BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OHIO PARTNERS FOR AFFORDABLE ENERGY'S APPLICATION FOR REHEARING

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OHIO PARTNERS FOR AFFORDABLE ENERGY'S APPLICATION FOR REHEARING

Ohio Partners for Affordable Energy ("OPAE") applies for rehearing of the January 9, 2013 Opinion and Order ("2013 Order") issued by the Public Utilities Commission of Ohio ("Commission") in the above-captioned docket, which is a joint motion of The East Ohio Gas Company d/b/a Dominion East Ohio ("Dominion") and the Ohio Gas Marketers Group ("OGMG") to modify the June 18, 2008 Opinion and Order in Case No. 07-1224-GA-EXM ("2008 Exemption Order"). The joint motion, filed on June 15, 2012, requested a modification of the Commission's 2008 Exemption Order in order to allow Dominion, beginning in April 2013, to discontinue the availability of standard choice offer ("SCO") service to choice-eligible non-residential customers. Joint Motion at 1. Attached to the joint motion was a joint exhibit, which was a stipulation and recommendation that asked the Commission to issue an order approving the joint motion. Joint Exhibit 1 at 2. The Commission's 2013 Order granted the joint motion and adopted and approved the stipulation attached to the joint motion.

Pursuant to Revised Code Section 4903.10 and Ohio Adm. Code Rule 4901-1-35, the Commission's 2013 Order is unjust, unreasonable, and unlawful in the following regards:

1. The Commission unlawfully disregarded the statutory requirements set forth at Revised Code Section 4929.08(A) for a modification of an exemption order. The Commission unlawfully, unreasonably and erroneously found that the 2008 Exemption Order was invalid because "phase two no longer provides any potential for further exploration of the benefits of market-based pricing for natural gas services." The 2008 Exemption Order did not find that phase two provides potential for further exploration of the benefits of market-based pricing for natural gas services; therefore, the 2008 Exemption Order cannot be invalid based on this finding invented by the Commission in its 2013 Order. 2013 Order at 8, 16.

2. In violation of Ohio Revised Code Sections 4929.08(A) and 4903.09, the Commission unlawfully and unreasonably found that the joint movants had demonstrated in accordance with Revised Code Section 4929.08(A) that certain findings of the 2008 Exemption Order are no longer valid. 2013 Order at 16. In addition to violating the law, the evidentiary record does not support a finding that the 2008 Exemption Order is now invalid.

3. In violation of Ohio Revised Code 4903.09 and 4929.08(A), the Commission unlawfully and unreasonably found that absent modification to the 2008 Exemption Order, "DEO, the suppliers, and, ultimately, the customers could be adversely affected" and that the continuation of SCO service is "adversely affecting DEO and is negatively affecting all Ohioans by hindering the development of a fully-competitive marketplace." 2013 Order at 16, 8. The Commission made these statements without any evidence of record to support them.

4. In violation of Ohio Revised Code 4903.09 and 4929.08(A), the Commission unlawfully found that the joint movants had corroborated that the public interest objectives set forth in Section 4929.02, Revised Code, will be advanced by modifying the 2008 Exemption Order. 2013 Order at 16. The record supports a finding that the public interest will be thwarted by the joint motion and does not support the Commission finding that the public interest will be advanced.

5. The Commission unreasonably and unlawfully found that the stipulation and recommendation filed with the joint motion as Joint Exhibit 1 resolved the contested issues in this contested proceeding. The stipulation did not address the contested issues in this case.

The reasons for granting this application for rehearing are set forth in the attached Memorandum in Support. Consistent with Revised Code Section 4903.10 and OPAE's claims of error, the Commission should grant rehearing.

Respectfully submitted,

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OHIO PARTNERS FOR AFFORDABLE ENERGY'S MEMORANDUM IN SUPPORT OF THE APPLICATION FOR REHEARING

I. Introduction

Ohio Partners for Affordable Energy ("OPAE") submits to the Public Utilities Commission of Ohio ("Commission") this memorandum in support of OPAE's application for rehearing in the above-captioned docket, which is a joint motion of The East Ohio Gas Company d/b/a Dominion East Ohio ("Dominion") and the Ohio Gas Marketers Group ("OGMG") to modify the June 18, 2008 Opinion and Order in Case No. 07-1224-GA-EXM ("2008 Exemption Order"). The joint motion filed on June 15, 2012 requested a modification of the Commission's 2008 Exemption Order in order to allow Dominion, beginning in April 2013, to discontinue the availability of standard choice offer ("SCO") service to choice-eligible non-residential customers. Joint Motion at 1. The Commission granted the joint motion and approved the stipulation and recommendation attached to the joint motion as Joint Exhibit 1 in its Opinion and Order issued January 9, 2013.

II. Argument

A. The Commission unlawfully disregarded the statutory requirements set forth at Revised Code Section 4929.08(A) for a modification of an exemption order. The Commission unlawfully, unreasonably and erroneously found that the 2008 Exemption Order was invalid because "phase two no longer provides any potential for further exploration of the benefits of market-based pricing for natural gas services." The 2008 Exemption Order did not find that phase two provides potential for further exploration of the benefits of market-based pricing for natural gas services; therefore, the 2008 Exemption Order cannot be invalid based on this finding invented by the Commission in its 2013 Order. 2013 Order at 8, 16.

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 but only under certain conditions. The statute requires that the exemption order may be modified only if 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." Ohio Revised Code Section 4929.08(A).

The Commission claims that the 2008 Exemption Order is no longer valid because "phase two no longer provides any potential for further exploration of the benefits of market-based pricing for natural gas services." 2013 Order at 8. The Commission has unlawfully re-written the 2008 Exemption Order to justify the modification. The Commission ignores the requirements of Revised Code Section 4929.08(A) for requesting a modification to an exemption order. The statute requires that there be a prior Commission finding that is no longer valid. Because the Commission did not make the finding in the 2008 Exemption Order upon which the Commission now bases its modification, the criteria for requesting a modification to an exemption order at Revised Code Section 4929.08(A) have not been met. Under the statute, the Commission may not modify the 2008 Exemption Order. Therefore the joint motion to modify should have been denied.

What the Commission actually found in the 2008 Exemption Order is 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." 2008 Exemption Order at 20. This actual finding in the 2008 Exemption Order is absolutely not the same finding as the 2013 order claims, i.e., that phase two provides "potential for further exploration of the benefits of market-based pricing for natural gas services." The 2013 Commission has deliberately mischaracterized the 2008 finding in the 2008 Exemption Order by referring simply to "market-based pricing for natural gas service" and deleting from the actual 2008 finding "market-based pricing of commodity sales by the company". This is not an honest mistake. This is the crux of the issue in the 2013 Order.

