that the exemption order

issued in 07-1224 contains findings that are no longer valid. Specifically, in 07-1224, the Commission found that phase two represents a reasonable structure through which to further the potential benefits of market-based pricing of the commodity sales by the company. We now find that phase two no longer provides any potential for further exploration of the benefits of market-based pricing for natural gas services. Further, the Commission is persuaded that continuation of SCO service is adversely affecting DEO and is negatively affecting all Ohioans by hindering the development of a fully-competitive marketplace.

In addition to the previously discussed procedural arguments, OPAE also opines that the modification is not in the public interest, as required by Section 4929.08, Revised Code. The Commission will consider and address the arguments concerning the public interest requirement later in this order, as part of our discussion and consideration of the Stipulation.

#### V. Stipulation

A Stipulation signed by DEO, OCC, and OGMG was submitted on the record at the hearing held on October 16 and 17, 2012. The Stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The Stipulation includes, *inter alia*, the following modification to the June 18, 2008, Opinion and Order issued in 07-1224:

- (1) Beginning in April 2013, choice-eligible GSS-NR, LVGSS, ECTS-NR, and LVECTS customers (collectively, nonresidential customers) may no longer default into, or have an option to receive, SCO commodity service. Instead, effective April 2013, a nonresidential customer who has not selected a new CRNGS provider will be served by the next available supplier on a rotating list maintained by DEO of CRNGS providers registered to provide default service using the supplier's MVR subject to the limitations set forth in the MVR commodity service portion of DEO's tariff. If a nonresidential customer enters into a new arrangement with a CRNGS provider, including but not limited to the former SCO supplier, or participates in an opt-out governmental aggregation program, the terms of the agreement of the selected CRNGS provider or governmental aggregator will replace the MVR service. New nonresidential customers establishing service with DEO for the first time, relocating within DEO's service territory and whose energy choice or governmental



aggregation agreement is not portable, or restoring service more than 10 days after being disconnected for nonpayment will receive at least one standard service offer (SSO) bill, after which they may enroll with a CRNGS provider or participate in an opt-out governmental aggregation program. If they do not do so, such nonresidential customers will, after their second SSO bill, be assigned to a CRNGS provider that has agreed to accept customers at its posted MVR rate, subject to the limitations set forth in the MVR commodity service portion of DEO's tariff.

- (2) The signatory parties, with the exception of DEO, agree that they shall not individually or jointly request Commission approval for DEO to exit the merchant function for its GSS-Residential or ECTS-Residential customers (collectively, residential customers) with an effective date prior to April 1, 2015. 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 will 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, if it requests to exit the merchant function. If a third-party, who is not a signatory party to the Stipulation, makes a request for approval of DEO's exit of the merchant function for residential customers prior to April 1, 2015, DEO and OGMG may support other parts of the application, but shall take the position that the exit of the merchant function for residential customers should not be implemented prior to April 15, 2015.
- (3) OCC reserves the right to challenge any application or request filed with the Commission by a signatory party or nonsignatory party seeking approval of DEO's exit of the merchant function for residential customers. The signatory parties agree that, in the event OCC makes such a challenge, OCC shall be entitled to exercise all rights available to it under the Commission's rules and Ohio law, including, as applicable, to conduct discovery, present and cross-examine witnesses at an evidentiary hearing, and make legal arguments through a full and adequate briefing

schedule that includes initial and reply briefs. Other signatory parties may respond to OCC as they see fit.

- (4) If DEO determines to file an application or request Commission approval to exit the merchant function for its residential customers, which filing shall not be made before April 1, 2015, DEO shall notify the other signatory parties of its intent to file such an application or request at least 90 days before filing such an application or request. DEO shall provide OCC with readily available, aggregated non-CRNGS provider-specific rate, usage, and customer count information in a format agreed to in advance by the signatory parties intended to enable OCC to periodically analyze, at OCC's discretion, the impact of an exit from the merchant function on nonresidential customers. The signatory parties agree to work cooperatively so that the data can be provided on a timely basis and with the understanding that OCC and DEO may reasonably modify, from time to time, the information to be provided pursuant to this paragraph or request such modification. DEO shall not be obligated to retain any information, or retain information in any format, that it is not already retaining or utilizing as of the date of the Stipulation. OCC shall not use such data or information in any proceeding that does not directly involve DEO's exit from the merchant function for residential customers; provided, however, that the restriction on use of information pursuant to this paragraph shall not prohibit OCC from serving discovery requests in future proceedings to seek information previously provided to OCC pursuant to this paragraph which has independent relevance in such future proceeding. To the extent there is a dispute concerning whether information previously provided to OCC is independently relevant in a future proceeding, such dispute shall be addressed in the future proceeding.