The 2008 Exemption Order approved Dominion's Phase 2 under which Dominion would hold an auction to set a market price for Dominion's standard choice offer ("SCO") service. The 2008 Exemption Order found that Phase 2, with its SCO market-based offer determined by an auction held by the company, represents a reasonable structure through which to further the potential benefits of **market-based pricing of the commodity sales by the company**. That is what Phase 2 is. Phase 2 gives customers the option to take the market-based price determined by an auction held by the utility company, i.e., SCO service. At the company-held auction, suppliers bid for a portion of the SCO customers' commodity service.

Phase 2 is not Phase 3, under which Dominion has no role to play in offering market-based pricing of commodity sales. The 2008 Exemption Order approved Phase 2 and stated that Phase 2 represents a reasonable structure through which to further the potential benefits of market-based pricing of commodity sales by the company. Phase 2 is the SCO, a market-based pricing offer determined through an auction managed by the natural gas utility. The 2013 Commission is now trying to bring about Phase 3, in which the company conducts no auction and offers no market-based pricing of commodity sales. The 2013 Order does not comport with the statute for a modification of an existing exemption order. The Commission has not found that any finding in the 2008 Exemption Order is now invalid. The Commission has mischaracterized the 2008 Exemption Order as if Phase 3 were supposed to be accomplished under the 2008 Order. In fact, Phase 3 was not to be accomplished under the 2008 Exemption Order. Nothing in the 2008 Exemption Order anticipates or contemplates Phase 3 in which the company has no role in offering an SCO.

The 2013 Commission ignored the actual findings in the 2008 Exemption Order that demonstrate that Phase 3 would not be accomplished under the 2008 Exemption Order. Nowhere in the 2013 Order did the Commission discuss its actual findings in the 2008 Exemption Order that Dominion would need to file a separate application to move from Phase 2, the SCO service, to Phase 3, the exit of the merchant function. The 2008 Exemption Order approved a Stipulation and Recommendation that is described at 15 of the 2008 Exemption Order:

> (5) DEO must seek, through a separate application in the future, Commission approval before moving from the SCO commodity service market to a market in which choice-eligible customers will be required to enter into a direct retail relationship with a supplier or governmental aggregator to receive commodity service, i.e., full commodity service market.
>
> (6) If DEO does not obtain Commission approval to move to a full choice commodity service market upon the expiration of the second term of the SCO service, March 31, 2011, another SCO service auction will be held for a subsequent annual period, and so on thereafter.

2008 Exemption Order at 15. If Dominion did not obtain Commission approval to move to a full choice commodity service, i.e., exit the merchant function, i.e., Phase 3, upon the expiration of the second term of the SCO service, which was March 31, 2011, another SCO service auction would be held for a subsequent annual period, and so thereafter. Dominion did not obtain such approval by March 31, 2011; therefore the SCO service auctions continue. This actual finding of the Commission in the 2008 Exemption Order is also not invalid, and the 2013 Commission did not find it invalid. It cannot be modified pursuant to Revised Code Section 4929.08(A).

As the 2008 Exemption Order states, the Commission would have entertained an application for an exemption under Revised Code Section 4929.04 for an exit of the merchant function. Dominion was free to file such an application. But in 2011, when the application should have been filed, a grant of such an application was by no means a certainty. Dominion did not follow the

2008 Exemption Order and file a separate application in 2011 for Phase 3 to exit the merchant function. Dominion's July 13, 2012 Memorandum Contra OPAE's Motion to Dismiss included an Attachment A, which, at Page 3 of 4, are e-mails sent by Dominion to "stakeholders." Dominion Ex. 4, Dominion Reply Comments (September 13, 2012) at 2. Dominion states in its April 21, 2012 e-mail to the "stakeholders" that it wants to identify alternatives for the future direction of Dominion's choice program and SCO structure, but that the "stakeholder group should be mindful of Staff's comment that there is a high hurdle to obtaining Commission approval of a full merchant function exit at this time. If we are to make any changes, those changes will need to continue the methodical process that has served us well in the past and place customer needs at the forefront."

Thus, rather than file a separate application for "full choice commodity service" as the 2008 Exemption Order requires, Dominion filed the joint motion with OGMG to modify the 2008 Exemption Order so that non-residential customers would be subject to full choice commodity service (i.e., denied SCO service) without Dominion filing the separate application contemplated by the 2008 Exemption Order. The strategic decision to use Revised Code 4929.08(A) to modify the 2008 Exemption Order so that non-residential customers would be denied SCO service is the methodical process that served Dominion well in the past. Agreeing that residential customers would not lose SCO service places residential customer needs at the forefront.

The problem is that the joint motion does not comport with Ohio Revised Code Section 4929.08(A). The joint motion to modify the June 18, 2008 Exemption Order should have been dismissed as a matter of law. The criteria at Revised Code Section 4929.08(A) were not met because no actual findings of the Commission in the 2008 Exemption Order were shown to be invalid so as to justify a modification. Findings that were never made cannot magically become invalid. The joint motion is an effort by Dominion and OGMG, now approved by the Commission, to rewrite the Commission's 2008 Exemption Order as if the 2008 Exemption Order were to accomplish an exit of the market function and somehow failed to do so. In reality, the 2008 Exemption Order approved Dominion's Phase 2, the SCO option, and ordered that SCO auctions continue until Dominion files a separate application for an exit of the merchant function, which Dominion never did.

At this time, the Commission has just adopted new administrative 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, Finding and Order (December 12, 2012). The joint motion to modify the 2008 Exemption Order not only disregards Revised Code Section 4929.08(A), it also disregards the new administrative rules that set up a process for an application by a public utility to exit the merchant function.

The joint motion avoids the requirements of Revised Code Section 4929.04 for a new exemption, the requirements of Revised Code Section

4929.08(A) for a modification to an existing exemption, and the new rules for the filing by a utility of an application to exit the merchant function. Dominion intends to avoid having to comply with the statutes and the new administrative code rules. This is unlawful and must not be allowed.

B. In violation of Ohio Revised Code Sections 4903.09 and 4929.08(A), the Commission unlawfully and unreasonably found that the joint movants had demonstrated in accordance with Revised Code Section 4929.08(A) that certain findings from the 2008 Exemption Order are no longer valid. 2013 Order at 16. In addition to violating the law, the evidentiary record does not support a finding that the 2008 Exemption Order is now invalid.

Ohio Revised Code Section 4903.09 states as follows:

> In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

Ohio law requires that, in contested cases, the Commission's written opinions setting forth the reasons for its decisions be based on the Commission's findings of fact. This is a contested case. Rather than write opinions setting forth the reasons for its decisions based on its findings of fact, the Commission re-wrote and mischaracterized the 2008 Exemption Order to arrive at its decision. There was no factual basis for the Commission to find that the 2008 Exemption Order is invalid because it did not accomplish Dominion's ostensible Phase 3, the exit of the merchant function. The 2008 Exemption Order was not made to accomplish Phase 3.

Dominion's witness Jeffrey A. Murphy attempted to turn the 2008 Exemption Order into an order that is invalid because an exit of the merchant function for non-residential customers has not been achieved. Mr. Murphy complained that the 2008 Exemption Order no longer represents a reasonable structure through which to "further the benefits of market-based pricing" because the SCO still exists. In his pre-filed testimony in this case, it was Mr. Murphy who first deleted the words from the Commission's 2008 Exemption Order "of the commodity sales by the company" so that the Commission's actual finding 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" became simply, "Phase 2 is no longer furthering the potential benefits of market-based pricing" that the Commission parroted in its 2013 Order. See Direct Testimony of Jeffrey A. Murphy at 5-6. Even if Mr. Murphy feels free to mischaracterize and re-write the 2008 Exemption Order, the Commission is not free to do so. The Commission must follow the law. Ohio Revised Code Section 4903.09.

OGMG's' witness Ringenbach, who works for the supplier Direct Energy, testified that the joint motion will be the completion of an exit of the merchant function for non-residential customers by removing them from retail auctions and requiring competitive suppliers to fulfill completely the default commodity role. OGMG Ex. 2 at 3. Tr. I at 161. Ms. Ringenbach stated that in June 2008, gas suppliers were "told by the chairman of the Commission at that time, "You will never get an exit on the gas side." Tr. I at 170. According to Ms. Ringenbach, that led to a lot of suppliers leaving the state because the business was not growing. Tr. I at 170. Suppliers reduced their presence in Ohio because they did not think that an exit was going to come. Tr. I at 172.

But now, in 2012, things are “very different” because Dominion is “entering into negotiations that would include an exit from the merchant function.” Tr. I at 170. “This gives certainty to suppliers to make an investment here and keep growing this market.” Id. Ms. Ringenbach testified that Direct Energy’s CEO “came here and talked to people and he got in the car with me and said: “You’re going to open an office and you’re going to staff it here because I believe in Ohio.” Tr. I at 173. Now instead of Ohio being “dead”, “Ohio is where it’s at.” Ms. Ringenbach testified that this will be the first approval by a Commission [in the country] to say “We’re willing to let it go and see what happens. That’s what this settlement is.” Id. Direct Energy is also an upstream producer “so deciding if we want to, you know, buy wells or invest in Utica or if we want to do something in New York or pay a premium with Marcellus, right, the difference is going to be in that market where we hold the largest amount of customers”. Tr. I at 175. But Direct does not want to feel that “the rug’s going to be pulled out from underneath them again.” Tr. I at 172. If the joint motion is granted and the state of Ohio forces Dominion’s non-residential customers to take commodity service directly from Direct, Ohio will be “where it’s at.”

The problem with the approach chosen by Dominion and OGMG to request a modification to the 2008 Exemption Order to achieve an exit of the merchant function is that there is a law in Ohio, Revised Code 4929.08(A) setting forth the criteria for a modification of an exemption order. The Commission must find that something in the 2008 Exemption Order is now invalid because an exit of the merchant function has not been achieved. Unlike Dominion and OGMG, the Commission cannot simply re-write and mischaracterize the 2008 Exemption Order. The Commission has no authority to take the same route as Dominion and OGMG; the Commission cannot violate or disregard Ohio law for modifications of exemption orders.

C. In violation of Ohio Revised Code 4903.09 and 4929.08(A), the Commission unlawfully and unreasonably found that absent modification to the 2008 Exemption Order, "DEO, the suppliers, and, ultimately, the customers could be adversely affected" and that the continuation of SCO service is "adversely affecting DEO and is negatively affecting all Ohioans by hindering the development of a fully-competitive marketplace." 2013 Order at 16, 8. The Commission made these statements without any evidence of record to support them.

Ohio Revised Code Section 4929.08(A) also provides that the Commission may modify any order granting an exemption "upon its own motion or upon the motion of any person adversely affected…." Neither Dominion nor the OGMG have shown pursuant to Ohio Revised Code Section 4929.08(A) that it is adversely affected by the 2008 Exemption Order. The primary reason for this is, of course, that the Commission did not make the findings that Dominion and OGMG cite in the joint motion. It is obvious that no one can be adversely affected by Commission findings that were never made.

The importance of an adversely affected party to an application for a modification is set forth both in the statute and the Ohio administrative code. In addition to Ohio Revised Code Section 4929.08(A), there is also an administrative code rule for modifications to exemption orders. Ohio Administrative Code Rule 4901:1-19-12 sets forth the filing requirements for 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.

From a mere glance at the joint motion, one would never know that there is an administrative code, let alone a rule for filings to modify exemption orders. The joint motion and the Commission in its 2013 Order completely disregard the Commission's rule. The joint motion provides no information upon which it bases its complaint that the findings of the 2008 Exemption Order are no longer valid. The joint motion is not even a complaint. There is no detail about the actual findings of the Commission in the 2008 Exemption Order that are no longer valid, about how the complainants are adversely affected by the actual Commission findings, about the code of conduct, about the corporate separation plan, or any of the other information that the rule requires. The rule is simply ignored.

Dominion is not adversely affected by the 2008 Exemption Order. Dominion is a public utility pursuant to Revised Code Section 4905.03(A)(5). Dominion, as a public utility, is not adversely affected by the continued SCO service. Dominion, as a public utility distribution company, is indifferent whether customers are served through the SCO or through bilateral contracts.

Likewise, OGMG is not adversely affected by the continued SCO service except to the extent that one of its members does not place a winning bid at the SCO auction or convince customers to take its commodity at a higher price than that provided by the SCO. Such failure is irrelevant and of no concern to the Commission. The Commission is charged with fostering competition that produces fair and reasonable prices, not maximizing marketers' profits. Ohio Revised Code Section 4929.02(A)(1).

Even though Dominion and OGMG are not adversely affected by the continuation of SCO service in any way that should interest the Commission, they complain about SCO service and apparently believe that the elimination of the SCO auction is the answer to their prayers. One of the complaints about the SCO voiced by Dominion and OGMG is that few customers are now leaving SCO service and choosing an individual supplier. Mr. Murphy complained that customers are not switching to bilateral contracts. Tr. I at 80. Mr. Murphy also complained that the auction at first spurred the competitive market, but "for the last two years that participation has been stable." Tr. I at 68. It has reached a plateau. Id. Mr. Murphy testified that initially there were 22,000 non-residential customers on the standard offer; that declined to 17,000 in the next auction, and in the last two auctions the number was around 14,000. Tr. I at 80.