(Jt. Ex. 1 at 2-5.)

## VI. Consideration of the Stipulation

### A. Standard of Review

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 31, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. (*Id.* at 563.)

### B. Review of the Three-Prong Test and the Stipulation

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

DEO witness Murphy testified that the Stipulation is a product of serious bargaining among capable, knowledgeable parties who were represented by experienced counsel and technical experts. Mr. Murphy further explains that the Stipulation was the product of negotiations that required numerous meetings and took place over several months, resulting in numerous concessions, with other nonsignatory parties being invited to the table. (DEO Ex. 1 at 9.) OCC witness Hayes also explains that each signatory party has a history of active participation in Commission proceedings, with all parties representing diverse interests (OCC Ex. 2 at 7-8). As such, the Commission finds that the first criterion has been met.

- (2) Does the settlement, as a package, benefit ratepayers and the public interest?

In support of the joint motion, DEO explains that the proposed modification is in the public interest, as required by Section 4929.08(A)(1), Revised Code, because it will encourage innovation and market access. Mr. Murphy explains that discontinuing SCO service to nonresidential customers will directly increase the entrance of customers into the commodity market, spurring market entry by CRNGS providers, the continued development of the competitive market, and will lead to an overall increase in competition. Instead of increasing competition, DEO argues that the current availability of SCO service is hindering the continued emergence of such a marketplace and customers remaining on SCO service are not being encouraged to enter the competitive marketplace, or even monitor offers available in the competitive marketplace to see if those offers provide better options. DEO also points to the testimony of RESA witness Ringenbach, who opines that in a fully-competitive marketplace, suppliers will constantly search for more efficient ways of supplying natural gas and will also provide more varied products for consumers to choose from. When questioned, Ms. Ringenbach explains that in a fully-competitive market, suppliers may combine their natural gas products with other products, such as electricity, a tangible product, such as a furnace, or a warranty product. Ms. Ringenbach further points to developments in other states, where products and services offered in conjunction with the retail supply of natural gas or electricity have included smart metering, conservation, and alternative payment forms, such as prepayment. Ms. Ringenbach further states that she believes, with expansion of the competitive market, will come greater involvement in local communities by CRNGS providers. She explains that one cannot market from afar, and, therefore, suppliers will have offices in Ohio, creating jobs and tax revenue, and will also have people invested in the local communities. (DEO Ex. 1 at 6-7; OGMG/RESA Ex. 2 at 5-6; DEO Br. at 7-9; Tr. at 73, 191-192; OGMG/RESA Br. at 9-10.)

To the contrary, OPAE argues that the Stipulation is not in the public interest because it does not promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods, a state policy articulated in Section

4929.02(A)(1), Revised Code. Moreover, OP&A argues that Section 4929.02(A)(2), Revised Code, encourages the promotion of the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options that meet their respective needs. OP&A argues that the joint motion violates the state policy articulated in Section 4929.02(A)(2) by eliminating the SCO option, with its additional available suppliers, and limiting competition that is spurred by the SCO. Instead, OP&A argues that the evidence in this case demonstrates that effective competition already exists in DEO's service territory. Specifically, OP&A relies on the testimony of DEO witness Murphy that the SCO option is based on the New York Mercantile Exchange, which enables the SCO price to reflect current market pricing. OP&A opines that the SCO auction is competitive and market forces are used to establish the price of the natural gas commodity at auction. If the SCO is eliminated, OP&A argues that approximately 20 percent of nonresidential customers who still take SCO service will be forced to switch from the competitively determined SCO, losing their choice option. According to OP&A, bilateral contracts are no substitute for the SCO with its price determined by a competitive auction and its transparent terms and conditions. Instead, OP&A argues that bilateral contract terms can vary greatly with customers being offered various products, with the potential for high early termination fees. OP&A also states that prices for bilateral contracts have been higher than the SCO, when compared over a 12-month period, with customers paying a premium for a fixed price contract. Finally, OP&A asserts that the SCO price provides a benchmark for natural gas prices, with there being an incentive for individual CRNGS providers to come close to the SCO price. Without the transparency of the SCO price, OP&A argues that customers will have no benchmark with which to compare competitive offers they receive, and may not understand the MVR mechanism on which they are placed. (OP&A Br. at 8-9, 21-26; Tr. at 24-27; OP&A Ex. 1 at Ex. 4.)