OGMG's witness Parisi testified that the SCO retail price adjustment, i.e., the adder which is added to the New York Mercantile Exchange ("NYMEX") end of month close, has generally trended down. Tr. II at 217. He also testified that the declining rate of the adder in the auction, "is primarily an effect of the declining market in total, but we still are in a very volatile market." Tr. II at 218. Commodity prices have been as high as $16 in the last few years, dropped lower, and currently are trending slightly upward again. Id. However, contrary to Mr. Parisi, these are characteristics of a competitive market. Lower prices mean that the competitive market is working. As the Office of the Ohio Consumers' Counsel ("OCC") witness Hayes testified, there is limited upward pressure on natural gas prices due to the abundance of natural gas and the reduced industrial load. OCC Ex. 2 at 16.

The current economic and environmental conditions have contributed to less growth in natural gas commodity sales, fewer customers, declining prices, and possibly lower profits for Dominion and OGMG. However, to blame the current market conditions on the existence of the SCO service is as false as the joint motion itself.

Dominion and OGMG seek to eliminate the SCO competitive option for non-residential customers. The SCO is a market-priced offer derived by an auction held by the utility. OGMG wants to set the commodity itself without regard to an actual market-determined price benchmark, the SCO, to which customers can compare other offers. OGMG does not want a transparent, competitive market. OGMG wants private control of prices, but this is not in the public interest. And it is not the Commission's role to secure private profits for suppliers. The Commission has no responsibility to cater to private special interests at the expense of consumers and competitive-market options. The claims of adverse effects by OGMG cannot be taken seriously.

The Commission claims adverse effects to customers due to the continuance of SCO service. The joint motion itself made no such claims. The Commission's finding that "DEO, the suppliers, and, ultimately, the customers could be adversely affected" by the continuance of SCO service is irrelevant under the statute. 2013 Order at 16. There is no statutory provision for a modification of an exemption order because someone "could be adversely affected." The statute and the rule require that the complainant be adversely affected.

The Commission also claims that the continuation of SCO service is "adversely affecting DEO and is negatively affecting all Ohioans by hindering the development of a fully-competitive marketplace." 2013 Order at 8. There is no evidence of record regarding the continuance of SCO service "negatively affecting all Ohioans by hindering the development of a fully-competitive market." The Commission simply made this up. The only SCO service at issue in this case for which there is an evidentiary record is Dominion's. There is no evidence that all Ohioans even have SCO service. There is no evidence whatsoever that the continuance of SCO service in Dominion's service territory is "negatively affecting all Ohioans."

This is a contested case before an adjudicative body, the Public Utilities Commission of Ohio. This is not a political campaign where a lie told often enough somehow gains traction. By law, which the Commission must follow, the Commission's findings must be based on the evidence of record. Ohio Revised Code Section 4903.09. The Commission offers no citation to the record in making these ridiculous statements about all Ohioans being negatively affected by the continuation of SCO service. This Commission finding is clearly not in any way supported by the record evidence. The Commission is not free to make stuff up. Ohio Revised Code Section 4903.09

D. In violation of Ohio Revised Code Sections 4903.09 and 4929.08(A), the Commission unlawfully found that the joint movants had corroborated that the public interest objectives set forth in Section 4929.02, Revised Code, will be advanced by modifying the 2008 Exemption Order. 2013 Order at 16. The record supports a finding that the public interest will be thwarted by the joint motion and does not support the 2013 Commission finding that the public interest will be advanced.

Revised Code 4929.08(A) also requires that the modification to the exemption order be in the public interest. Ohio Revised Code Section 4903.09 requires that, in all contested cases heard by the Commission, the Commission shall make findings of fact and written opinions setting forth the reasons prompting the decisions arrived at based on the findings of fact.

The Commission's 2013 Order violates both Revised Code Sections 4903.09 and 4929.08(A). The Commission found 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. The Commission also found that allowing Dominion to exit the merchant function for non-residential customers will encourage innovation, both in how services are provided and in the variety of available products. 2013 Order at 14-15.

Contrary to the findings of the Commission in the 2013 Order, the "stipulation" filed in this case does not address and is in fact completely devoid of any provision regarding the public interest or the policy of the state of Ohio. The stipulation makes no reference at all to the public interest or the policy of the state of Ohio. The Commission apparently has not read the stipulation filed in this case. The Commission's findings with regard to the stipulation's compliance with the policy of the state of Ohio and the public interest are not based on anything contained in the stipulation.

The purpose of the stipulation in this case is to set a timeline for the elimination of SCO service for non-residential customers and a possible timeline for the process by which residential customers may no longer have SCO service. Non-residential customers will lose SCO service as of April 2013 without any further process at the Commission. Residential customers are protected from this outcome. Under the stipulation, Dominion may not file an application for an exit for residential customers until 2015 and then an application must be filed and a full process be conducted. The stipulation stands for the proposition that residential customers must be protected from the loss of SCO service and a utility's exit of the merchant function but non-residential customers need have no protection at all. The stipulation cannot possibly conform to the state's energy policy.

Ohio Revised Code Section 4929.08(A) requires that the modification to the exemption order be in the public interest. This is a statutory matter that is not resolved by the Commission's three-part test for the reasonableness of stipulations, especially when the stipulation is silent on any public interest considerations. The Commission's three-part test is irrelevant here. The **statute** requires that the public interest be addressed. That is the reason the public interest is relevant to this proceeding.

OPAE witness Stacia Harper described the competitive options now available to non-residential customers in Dominion's service area. First, there are price offers from suppliers, who offer customers direct bilateral contracts with variable or fixed rates, short or long terms, and various other features. OPAE Ex. 1 at 9. Second, customers may join a government aggregation if one is available to them. In a government aggregation, suppliers sell natural gas to aggregation customers with a bidding or auction process establishing the price. The third competitive option is the SCO. The SCO price is established through an auction held by the natural gas utility where the winning bidders receive the same price. Fourth is the market variable rate ("MVR") where Dominion maintains a list of suppliers who choose to post an MVR. The MVR is unique to each supplier, is set by each supplier, and has a price that is not determined by an auction. Id. at 11. Dominion's Murphy testified that he does not know how the suppliers' MVRs are set. Only individual suppliers know how their MVR is set. Tr. I at 16. While the MVR is capped at the lowest competitive monthly variable rate offer that the supplier has posted on the Commission's Apples to Apples chart, it is the suppliers that set their MVR price. Tr. I at 17.

The auction used to set the SCO is a competitive auction. At the close of Dominion's 2011 SCO auction, Chairman Todd A. Snitchler stated, "The auction process has again yielded positive results for Dominion East Ohio customers . . . [t]he market continues to provide a competitive commodity price for natural gas." See: http://www.puco.ohio.gov/puco/index.cfm/media-room/media-releases/puco-approves-results-of-dominion-natural-gas-supply-auctions/.

In this case, Dominion and OGMG sought to eliminate the SCO option for non-residential customers, and the Commission found the elimination of the SCO to be in the public interest. Non-residential customers will no longer have a price established through a competitive auction. Choice-eligible non-residential customers who have not chosen to enter into a bilateral contract with a supplier or are not served through a governmental aggregation will be assigned a supplier by Dominion through the MVR process at a variable rate determined by the supplier participating in the MVR process. This change will result in roughly 20% of all non-residential customers losing their current choice, the competitively determined SCO, by April 2013. OPAE Ex. 1 at 12.

Bilateral contracts are no substitute for the SCO with its price determined by a competitive auction and its terms and conditions transparent. Bilateral contract prices are higher than the SCO when compared over a twelve-month period to a 12-month average SCO price. Exhibit SH-4. Bilateral contracts simply cost more. Bilateral contracts also vary greatly as to terms and conditions, and there may be early termination fees as high as $150. OPAE Ex. 1 at 12. The terms of bilateral contracts are not generally known to the public or transparent in any way. Id. In addition, some suppliers may offer bilateral contracts at prices that are not on the Apples to Apples chart. Tr. I at 157. The only way a customer would know about such an offer is to call a supplier or visit a supplier's website to obtain the information. Tr. I at 157. The variable price offers from marketers almost always exceed the price offered through the SCO, in part because of the customer acquisition costs associated with supplier offers.

Tr. I at 143. Moreover, the SCO option, set by a competitive bid process, is generally lower priced than the marketers' MVRs. Ms. Harper testified that while there is occasionally an MVR price that is at or below the SCO price, the vast majority of MVR prices posted on the Commission's Apples to Apples chart are higher, often much higher, than the SCO price. OPAE Ex. 1 at 14; Exhibit SH-3. MVR prices are higher because they are not set by competitive forces.

The SCO provides a benchmark for natural gas prices, and, if there is an SCO, there is an incentive for suppliers to try to come close to the SCO price in order to win customers. Tr. I at 143. The SCO provides a benchmark that keeps the suppliers honest. Tr. I at 143.

In addition, the SCO price, unlike bilateral contract prices and MVRs, is transparent. Currently, it is the NYMEX close plus 60 cents, the adder determined at the auction. Tr. I at 132-133. A customer can easily know and understand the SCO price; however, a customer has no way to know how the MVR price is set. Tr. I at 157. The MVR is not always NYMEX priced, nor is any adder known. Tr. I at 157. The MVR is anything a marketer wants it to be, and there is no insight into how an MVR is set. Tr. I at 133. After Dominion assigns a non-residential customer to a marketer's MVR, the customer will not know his price for natural gas until he gets his first bill. Tr. I at 158.

Given the lack of transparency and the higher cost of bilateral contracts and the MVR, it is not surprising that customers leave bilateral contracts with suppliers to take the SCO service option. Tr. I at 37. OPAE Ex. 4. Customers leave bilateral contracts for the SCO even though customers must take the step to call Dominion to return to SCO service. In short, customers are willing buyers of the SCO service. Tr. I at 38.

In the 2009 to 2010 period, approximately 241,000 SCO customers were included in the Dominion auction. At the present, there are approximately 170,000 SCO customers. Of these, there are approximately 14,000 non-residential customers on the SCO service who will now lose the SCO option. Tr. I at 39. Mr. Murphy testified that many of the customers who were SCO customers at the outset of the SCO have simply remained SCO customers through the entire time. Tr. I at 38. Clearly, the SCO service is a choice that customers make, including non-residential customers. Tr. I at 39.

In addition to the SCO auction spurring price competition, the SCO eliminates the supplier’s customer acquisition costs, which is a significant barrier to entry into the competitive natural gas market of new suppliers. Id. at 15. The SCO is comparable to a government aggregation where suppliers are able to acquire customers without incurring significant acquisition costs. Customers without access to a government aggregation are able to obtain a similar competitive option through the SCO. Without the transparent SCO price set by an auction held by Dominion, there is a reduction in the efficiency of the competitive market. OPAE Ex. 1 at 15.

A review of state policy as articulated by Revised Code Section 4929.02(A) clearly states the preference of the General Assembly to promote all types of competition in order to: “[p]romote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods”.

Revised Code Section 4929.02(A)(1). The method selected to achieve this is to: “[p]romote 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”. Revised Code Section 4929.02(A)(2).

Bilateral contracts, government aggregations, and the SCO represent options that are consistent with the state’s policy because they provide customers with diverse competitive options. The fact that roughly 20% of Dominion non-residential customers have chosen the SCO makes clear that SCO service is in demand and is a desired competitive option. Revised Code 4929.02(A)(3).

The SCO is also an innovative approach to providing cost-effective natural gas services within the meaning of R.C. 4929.02(A)(4), which calls for the promotion of innovative supply options. To eliminate the SCO would eliminate consumers’ access to this innovative supply approach to competition, in contravention of R.C. 4929.02(A)(4). The SCO is not a vestige of traditional regulation; rather it is a manifestation of the Commission’s promotion of innovative supply options in such a way that competition is harnessed to provide customers with the lowest competitive market price. There is nothing innovative about eliminating the SCO option. Customers already have the choice of bilateral contracts with suppliers and variable rates with suppliers. Eliminating the SCO option adds nothing to the competitive choices available; in fact, competitive options will be reduced.

State policy also promotes “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”. Revised Code Section 4929.02(A)(7). The evidence of record is that Phase 2 has achieved effective competition. Dominion witness Murphy testified that effective competition has already been achieved. In his testimony in Case No. 07-1224-GA-EXM, Mr. Murphy testified that suppliers would be able to establish relationships with customers without incurring customer acquisition costs, such as sales and marketing expense. In the competitive market that includes the SCO, the savings in customer acquisition costs would be reflected in the suppliers’ bids and thus passed on to customers. Testimony of Jeffrey A. Murphy, Case No. 07-1224-GA-EXM at 4. He also testified that the promotion of direct contractual relationships between customers and suppliers would accrue regardless of the auction result. Id. at 6. As Mr. Murphy testified that, “If DEO’s natural gas commodity market is not competitive, it is difficult to imagine one that is.” Testimony of Jeffrey A. Murphy, Case No. 07-1224-GA-EXM at 10.