OP&A also argues that prior testimony submitted by DEO witness Murphy, in 07-1224, demonstrates that CRNGS providers would be able to establish relationships with customers, without incurring customer acquisition costs, through the SCO auction. Therefore, OP&A concludes that the SCO is a part of the competitive market that saves customer acquisition costs and those costs can be passed on to consumers as savings. (OP&A Br. at 19.)

In response, DEO asserts that nothing in the record supports OP&A's contention that elimination of the SCO option would somehow weaken competition. Instead, DEO argues that the presence of the SCO hinders the development of additional competition. Further, DEO explains that nothing in the record demonstrates that customers who remain on SCO service have made an affirmative decision to do so. DEO also argues that no evidence shows that elimination of SCO service will result in higher prices for customers. DEO disputes OP&A's reliance on

Ms. Harper's calculation that, over a single 12-month period, prices were higher than the SCO for fixed-price bilateral contract and some MVR offers. DEO points out that the point of fixed-price contracts involves the payment of a premium in exchange for rate certainty. With the SCO, only the adder is fixed, so if the price spikes, customers will be subject to rate volatility under the SCO. Further, DEO points out that, if a customer is switched to a higher MVR, market protection exists, as that customer is free to switch to a lower priced supplier. Concluding, DEO relies on the testimony of Ms. Ringenbach, who stated that the auction has not brought low prices, it has been competitive suppliers participating in the auction that has kept prices low. (DEO Reply Br.-at 10-12.)

Joint movants also assert that education of customers will help alleviate any difficulty with the elimination of SCO service. OGMG and RESA point out that Staff witness Bossart testified that Staff believe educational materials should be provided to nonresidential customers to help them make fully-informed decisions about their natural gas supply. Staff explains that some nonresidential customers who currently receive SCO service may be unfamiliar with natural gas choice service, or the natural gas commodity market. Staff believes DEO should implement a comprehensive customer education program which would involve customers receiving at least two notices prior to the exit date becoming effective, with the last notice occurring at least 60 days prior to the exit date. Staff witness Bossart, specifically articulates the following elements that should be included in DEO's notice to customers: the process of customer assignment; information regarding the MVR; the fact that an assigned customer may switch at any time; the timeline for switching; a list of current CRNGS providers operating in DEO's territory; and information stating that current contracts and a customer's relationship with DEO will not be affected by this change. Staff also opines that DEO's education programs should be funded through its customer education fund established in 05-474. DEO accepts Ms. Bossart's recommendations in its reply comments. (OGMG/RESA Br. at 6-7; Staff Ex. 1 at 3-6; Staff Br. at 3; DEO Ex. 4 at 1.)

Staff also testified that it believes MVR suppliers who receive new customers should be required to provide certain customer information, to inform customers as to how the MVR is determined and that a customer may switch from an MVR supplier at any time. (Staff Ex. 2 at 5; Staff Br. at 5-6.)

Considering the second criterion, the Commission finds that the second criterion has been met. In particular, the Commission finds that the Stipulation provides for 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. Moreover, the Commission believes that the

Stipulation allowing DEO to exit the merchant function for nonresidential customers will encourage innovation, both in how services are provided and in the variety of available products. The Commission further believes that customers will be protected by the market during this transition. Once a customer is switched to an MVR, that customer is immediately free to: switch to a different CRNGS provider, enter into a different rate plan with the same supplier, or participate in opt-out government aggregation, without any type of termination fee. With respect to customer education, DEO has already accepted Staff's recommendations for a comprehensive customer education program, which will commence well in advance of the actual transition. The Commission believes that, with appropriate information and education, customers will be able to make informed decisions when SCO service is discontinued. Further, the Commission directs DEO to meet with Staff to assure coordination of customer education efforts. In addition to the requirements set forth in the Stipulation, the Commission finds that DEO must reach out to small businesses and entities representing small businesses in its service territory, in order to engage them in the stakeholder group and discussions regarding the educational obligations. Accordingly, with the above directives, the Commission finds that the Stipulation, as a package, benefit ratepayers and the public interest.