The state’s energy policy is not to force unwilling customers to choose a supplier and certainly not to allow a utility to choose a supplier for them. The promotion of competition requires an SCO option that gives consumers a price for natural gas commodity set by the competitive market and also the choice not to choose an individual marketer.

For the Joint Movants, the state's energy policy is not about competition, open markets, transparent prices, or consumers' choices; it is about eliminating competitive options that benefit consumers and forcing consumers into pricing options under which customers will pay more. The Joint Movants narrowly interpret state policy to benefit only themselves.

In a move contrary to the state's policy to promote reasonable prices, Dominion and OGMG advocate eliminating a competitive option that generally costs less than the alternatives. Dominion also does not care if it assigns customers, who have taken no action at all, to a supplier who will charge a higher price than their current competitive choice. Tr. I at 57. Mr. Murphy was also unconcerned if customers are paying a higher price if they select a fixed-price bilateral contract and pay a high price to address risks that they may see in a price that varies every month. Tr. I at 61. Mr. Murphy also believes that higher prices will lead customers to shop, whereas lower prices may not. Tr. I at 61. He is unconcerned if high exit fees effectively prohibit consumers from correcting a mistake or if high prices for natural gas impede a business from staying in business or hiring more employees.   Tr. I at 62.

Ms. Ringenbach conceded that Direct's fixed price bilateral contract would be higher than the SCO price. Tr. I at 176. As she testified, customers are going to say "I don't like this." Tr. I at 176. OGMG's witness Parisi, from the supplier IGS, would not agree that lower prices are good for consumers because he believes that "what's good for consumers, frankly, is to be engaged in the market." Tr. II at 217. He testified that IGS watches the market daily. Tr. II at

226. IGS is in the market daily, buying 365 days a year. IGS has a risk department that focuses on the forward market and tries to predict trends. Tr. II at 226.

Consumers generally cannot commit this level of attention to the natural gas market and will confront a considerable challenge to determine the contract that is right for them. It is clear that what benefits suppliers does not always benefit consumers. The state's energy policy does not put the interests of suppliers in higher prices and opaque contract offers ahead of the interests of consumers.

The Commission claims 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. 2013 Order at 14. The Commission also believes that the "stipulation" will encourage innovation in how services are provided. The Commission refers to the state's energy policy at Revised Code Sections 4929.02(A)(7) and (A)(4). But, the stipulation does not even mention the state's energy policy. The stipulation is irrelevant to the issue of whether the joint motion for modification of the 2008 Exemption Order conforms to Ohio law.

By agreeing to eliminate the SCO service for non-residential customers, the Commission's view of the state's energy policy limits competition and reduces supply options available to customers. The Commission refers to only two aspects of the state's energy policy while ignoring the other policies that the

Commission must consider. The Commission ignores the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods [Revised Code Section 4929.02(A)(1)], the provision of 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" [Revised Code Section 4929.02(A)(2)], and the provision of a diversity of options available to consumers to meet their respective needs" [Revised Code Section 4929.02(A)(3)]. The Commission also does not recognize the dishonesty of its finding that forcing customers to accept a supplier chosen by Dominion makes them "willing buyers" as required by Ohio law. Revised Code Section 4929.02(A)(7). 2013 Order at 14. Nor is it clear how eliminating the SCO service will reduce the need for competition when the Commission claims that it will monitor the effects of the elimination of SCO service on non-residential customers and also stand ready to reestablish SCO service for non-residential customers. 2013 Order at 16-17.

The Commission pays no attention to the entirety of the state's energy policy, the fact that the stipulation does not even address the state's policy, or that the outcome of this case is to eliminate competitive options rather than promote them. The Commission's finding with regard to the state's energy policy is not supported by the record in this case. The Commission should grant rehearing and conform its finding to the record.

E. The Commission unlawfully and unreasonably found that the stipulation and recommendation filed with the joint motion as Joint Exhibit 1 resolved the contested issues in this contested proceeding. The stipulation did not address the contested issues in this case.

After finding erroneously and unlawfully that the findings of the 2008 Exemption Order are now invalid and that all Ohioans are adversely affected by the continuation of Dominion's SCO service, the Commission goes on to discuss the stipulation and recommendation filed with the joint motion as Joint Exhibit 1. The Commission incorrectly finds that this stipulation referred to as Joint Exhibit 1 resolves the issues in this contested proceeding. The Commission describes contested positions on the stipulation that were never raised. Opinion and Order at 12.

In fact, the stipulation is not relevant to any contested position on the joint motion to modify the 2008 Exemption Order because the stipulation is completely irrelevant to the contested proceeding. OPAE's position is that the joint motion should be dismissed because it is unlawful. The stipulation attached to the joint motion is irrelevant to OPAE's argument that the joint motion should be dismissed.

The stipulation referred to as Joint Exhibit 1 basically concerns the **timing** of the elimination of SCO service for non-residential customers and isolates residential customers from the timing to which non-residential customers are subjected. There are three signatory parties to this stipulation and recommendation, Dominion, OGMG, and the Office of the Ohio Consumers' Counsel ("OCC"). The stipulation states that non-residential customers will lose SCO service as of April 1, 2013 with no further process before the Commission.

Joint Exhibit 1 at 2. Non-residential customers who have not chosen a supplier will be assigned a supplier by Dominion and will pay that supplier's posted market variable rate ("MVR") whatever it may be. Id.

The rest of the stipulation simply protects residential customers from the fate of non-residential customers. This is the sole purpose of the stipulation signed by OCC, the representative of residential customers. OCC witness Bruce Hayes stated that in the stipulation "Dominion has agreed not to seek an exit from the merchant function for residential customers prior to April 1, 2015." OCC Ex. 2 at 5. Mr. Hayes stated that the stipulation provides for "the opportunity for a hearing to challenge Dominion's application to Exit for residential customers." Id. He also stated that OCC takes no position on Dominion's non-residential exit. Id.

Mr. Hayes also emphasized that OCC did not sign the joint motion, which was signed only by Dominion and OGMG. The legal position set forth in the Memorandum in Support of the joint motion, which is what OPAE has challenged in this case, is Dominion's and OGMG's position only. OCC Ex. 2 at 12. In fact, Mr. Hayes testified that OCC agrees with OPAE's legal position on the joint motion. OCC does not concur with the joint movants' statement that the 2008 Exemption Order is based on findings that are no longer valid. OCC Ex. 2 at 13-14. As Mr. Hayes points out, and as OPAE has argued, the Commission made provisions in the 2008 Exemption Order for SCO service to be provided indefinitely unless and until such time as Dominion receives Commission approval to eliminate the competitive SCO option. Therefore, as Mr. Hayes testified, the joint motion's request for an exit for non-residential customers should not be characterized as an action to address a Commission expectation. OCC Ex. 2 at14. It should not, in other words, be considered an invalid finding in the 2008 Exemption Order.