- (3) Does the settlement package violate any important regulatory principle or practice?

With respect to the third prong, both DEO witness Murphy and OCC witness Hayes opine that the Stipulation does not violate any important regulatory principle or practice and note that the Commission retains authority to modify or abrogate exemption orders to the extent a nonresidential exit may be found to pose any problems. (DEO Ex. 1 at 10; OCC Ex. 2 at 9-10.) Mr. Murphy explains that the settlement benefits customers because it directly furthers several provisions of state policy, while taking a careful, incremental step affecting only a subset of nonresidential customers to explore whether and how a full exit from the merchant function may benefit all customers. Moreover, OGMG and RESA assert that the state policy objectives set forth in Section 4929.02(A)(4), (5), (6), and (7), Revised Code, are furthered by the Stipulation, and DEO's exit for nonresidential customers.

In making their argument that the Stipulation furthers state policy, OGMG and RESA rely on the testimony of DEO witness Murphy, who explains that discontinuing SCO service will directly increase the entrance of customers into the commodity market, spurring market entry by new CRNGS providers, additional competition, and the development of the natural gas supply market. Additionally, DEO witness Murphy opines that SCO service was only serving to hinder the market, and discontinuing SCO service will encourage customers to enter into direct retail relationships with CRNGS providers. (DEO Ex. 1 at 6-7, 10; OGMG/RESA Br. at 6-7; Staff Ex. 1 at 3.)

OPAE responds that joint movants focus on state policy only inasmuch as they can benefit from it. OPAE relies on OCC witness Hayes's testimony that, although joint movants attribute customers remaining on the SCO to inertia, customers may still be taking SCO service because it offers the best price. Moreover, OPAE points to Mr. Hayes' testimony that in the only state where a natural gas company has exited the merchant function, customers consistently pay a price that is higher than the national average. (OPAE Br. at 28-29; OCC Ex. 2 at 5, 15-16, 23.)

In reply, OGMG and RESA assert that joint movants have properly interpreted state policy, and argue that OPAE's argument that joint movants only interpret state policy in their own self-interest has no record support. OGMG/RESA point out that, OPAE witness Harper admits that, for a recent month, there were two variable plans available to consumers in DEO's territory that had lower rates than the SCO rate. Ms. Harper further concedes that, without an SCO rate, there would be nothing to prevent CRNGS providers from making offers below an SCO floor. (OGMG Reply Br. at 14.)

Accordingly, the Commission finds that there is no evidence that the Stipulation violates any important regulatory principle or practice. Instead, the Commission believes the Stipulation furthers state policy by increasing customers access to competitively provided products and services and by increasing the diversity of products available to customers. Therefore, we find the Stipulation meets the third criterion.

#### CONCLUSION:

Upon consideration of the joint motion to modify and the arguments made by the parties, the Commission finds that joint movants have demonstrated that, in accordance with Section 4929.08(A), Revised Code, the 07-1224 order should be modified. Joint movants have shown that certain findings from the 07-1224 order are no longer valid and, absent modification to that order, DEO, the suppliers, and, ultimately, the customers could be adversely affected. Moreover, joint movants have corroborated that the public interest objectives set forth in Section 4929.02, Revised Code, will be advanced by modifying the exemption orders. Accordingly, the Commission concludes that the joint motion to modify should be granted.

Having found that the 07-1224 order should be modified, the Commission will now turn its consideration to how the order should be modified and the Stipulation in this case. Overall, the Commission finds that the Stipulation entered into by the parties is reasonable, in the public interest, and should be adopted. However, the Commission wishes to clarify that nothing precludes us from reestablishing the SCO



or other pricing mechanism, if we determine that DEO's exit is unjust or unreasonable for any customer class. As provided for in Section 4929.08, Revised Code, the Commission is permitted to abrogate or modify the exemption provided for in this order within eight years after the effective date of this order, without DEO's consent.