Mr. Hayes also contested the idea that the elimination of the SCO for non-residential customers somehow will benefit non-residential customers. He testified that non-residential customers may be currently taking SCO service because SCO service "has consistently been better – meaning at a lower price – than the numerous comparable variable rate offers from Choice Marketers on the PUCO Apples to Apples chart." OCC Ex. 2 at 17. This is also OPAE's position. Mr. Hayes testified that it is possible that "these non-residential customers have made a choice, with that choice being to take the lower price SCO option." Id. at 18. In addition, Mr. Hayes testified that "with limited upward pressure on price due to the abundance of natural gas and the reduced industrial load, these customers may not see the value in paying a premium for a fixed rate contract to hedge against a risk that is not perceived as realistic or threatening." Id. OPAE agrees completely. What could make it more obvious that the stipulation is irrelevant to OPAE's contested position in this case but the fact that one of the signatory parties to the stipulation completely agrees with OPAE's contested position? The stipulation is irrelevant to this contested proceeding.

For the Commission to launch into its customary, but in this case irrelevant and meaningless, discussion of how the stipulation meets the Commission's three-part test for the reasonableness of stipulations is beyond belief. It is as if the Commission has no idea what the stipulation says. OPAE did not contest the joint motion in the context of anything set forth in the stipulation. The stipulation is irrelevant to the contested issues in this case, which are all concerned with the legality of the joint motion and the evidence of record that proves that the joint motion is unlawful. The stipulation resolves no issue contesting the lawfulness of the joint motion and the Commission's approval of it.

The only issue that OPAE raised with respect to the stipulation is whether it is the product of serious bargaining. The Commission found that the stipulation is the product of serious bargaining among capable, knowledgeable parties. 2013 Order at 12. This is the first criterion for the Commission's evaluation of settlements. *Consumers Counsel*, 64 Ohio St.3d at 126. However, the Commission did not address OPAE's arguments on serious bargaining for the stipulation.

The Stipulation is not signed by any customer group that will be affected by the joint motion. The stipulation allows the Commission, Dominion, and OGMG to claim falsely that a customer group supports the desired outcome in this case, which is Dominion's exit of the merchant function for **non**-residential customers. No customer group supports this outcome. OPAE is representing the interests of its member anti-poverty agencies, which are non-residential customers. OPAE is the only party in this case representing the affected customers, Dominion's non-residential customers. And, OPAE did not negotiate nor agree to the stipulation.

OCC is only authorized to represent residential customers. The Stipulation signed by OCC and filed in this docket only refers to residential customers **to assure that they will not be affected by the joint motion, i.e., the desired modification to the 2008 Exemption Order, which eliminates the low-cost**

SCO service for non-residential customers. While OCC cannot be faulted for its understandable attempt to protect residential customers from the loss of SCO service and the bill increases that will result from Dominion's exit of the merchant function for residential customers, this does not make OCC a party of interest to the joint motion, which has no effect on residential customers at all. Under the joint motion, it is only non-residential customers who lose the SCO and are subjected to higher rates. OCC has negotiated to protect residential customers from the desired modification, but that does not make OCC a party of interest in a matter that only affects non-residential customers. It does, however, cast suspicions with respect to the validity of the joint motion because the stipulation protects residential customers from the joint motion and also because the joint motion allows for disparate treatment of residential and non-residential customers without any basis for this disparate treatment.

Given that OCC has no interest in the joint motion because it does not apply to residential customers, the stipulation signed by one party with no interest in the matter and two other parties (Dominion and OGMG) with identical interests is not the product of serious bargaining because no bargaining took place with respect to the joint motion. All the bargaining with OCC took place to assure that residential customers are not affected by the joint motion. This gives the Commission no basis to claim that the stipulation is the product of serious bargaining and to claim that it benefits ratepayers and the public interest. The only possible benefit to ratepayers and the public interest from the stipulation is that the stipulation protects residential customers from the joint motion.

The Commission, as a regulatory body with responsibility to the public, to the General Assembly, to the law, and to the evidentiary record in this case, cannot use this stipulation to claim that there is a reasonable settlement that meets the Commission's three-part test for the reasonableness of stipulations. OCC's signature on the stipulation simply means that OCC's clients, the residential customers, will not be affected by the joint motion. Dominion and the OGMG have the same interest, to eliminate SCO service for non-residential customers. The Commission must find that the stipulation signed by Dominion, the OGMG and OCC is not the product of serious bargaining among interested groups. A stipulation signed by one party with no interest in the matter (because it represents only residential customers) and by two other parties with identical interests, which are adverse to customers who have not signed the stipulation, is not the product of serious bargaining because no bargaining took place with respect to the joint motion.

The Commission should have been concerned that none of the stipulating parties represent customers who will be adversely impacted by the joint motion. The non-profit agencies that OPAE represents are the only non-residential customer group in this case. It is easy for the other parties to resolve their problems through an agreement that harms non-residential customers. For example, in the case of American Electric Power's ("AEP") standard service offer ("SSO") case, the Commission was belatedly forced to recognize that a stipulation resulted in "disproportionate rate impacts" for small commercial customers. The Commission stated:

> Due to the evidence that some commercial customers were going to receive significant total bill increases approaching 30%, we modified the shopping credits provision to provide additional relief to GS-2 customers in the form of an additional allocation of shopping credits to new shopping customers. However, the actual impacts suffered by a significant number of GS-2 customers appear to have vastly exceeded AEP-Ohio's representations at the hearing. Since we issued the Opinion and Order, numerous customers have filed, in the case record of this proceeding, actual bills containing total bill rate increases disproportionately higher than the 30 percent predicted by AEP-Ohio. The disproportionate rate impacts indicated by these bills undermine the evidence presented by the signatory parties [to the AEP Stipulation] that the MTR and LFP provide rate certainty and stability pursuant to Section 4928.143(B)(2)(d), Revised Code. We note that the parties seeking rehearing acknowledge that customers in the GS-2 class have received significant total bill rate increases and that it is appropriate to provide relief to these customers. However, the Commission is not persuaded that the actual total bill impacts inherent in the MTR and LFP can be cured by a phase-in of the LFP or an additional allocation of shopping credits as recommended by AEP-Ohio. We find that the Signatory Parties have not met their burden of proof of demonstrating that the MTR and LFP provisions meet the statutory requirement of Section 4928.143(B)(2)(d), Revised Code, to provide rate certainty and stability, and that the Signatory Parties have not demonstrated that the MTR and LFP benefit ratepayers and the public interest. Accordingly, pursuant to our three-part test for the consideration of stipulations, we must reject the Stipulation.