Moreover, the Commission believes that allowing DEO to exit the merchant function for nonresidential customers provides the Commission with an excellent opportunity to study the consequences of the exit. To determine the consequences of DEO exiting the merchant function, OGMG/RESA witness Ringenbach recommends that parties consider whether new and varied products are offered after the SCO is discontinued. Moreover, if new and varied products are not produced, OGMG/RESA encourage the consideration of whether additional barriers exist to hinder the development of new products. Ms. Ringenbach also recommends that parties study whether the switch to the MVR causes an increased number of calls to the Commission's call center, and whether suppliers have increased their investment in, and commitment to, the local community as a result of the discontinuation of the SCO. In addition, Staff, believes the following information should be provided to the Commission to facilitate the Commission's analysis of DEO's exit for nonresidential customers: a record of the number of suppliers participating in DEO's territory over the next three years; a record of the number and type of various supplier offers of new products and services; a record of customer participation levels in new supplier products and service offerings; an analysis of any increased investment in Ohio by suppliers that was caused by DEO's exit; and, specific customer billing determinants. OCC witness Hayes recommends the Commission require a study to consider the following: the success or failure of the exit to provide customers with reasonably priced natural gas services; the benefit of the exit for customers; and customer attitudes toward the transition. (OGMG/RESA Br. at 9; OGMG/RESA Ex. 2 at 6-7; OCC Ex. 2; OCC Br. at 10.)

The Commission believes that a maximum amount of information should be provided regarding the impact of DEO's exit. Accordingly, we direct DEO to provide to Staff, OCC, and any other interested party the information recommended by Staff, OCC, and OGMG and RESA, so that all parties can become better informed regarding the effect of DEO's exit on competition and customers. Moreover, DEO should meet with Staff and other interested stakeholders, within 45 days of the date of this order, and determine what data should be analyzed, and how it should be provided, including any data Staff determines is necessary to adequately provide information to assist the Commission in determining future actions pertaining to natural gas competition. DEO and suppliers shall collect the information that Staff determines is necessary and provide such information to Staff. Staff shall take appropriate actions to protect information that is marked as confidential.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) DEO is a natural gas company as defined in Section 4905.03(5), Revised Code, and a public utility under Section 4905.02, Revised Code.
- (2) On June 15, 2012, DEO and OGMG filed a joint motion to modify the order issued in 07-1224, pursuant to Section 4929.08, Revised Code.
- (3) On June 15, 2012, a Stipulation was filed in this proceeding signed by DEO, OCC, and OGMG.
- (4) By entry issued on July 27, 2012, a procedural schedule was set for this matter and DEO was directed to publish notice in a newspaper of general circulation in each county of the company's service area.
- (5) DEO filed proof of publication on October 9, 2012.
- (6) Motions to intervene filed by OPAC, OCC, and RESA were granted.
- (7) The hearing was held on October 16-17, 2012.
- (8) Section 4929.08, Revised Code, and Rule 4901:1-19-12, O.A.C., provide that, upon motion, and after notice and hearing, the Commission may modify any order granting an exemption pursuant to Section 4929.04, Revised Code.
- (9) Joint movants have demonstrated that the joint motion to modify the 07-1224 order should be granted.
- (10) The Stipulation submitted by the signatory parties comports with Section 4929.08, Revised Code, and Rule 4901:1-19-12, O.A.C., meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

ORDER:

It is, therefore,

ORDERED, That the joint motion to modify be granted. It is, further,

ORDERED, That the Stipulation be adopted and approved. It is, further,

ORDERED, That DEO to provide to Staff, OCC, and any other interested party the information recommended by Staff, OCC, and OGMG and RESA. It is, further,

ORDERED, That the parties adhere to the directives set forth herein. It is, further,

ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

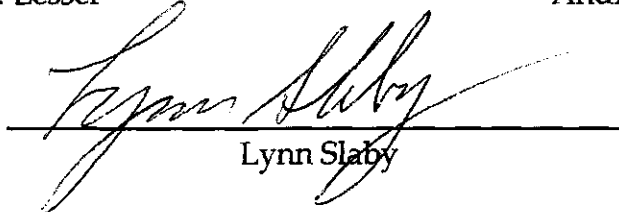
ORDERED, That a copy of this opinion and order be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
Todd A. Snitchler, Chairman

  
Steven D. Lesser

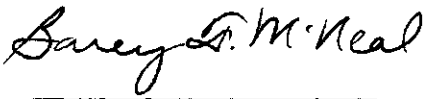
  
Andre T. Porter

  
Lynn Slaby

KLS/sc

Entered in the Journal

**JAN 09 2013**

  
Barcy F. McNeal

Barcy F. McNeal  
Secretary