Entry on Rehearing, Case No. 11-346-EL-SSO, et al. (February 23, 2012) at 11.

This eventual rejection of the stipulation occurred, of course, after the Commission had previously approved it as meeting the three-part test but before the Commission realized the impact to small commercial customers, who had no part in the stipulation and no voice at the Commission. The Commission should remember this notable event, as it occurred less than a year ago. The parallels between this case and the AEP case are clear, except that OPAE, representing non-residential customers, has provided evidence in the record that the joint motion will raise rates for non-residential customers.

Similar to the approval of the stipulation as a settlement of issues raised in this case, the Commission also pretends that there is some value to studying the impact of the elimination of SCO service for non-residential customers. Dominion claimed that the stipulation creates a "measured opportunity to evaluate the effects of an exit of the merchant function." Dominion Brief at 11. OGMG claimed the stipulation will "explore whether and how a full exit from the merchant function may benefit all customers." OGMG Brief at 13. OCC is also looking for studies to see how an exit of the merchant function for non-residential customers will work. OCC Brief at 6-16. The Commission also claims that it can undo its orders if circumstances make it necessary. 2013 Order at 16-17.

This appeal of studies and possible rescission of the 2013 Order is all nonsense. There is no value in sacrificing non-residential customers for the purpose of conducting a study on how non-residential customers will be harmed by the elimination of SCO service. SCO service is a competitive option that non-residential customers will no longer be able to access. The Commission's decision eliminates a choice that non-residential customers currently have. It defies logic and common sense to pretend that eliminating a customer choice might somehow prove to be beneficial and that some study of this has any value.

The record established in this case makes clear that rates will increase for 14,000 non-residential customers who will lose SCO service. That analysis has been completed. There is nothing left to study. When Dominion exits the merchant function, customers pay higher rates. Marketers win and customers lose. There should be no elimination of the SCO service so that a rescission of the elimination of the SCO service is ever necessary.

IV. Conclusion

The Commission should grant rehearing of its January 9, 2013 Order. The criteria at Revised Code Section 4929.08(A) have not been met because the 2008 Commission did not make the findings in the June 18, 2008 Exemption Order that the 2013 Commission now claims the 2008 Commission made. Findings that were never made cannot magically become invalid and no party can be adversely affected by findings that were not made. It is not in the public interest for the 2013 Commission to ignore Ohio law or to deny, mischaracterize, or re-write the findings of the 2008 Commission. The Commission has no authority to violate or ignore Ohio law.

The requirements of Ohio Administrative Code Rule 4901:1-19-12, the Commission's rule for modifications to exemption orders, have been ignored. No complaint has been filed regarding the 2008 Exemption Order, nor has any of the information required by the rule been submitted.   Like the statute, the rule requires detailed information about the findings of the Commission in the 2008 Exemption Order that are now invalid. The joint motion refers to no findings actually made by the 2008 Commission. The record evidence leads to no other outcome than rehearing and a denial of the joint motion. The evidence demonstrates that the 2013 Commission is rewriting the 2008 Exemption Order as if it ordered an exit of the market function, Dominion's Phase 3. In reality, the 2008 Exemption Order approved only Dominion's Phase 2, the SCO option, and ordered that SCO auctions continue until Dominion filed a separate application for an exit of the merchant function. Dominion determined that an application to exit the merchant function would be a far harder course than to file a motion to modify an exemption order, especially if no one paid attention to the legal requirements for a modification. The Commission cannot be the handmaiden to a strategy based on disregarding Ohio law and the Commission's orders. Therefore, because the statutory requirements of Revised Code Section 4929.08(A) and the administrative requirements of Rule 4901:1-19-12 have not been met, the Commission has no authority to issue an order modifying the 2008 Exemption Order. Revised Code Section 4929.08(A).

The Commission's 2013 Order also violates the policy of the state of Ohio. Revised Code Section 4929.02(A). Eliminating SCO service and requiring non-residential customers to choose a supplier or have Dominion choose a supplier for them conflict with the policy of the state of Ohio. R. C. 4929.02(A). By eliminating the SCO service option, customers are deprived of the choice to take natural gas commodity service at a competitive market price determined through an auction held by the public utility, and they are deprived of the choice not to choose a particular supplier. Customers need the choice of the SCO service option. Some customers who have not chosen a supplier do not want to choose a supplier; others are shopping and choosing the lowest price – the SCO. The Ohio General Assembly has not sanctioned raising prices for consumers by eliminating competitive market options.

The evidence of record also demonstrates that the joint motion violates the policy of the state of Ohio. R. C. 4929.02(A). The state's policy is not a one-way street benefiting suppliers and harming consumers. The requested modification to eliminate the SCO service will raise prices choice-eligible non-residential customers pay, force those consumers to confront opaque and highly volatile markets without any benchmark to guide them, and take away a competitive choice that customers currently choose. The requested modification reduces competitive options. It is not consistent with the policy of the state of Ohio. The evidence demonstrates that the SCO conforms to the state's energy policy and must not be eliminated for non-residential customers.

Finally, the stipulation, which the Commission inexplicably emphasizes, has no relevance to the contested issues in this case. The purpose of the stipulation is to protect residential customers from the fate that the joint motion assigns to non-residential customers. Under the stipulation, residential customers will not lose SCO service in April 2013 as non-residential customers will, nor will residential customers lose SCO service without a Commission process as the non-residential customers will. Far from demonstrating the reasonableness of the joint motion and the exit of the merchant function for non-residential customers, the stipulation actually demonstrates how customers need protection, a lot of protection, from the elimination of SCO service. The Commission approved the stipulation protecting, at least temporarily, residential customers, but finds the stipulation is reasonable in its disparate treatment of non-residential customers who have no protection at all. The Commission has no concern for non-residential customers' loss of SCO service and process at all.

OPAE did not contest the joint motion in the context of anything set forth in the stipulation. The stipulation is irrelevant to OPAE's issues in this case, which are all concerned about the legality of the joint motion and the evidence of record which proves that the joint motion is unlawful. The stipulation resolves no issue raised by OPAE in contesting the lawfulness of the joint motion and the Commission's approval of it. However, the stipulation does support OPAE's position that customers must be protected from the loss of SCO service.

The Commission's 2013 Opinion and Order is unjust, unreasonable, and unlawful. Pursuant to Revised Code Section 4903.10, the Commission should grant rehearing and issue a lawful and reasonable Entry on Rehearing based on Ohio law and the evidence of record. The joint motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing and Memorandum in Support was served electronically upon the parties identified below in this case on this 25th day of January 2013.

/s/Colleen L. Mooney
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Summary: Application for Rehearing and Memorandum in Support electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy