BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OHIO PARTNERS FOR AFFORDABLE ENERGY'S
APPLICATION FOR REHEARING

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Ohio Partners for Affordable Energy ("OPAE") hereby applies to the Public Utilities Commission of Ohio ("Commission") for rehearing of the Commission's January 9, 2013 Opinion and Order ("2013 Order") in the matter of the Joint Motion to Modify the December 2, 2009 Opinion and Order ("2009 Order") and the September 7, 2011 Second Opinion and Order in Case No. 08-1344-GA-EXM. The matter was initiated by a joint motion and an accompanying stipulation and recommendation filed on October 4, 2012 by Columbia Gas of Ohio, Inc., ("Columbia"), the Staff of the Public Utilities Commission of Ohio, the Ohio Gas Marketers Group ("OGMG"), the Retail Energy Supply Association ("RESA"), and Dominion Retail, Inc., (together, "joint movants", the latter three together, "Marketers"). On November 27, 2012, the joint movants filed an amended joint motion and an amended stipulation and recommendation. The amended stipulation was also signed by the Office of the Ohio Consumers' Counsel ("OCC"). The Commission's 2013 Order granted the amended joint motion and adopted the amended stipulation.

Pursuant to Revised Code Section 4903.10 and Ohio Administrative 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.

2. The Commission unlawfully found that "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 joint movants, pursuant to Section 4929.08, Revised Code", but ignored the failure of the joint movants to file an "application" for modification of an exemption order that comports with the rule, Rule 4901:1-19-12, Ohio Administrative Code. 2013 Order at 10.

3. In violation of Ohio Revised Code Sections 4903.09 and 4929.08(A), the Commission unlawfully and unreasonably found that the evidence supports a finding that certain findings of the previous exemption orders are no longer valid and that the joint movants may be adversely affected if the modification is not made. 2013 Order at 10.

4. In violation of Ohio Revised Code Sections 4903.09 and 4929.08(A), the Commission unlawfully and unreasonably found that the joint movants had corroborated that the public interest objectives set forth in Revised Code Section 4929.02 will be advanced by modifying the exemption orders. 2013 Order at 11.

5. In violation of Ohio Revised Code Sections 4903.09 and 4929.08(A), the Commission unreasonably and unlawfully found that the stipulation and recommendation "comports with Section 4929.08, Revised Code, and Rule 4901:1-19-12, Ohio Administrative Code, (sic) meets the criteria used by the Commission to evaluate stipulations, is reasonable and should be adopted." 2013 Order at 47.

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") hereby submits to the Public Utilities Commission of Ohio ("Commission") this memorandum in support of OPAE's application for rehearing from the Commission's January 9, 2013 Opinion and Order ("2013 Order") in the matter of the Joint Motion to Modify the December 2, 2009 Opinion and Order ("2009 Order") and the September 7, 2011 Second Opinion and Order in Case No. 08-1344-GA-EXM. The joint motion and an accompanying stipulation and recommendation were filed on October 4, 2012 by Columbia Gas of Ohio, Inc., ("Columbia"), the Staff of the Commission, the Ohio Gas Marketers Group ("OGMG"), the Retail Energy Supply Association ("RESA"), and Dominion Retail, Inc., (all five together, "joint movants", the latter three together, "Marketers"). On November 27, 2012, the joint movants filed an amended joint motion and an amended stipulation and recommendation, which was also signed by the Office of the Ohio Consumers' Counsel ("OCC"). The Commission's 2013 Order granted the amended joint motion and adopted the amended stipulation.

II. Allegations of Error

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 disregarded the statutory requirements set forth at Revised Code ("R.C.") Section 4929.08(A) for a modification of an exemption order. The section 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**". R.C. Section 4929.08(A) [Emphasis added.].

While the Commission stated that the findings upon which the 2009 exemption order was based are no longer valid, the Commission made no citation or reference to the findings in the 2009 Order. From the 2013 Order, it is obvious that the Commission has not even looked at the 2009 Order, much less determined that its findings are now invalid. It is impossible to satisfy R.C. Section 4929.08(A) without referring to the findings of the order the motion requests to modify.

The amended joint motion also did not comply with R.C. Section 4929.08(A). None of the triggers for a modification of an exemption order set forth at R.C. Section 4929.08(A) were met. This is because the joint movants were not requesting a modification to an existing exemption order; they were requesting a new exemption through a new alternative regulation plan. The term of the 2009 Order expires on March 31, 2013.

The joint movants are requesting a new exemption order and a new term. The joint motion asks for a new term that will commence on April 1, 2013 and continue until March 31, 2018. A request for a new term requires a new application; it does not meet the requirements of R.C. Section 4929.08(A) to simply modify an existing exemption order. Ohio law provides for applications for alternative rate plans. The relevant statute is not R.C. Section 4929.08(A); it is R.C. Section 4929.04.

In the 2013 Order, the Commission states that OPAE went "to great lengths stating that the joint movants did not satisfy the requirements of Section 4929.04, Revised Code, however, unlike joint movants whom we find did provide record support for their amended joint motion, OPAE fails to provide citation to any support on the record for its broad assertions that there is no record to support the motion." 2013 Order at 13. Is the Commission serious? OPAE cannot "provide citation to any support on the record for its broad assertions that there is no record to support the motion". OPAE cannot be asked to provide support to the record when OPAE is asserting that there is no record.

The Commission deliberately confused OPAE's argument that this case should have been an application by Columbia under Section 4929.04, Revised Code, for a new exemption order. Of course the joint movants did not file the information required by Section 4929.04; that was OPAE's point. The joint movants did not file the information because they avoided requesting a new exemption by filing a motion for a modification of an existing exemption order. OPAE's point is that the joint motion under R.C. Section 4929.08(A) for a modification of an existing exemption order was improper when the joint movants were requesting a new term. The joint motion under R.C. Section 4929.08(A) should have been dismissed.

A filing under R.C. Section 4929.04 is the only lawful way for the joint movants to achieve a new term. This is not simply a matter of information to be filed as the Commission states; it is also a matter of process. There is no comparison between the information and process required for an application under R.C. Section 4929.04 and a complaint for modification under R.C. Section 4929.08(A). Ohio Administrative Code ("O.A.C.") Rule 4901:1-19-04, which is controlling when requesting a new exemption, like R.C. Section 4929.04, which is the underlying authority for the rule, requires a comprehensive filing which could not have been considered in the extremely accelerated time frame in which the Commission approved the amended joint motion. The Commission and the joint movants were in too much of a hurry to comply with the law. The Commission simply ignored the correct statute and the correct administrative code rule, which needed to be followed to legally achieve the desired ends.

The Commission and Columbia are not always in such a hurry. In another case, Columbia filed an application for a new alternative regulation plan under R.C. Section 4929.04, *In the Matter of the Application of Columbia Gas of Oho, Inc. for Approval of an Alternative Form of Regulation*, Case No. 11-5515-GA-ALT (May 8, 2012). Columbia submitted this application for approval of a second five-year accelerated pipeline replacement plan prior the current five-year period expiring. In Case No. 11-5515-GA-ALT, Columbia did not file to 'modify' the current order to get a new term. Id. Columbia correctly filed for a new term.

The Commission is a creature of statute and is not free to issue any orders it likes. The Commission must follow the laws passed by the Ohio General Assembly. The Commission should have dismissed the amended joint motion and required that a proper lawful filing for a new alternative rate plan be made under R. C. Section 4929.04 and the Commission's rule adopted pursuant to that statute.

The amended joint motion to modify the existing exemption orders did not meet the statutory criteria for modifications of exemption orders at R.C. Section 4929.08(A). There were no citations to invalid findings in the existing exemption orders. There are no allegations that any party has been harmed by the Commission's findings in the existing exemption orders. The joint movants simply wanted a new term. The Commission cannot disregard Ohio statutes and the Commission's findings in its orders. The amended joint motion to modify the orders granting the current exemption should have been denied. The Commission has no authority to violate Ohio law.

B. The Commission unlawfully found that "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 joint movants, pursuant to Section 4929.08, Revised Code", but ignored the failure of the joint movants to file an application for modification of an exemption order that comports with the rule, Rule 4901:1-19-12, Ohio Administrative Code. 2013 Order at 10.

The Commission found that there is a current rule that provides "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 joint movants, pursuant to Section 4929.08, Revised Code." However, the Commission does not appear to be familiar with the 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 as follows:

> Abrogation or modification of an order granting an exemption.
>
> (A) A complainant shall provide at a minimum the following information with its application to modify or abrogate an order granting an exemption.
>
> (1) A detailed description of the exact nature of the violation.
>
> (a) Which portion(s) of the separation plan the applicant has failed to comply with and how the applicant has failed to comply.
>
> (b) Which portion(s) of the code of conduct the applicant has failed to comply with and how the applicant has failed to comply.
>
> (c) How the complainant has been adversely affected by such exemption.
>
> (d) Which findings of the order granting the exemption are no longer valid and why.
>
> (e) How the modification or abrogation of the order granting the exemption is in the public interest.
>
> (2) Supporting documentation for the complainant's allegation.
>
> (3) The form of remedy requested.
>
> (B) Such complaint shall be designated by the commission's docketing division using the acronym CSS.
>
> (C) The docketing division of the commission shall serve the complaint upon the parties of record for the original exemption case which is the subject of the motion to modify or abrogate.
>
> (D) The commission shall order such procedures as it deems necessary, consistent with these rules, in its consideration for modifying or abrogating an order granting an exemption.

Ohio Administrative Code Rule 4901:1-19-12.

The Commission adopted this rule setting the requirements for a complaint to modify an exemption order. While the Commission recognizes that there is a rule that provides “the necessary direction as to what an applicant must include in an application for modification of an exemption order”, the Commission does not appear to be familiar with the rule and simply ignores its requirements. The amended joint motion is not a complaint as the rule requires it to be. There is no complaint that the findings of the existing exemption orders are no longer valid. There is no detail about which findings of the existing exemption orders are now invalid, about the code of conduct, or the corporate separation plan. There is not even information about how the existing exemption orders adversely affect the complainant. The Commission simply ignores the rule and its requirements.

The Commission allows a request for a new alternative regulation plan to pass as a request for a modification of an existing exemption order. The requirements for a new exemption under R.C. Section 4929.04 are rigorous. Under the Commission’s 2013 Order, the requirements for a modification of an existing order under R.C. Section 4929.08(A) are basically a joke. The Commission makes a perfunctory and irrelevant finding that the existing order is invalid because times have changed and new things have happened since the existing order was made over three years ago. The Commission does not refer to the 2009 Order and its findings and how the findings underlying it are now invalid. This violates the law.

C. In violation of Ohio Revised Code Sections 4929.08(A) and 4903.09, the Commission unlawfully and unreasonably found that the evidence supports a finding that certain findings of the previous exemption orders are no longer valid and that the joint movants may be adversely affected if the modification is not made. 2013 Order at 10.

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 record 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 the Commission's written opinion setting forth the reasons for its decisions be based on the Commission's findings of fact.

The Commission found that "changes from the 2009 stipulation", "changes to the program outline", and a request for an "exemption to modify the exemption orders for another five-year period" met the requirements of R. C. Section 4929.08(A) for a modification of an exemption order. 2013 Order at 10. The Commission found that "the record reflects that the assumptions used to support the exemption orders are no longer valid and that joint movants may be adversely affected if modifications are not made". 2013 Order at 10, 11.

There was, in fact, no evidence presented that any finding upon which the existing exemption orders were based was invalid. The Commission found "changes from the 2009 stipulation", "changes to the program outline" and a request for an "exemption to modify the exemption orders for another five-year period". 2013 Order at 10. These findings have no relevance to the requirements of R.C. Section 4929.08(A) because they point to no invalid finding in the existing exemption orders.

The existing exemption order established a three-year term ending March 31, 2013. The motion for modification requests a new term. But the issue in a modification complaint is whether the existing exemption order is based on Commission findings that are now invalid and adverse to the complainants. The findings of the existing orders are not invalid because the term of the existing order will expire on March 31, 2013. The term was supposed to expire on March 31, 2013. The request for a new term is proof that the Commission's finding in the 2009 Order for a three-year term remains valid. Columbia's desire for a new five-year exemption order does not render the current three-year term authorized by the 2009 Order invalid. The finding in the existing order is still completely valid.

The Commission also found that "the joint movants point to the advent of shale gas production In Ohio, the factual assumptions underlying Columbia's capacity contracts, Columbia's consideration of exiting the merchant function, and adherence to the policies enunciated in Section 4929.02, Revised Code." However, none of this supports the finding that the previous exemption orders are no longer valid and adversely affect the complainant. There are, of course, new circumstances since the 2009 exemption order was made. But this does not make the bases for the existing order's findings invalid. What did the existing order say about the advent of shale gas production in Ohio and its impact on Columbia's capacity contracts? The existing order said nothing about this. Because there were no findings about the advent of shale gas production in Ohio and its impact on Columbia's capacity contracts, the existing order cannot be invalid based on the Commission's 2009 findings. In addition, the amended stipulation does nothing that relates to shale gas other than lock in existing contracts with a Columbia affiliate that bring gas from the Gulf Coast, not from the Utica or Marcellus plays.

As for Columbia's consideration of exiting the merchant function, there are no Commission findings in the existing exemption order that are now invalid as the result of Columbia's consideration. There were no findings made in the existing exemption order with respect to Columbia's exit of the merchant function for non-residential customers or the existence of SCO service for non-residential customers. Findings that were never made cannot be invalid.

The most critical issue addressed in this case, from OPAE's perspective, is Columbia's exit from the merchant function for non-residential customers. The exit means that Columbia's non-residential customers no longer have the option of buying natural gas from a utility-provided default service, in this case, the standard choice offer ("SCO"). The SCO is a market-based rate set through an open auction process conducted by the utility. The SCO has been successful in providing customers with a low-priced option for natural gas. Without the SCO, non-residential customers will be required to take service directly from one of the Marketers who signed the Stipulation or other suppliers, even if non-residential customers prefer the SCO option. Because OPAE's members, who are commercial customers, are helping Ohioans cope with a long-term economic decline which has left many with inadequate food, housing, and health care, even a small increase in utility costs are harmful. Moreover, anti-poverty agencies such as OPAE members are not experts in natural gas markets, so forcing them into a marketplace controlled by suppliers who spend 365 days a year monitoring natural gas markets and setting prices in a manner that is not transparent is contrary to sound public policy.

There is no record evidence that any of the Commission's findings in the existing exemption orders are now invalid. The 2009 Order is set to expire on March 31, 2013, exactly as the Commission approved in the 2009 Order. The joint movants want a new term to address new circumstances, exactly as the 2009 Order anticipated, but there is no application to have a new term approved.

D. In violation of Ohio Revised Code 4903.09 and 4929.08(A), the Commission unlawfully and unreasonably 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 exemption orders. 2013 Order at 11.

The Commission found that the joint movants had corroborated that the public interest objectives set forth in R. C. Section 4929.02 will be advanced by modifying the exemption orders. 2013 Order at 11. The Commission made this finding by ignoring both the public interest objectives set forth in Section 4929.02 and the evidence of record.

The joint motion seeks to eliminate the availability of standard choice offer ("SCO") service to non-residential customers. The Commission's primary concern in considering the public interest should have been the impact on customer bills if SCO service is eliminated. In testimony filed in Case No. 08-1344-GA-EXM, Richard A. Cahaan, testifying on behalf of OGMG, noted that "[t]he public interest responsibility of the PUCO, both analytically and historically, is to obtain the lowest supply price." Testimony of Richard A. Cahaan at Page 7, Line 13-14. The Commission recognized this as well when it noted in its Second Opinion and Order in Case No. 08-1344-GA-

EXM the substantial price benefits afforded to customers of the local distribution public utilities Dominion East Ohio and Vectren Energy Delivery as a result of their SCO auctions. See Case No. 08-1344-GA-EXM, Second Opinion and Order at 12.

While the SCO is determined by a competitive auction which produces price benefits, suppliers' direct choice offers have not been so beneficial to customers. Since the inception of the Columbia's choice program in 1997, Columbia has maintained a shadow bill program that tracks both individual customer and total customer savings or losses by comparing the suppliers' choice offers to the alternative utility default service offers, i.e., the gas cost recovery ("GCR") rate, the standard service offer ("SSO"), or the standard choice offer ("SCO"). Most of the savings from choice were in the early years of the program (1997 to 2001) with savings peaking in July 2001. To date, however, the shadow bills show that Columbia's customers have cumulatively paid $865 million more for choice than they would have paid had they taken service under the alternative GCR, SSO, or SCO. See Columbia response to OCC Request to Produce No. 65. OPAE Ex. 2A; Exhibit SH-7. Columbia witness Brown testified that the shadow billing data is accurate. Tr. Vol. 1 at 53. OCC witness Hayes also testified that the shadow billing data is useful in evaluating the choice program options. Tr. Vol. I at 102-103.

During the period of the SSO/SCO, those receiving choice service through bilateral contracts with suppliers have paid $316,477,450 more than those on the SSO or SCO. In the six months since the SCO was implemented in April 2012, customers served by choice suppliers have paid $37,200,878 million more (a figure that does not include any winter heating months) than those on the SCO. OPAE Ex. 1 at 20. The shadow bills show that on a monthly basis customers choosing suppliers' bilateral contracts have paid higher prices than customers on the SCO.

Low prices are very important to cash-strapped Ohio families and businesses. For some customers price may not matter; for others it is the only thing that matters. Price matters to low-income residential consumers and to struggling small businesses. The elimination of SCO service will undermine attempts to stimulate Ohio's economy because it will reduce the dollars available to Ohio families and small businesses to purchase one of the necessities of life, natural gas service.

Price also clearly matters to industrial customers as only 25% of industrial customers have chosen suppliers' bilateral contracts with 75% preferring the low prices provided by the SSO/SCO. OPAE Ex. 2 at 21. These are sophisticated customers, and in their sophistication they are opting for the competitive option that consistently provides the least expensive price. Id. The hundreds of thousands of Columbia customers that have chosen SCO service because of its low price should not be ignored. As Mr. Cahaan noted, it is a fundamental public policy to ensure customers the lowest possible price.

Clearly, the suppliers' bilateral contracts are no substitute for the SCO, where the price is determined by a competitive auction and the terms and conditions are transparent. Bilateral contracts vary greatly as to terms and conditions; there may be early termination fees as high as several hundred dollars. OPAE Ex. 2 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 Commission's Apples to Apples chart. Id. at 13. The only way a customer would know about such an offer is to call an individual supplier or to visit an individual supplier's website to obtain the information.

Bilateral contract prices are also higher than the SCO when compared over a twelve-month period to a 12-month average SCO price. OPAE Ex. 2A; Exhibit SH-4. Bilateral contracts simply cost more. Customers pay a premium for a fixed price contract over a variable price contract because there is more risk to suppliers when offering a fixed price. The variable price offers from suppliers also almost always exceed the price offered through the SCO, in part because of the customer acquisition costs associated with supplier offers. OPAE witness Harper testified that while there is occasionally a supplier price that is at or below the SCO price, the vast majority of supplier prices posted on the Commission's Apples to Apples chart are higher, often much higher, than the SCO price. OPAE Ex. 2A; Exhibit SH-3. Without the transparent SCO price set by an auction, there is a reduction in the efficiency of the competitive market. OPAE Ex. 2 at 18-19. In eliminating the suppliers' customer acquisition costs, the SCO also eliminates a significant barrier to entry into the competitive natural gas market of new suppliers.

Hess Corporation ("Hess") witness Magnani also testified that the SCO is simply the lowest price. Tr. II at 128. It is simply a lot cheaper to sell to a few large customers than to thousands of tiny customers. Id. With the SCO in the marketplace, non-SCO suppliers will try to drive their prices as low as possible, in order to at least be closer to the SCO. If the SCO is taken out of the market, the price would not be driven down to the lower levels. Tr. II at 128. Customers should get the lowest price that they are eligible for. Tr. II at 151; Hess Ex. 1 at 9. The lowest price is the SCO price. Tr. II at

153-154. On a sustained basis, the SCO price has to be lower than the suppliers' bilateral contract price because the cost to serve a customer through the SCO is significantly less than the cost to serve a choice customer. Tr. II at 154. The SCO auction forces bidders to drop their price as low as possible and since the costs of SCO service are significantly lower than the choice supplier's cost, the SCO price will be lower. Id.

Hess witness Magnani also noted that there may be situations where an introductory price or a one-month price is lower than the SCO, but over a sustained period of time, it is not possible for the suppliers' bilateral contract price to be lower than the SCO. Tr. II at 155. There may be an introductory rate, which is discounted for two months, but this cannot be sustained for a year. It is merely a loss leader. Tr. II at 159. An introductory rate cannot be compared to a rate sustained over a year. A sustained rate over a year with lower costs to serve – the SCO -- will be lower. Tr. II at 158. It is still not possible to get below the SCO price. Tr. II at 159. Only if a supplier is willing to supply service at a loss for a sustained period of time could it compete with the SCO rate. The SCO is lower priced, and customers who do not want bilateral contracts and who do not join a government aggregation should not be required to pay a higher rate. Tr. II at 160.

The Commission found that elimination of the SCO corroborated the public policy objectives of R.C. Section 4929.02, which sets forth the policy of the state of Ohio. 2013 Order at 11. The Commission is wrong. It is the policy of the state of Ohio to use diverse approaches to competition to provide customers with "…adequate, reliable, and reasonably priced natural gas services and goods." R.C.

Section 4929.02(A)(1). To take away the SCO, which has been the lowest cost option, and to force customers to take direct supplier offers, which have been higher priced, violates the state's policy at R.C. Section 4929.02(A)(1) and is not in the public interest. The SCO provides just and reasonable prices to customers, as required by R.C. Sections 4909.15 and 4929.02(A)(1). The elimination of SCO service will reduce competition, increase prices consumers pay, and maximize suppliers' profits. It does not comport with the state's energy policy to eliminate the competitive SCO option and force consumers into higher-priced bilateral contracts, which minimize competition and maximize the suppliers' profits. The promotion of state policy requires an SCO option that gives consumers a reasonable price for natural gas service set by the competitive market.

Eliminating a competitive option that customers choose does not conform to the state's policy at R.C. Section 4929.02(A)(2) to promote the availability of natural gas services that provide customers with the supplier, price, terms, conditions and quality options they elect to meet their respective needs. The elimination of SCO service offers customers nothing new in the way of a competitive option that customers do not already have. Instead, the elimination of SCO service takes away the availability of a competitive option that customers now have. One would think that given the large number of customers being served through the SCO, marketers would be offering their most innovative products now to attract those customers rather than waiting for the SCO to be eliminated. But the marketers are waiting for competition to be eliminated. Taking away the SCO, the transparently-priced option determined by a competitive auction, serves no one but the marketers. Perhaps the low-priced SCO inhibits “innovative” products because innovation comes at a much higher price than marketers are willing to pay.

The SCO also promotes diversity of natural gas supplies and suppliers and gives consumers choices over the selection of supplies and suppliers. R.C. Section 4929.02(A)(3). The SCO’s contribution to the diversity of supply options complies with the state energy policy. The SCO also encourages innovation and market access for cost-effective natural gas services as required by R.C. Section 4929.02(A)(4).

The SCO promotes an expeditious transition to the provision of natural gas services 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 under Chapters 4905 and 4909, Revised Code. R.C. Section 4929.02(A)(7). SCO customers have chosen not to choose an individual supplier. The elimination of the SCO service will force these SCO customers into higher-priced bilateral contracts, which minimize competition and maximize the suppliers’ profits.

Under the SCO, regulation is effectively minimized. The distribution company holds the SCO auction and the Commission certifies the results. This is not an onerous process, so regulation is reduced and minimized in accordance with the state policy. 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.

The state's energy policy is not designed to force unwilling customers to choose a supplier and certainly not to allow a utility to choose a supplier for them, as Columbia's plan to eliminate SCO service would require. Customers currently on the SCO are 'willing' customers. The SCO auction meets their needs by using competition to set a price that is, by and large, lower than anything available directly from suppliers. Eliminating the SCO service option deprives customers of the choice to take natural gas commodity service at a competitive market price determined through an auction, and they are deprived of the choice not to choose an individual supplier. The Ohio General Assembly has not sanctioned raising prices for consumers by eliminating competitive market options.

The state of Ohio's energy policy is not so limited that it excludes the needs and desires of consumers to make their own choices and to obtain competitive, fair, and reasonable prices. There should be no mistake: the elimination of SCO service takes away a competitive choice that customers currently have. It reduces competitive options. It is not consistent with the policy of the state of Ohio.

E. In violation of Ohio Revised Code 4903.09 and 4929.08(A), the Commission unreasonably and unlawfully found that the stipulation and recommendation "comports with Section 4929.08, Revised Code, and Rule 4901:1-19-12, Ohio Administrative Code, (sic) meets the criteria used by the commission to evaluate stipulations, is reasonable and should be adopted." 2013 Order at 47.

The Ohio Supreme Court has considered whether a just and reasonable result was achieved with reference to the criteria adopted by the Commission in evaluating settlements. These criteria are:

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?

Ohio Consumers' Counsel, 64 Ohio St. 3d at 125. The Commission found that the amended stipulation meets the criteria to evaluate stipulations, is reasonable and should be adopted. 2013 Order at 47. The Commission is wrong. The amended stipulation and recommendation fails all three parts of the Commission's test for evaluating the reasonableness of stipulations.

First, the amended stipulation is not the product of serious bargaining. OPAE's member agencies are the only non-residential customers in this case. Non-residential customers were entirely excluded from the settlement negotiations, even though the stipulation directly and adversely affects non-residential customers. While OPAE attended some collaborative meetings, being invited to settlement discussions where the outcome is not negotiable is the same as being excluded. Moreover, OPAE was not invited to participate in the meetings which crafted the stipulation.

The unrepresented non-residential customers are the victims of the settlement process. If 70% of non-residential customers shop for at least 3 consecutive months, Columbia exits the merchant function for non-residential customers. Columbia will file no application and no hearing will be held. Non-residential customers will be denied the standard choice offer, the SCO. Non-residential customers' natural gas bills will go up because their choice will be limited to direct bilateral contract offers from suppliers. See

OPAE Ex. 1, Exhibits SH-3 and SH-4. There is no way a representative of non-residential customers would agree to this.

For proof of this, the Commission need only consider what OCC, a participant in the settlement process and signatory of the amended stipulation, achieved for the residential class. Under the stipulation, if 70% of residential customers shop for at least three months and if non-residential customers have already been denied SCO service -- i.e., when Columbia has already exited the merchant function for non-residential customers for at least 22 months -- Columbia may file an application to exit the merchant function for residential customers. Jt. Ex. 1, Amended Stipulation at 6. There will be an application, a hearing, and local public hearings. Thus, under the amended stipulation, there will be at least two years to study the impact of the exit on the victims of the settlement process (the excluded non-residential customers) before Columbia can even file an application under R.C. Sec. 4929.04 to exit the merchant function for residential customers. No application or hearing is needed for an exit for non-residential customers.

OCC witness Bruce Hayes testified that there needs to be a delay in the exit of the merchant function, and that the delay protects residential customers. Tr. I at 99. Mr. Hayes admitted, however, that OCC does not view residential customers who live in master-metered buildings as residential customers because their service is billed under commercial tariffs. Tr.I at 102. OCC's narrow focus on residential customers that directly pay their own bills does not capture all residential customers who may rent or pay bills based on sub-metering when landlords have commercial accounts. The most recent monthly report issued by Columbia under the terms of the Case No. 08-1344-

GA-EXM stipulation indicates that 41% of residential customers are served through bilateral contracts with suppliers; 52% of non-residential customers are served through that option; and 26% of industrial customers have chosen bilateral contracts. OPAE Ex. 1, Exhibit SH - 2. This means that non-residential customers are more likely than residential or industrial customers to reach the 70% figure and lose their SCO service.

If OPAE had been invited to attend real settlement negotiations, then at least some intervenor representing the non-residential customers would have been present. OPAE would have opposed the practically automatic loss of SCO service for non-residential customers, but OPAE was excluded. Such an exclusionary settlement process is contrary to sound public policy and also raises questions concerning the procedural due process rights of interested stakeholders. In *Time Warner AxS v. Pub. Util. Comm*.. (1996), 75 Ohio St.3d 229, 233, footnote 2, the Supreme Court noted concern with the fact that the stipulation arose from "exclusionary settlement meetings." Neither participating in a collaborative process prior to settlement discussions being initiated nor being asked to comment on a completed stipulation equates to participation in settlement meetings.

The Commission should be concerned that none of the stipulating parties represent non-residential customers who will be adversely impacted by the stipulation. This has happened at the Commission before. 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, who were not represented in the settlement process. 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.
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> 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 settlement negotiations and no voice at the Commission. This situation should serve as a cautionary tale to the Commission. Just as the Commission ultimately rejected the AEP stipulation, the Commission must reject this stipulation as well.

Second, the stipulation also fails to benefit ratepayers and the public interest because it reduces competition and eliminates competitive options available to consumers. OPAE witness Stacia Harper described the competitive options now available to commercial customers in Columbia's service area. These include 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. 2 at 11-13. Customers may also join a government aggregation, if one is available to them, under which natural gas is sold to aggregation customers by suppliers with a bidding or auction process establishing the competitive price. OPAE Ex. 2 at 13. Another competitive option is the SCO. In the SCO, the price is established through an auction conducted by the natural gas utility where the winning bidders receive the same price. OPAE Ex. 2 at 13-14. The auction used to set the SCO is a competitive auction. At the close of Dominion East Ohio'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, the joint movants seek to eliminate the SCO option. Once shopping has reached 70%, Columbia will exit the merchant function for the commercial class and the SCO, which is established through a competitive process, will be eliminated for commercial customers. Choice-eligible commercial customers who have not chosen to enter into a bilateral contract with a supplier or to be served through a government aggregation, if one is available, will be assigned to a supplier by Columbia through the monthly variable rate ("MVR") process at a variable rate determined by the suppliers participating in the MVR process. This change would result in roughly 50% of all commercial customers losing their current choice, the competitively determined SCO. OPAE Ex. 2 at 15, 21.

The MVR to which SCO commercial customers will be assigned in the event of an exit of the merchant function is certainly inferior to the SCO in terms of price and conditions. The SCO price is the New York Mercantile Exchange ("NYMEX") monthly close plus the adder determined at the competitive auction. The SCO auction is an annual auction so that the SCO price is the monthly NYMEX close plus the annually-set adder. Hess witness Magnani testified that the MVR price is anything that the supplier wants it to be. Tr. II at 137. OGMG/RESA witness Parisi acknowledged that while the MVR can also be expressed as monthly NYMEX price plus an adder, the adder can change from month to month because of 'many variables'. Tr. II at 198. Thus, the MVR price is a price determined by the individual supplier, not by a competitive auction. The Commission certifies suppliers but does not certify the process by which suppliers set their MVR prices. The MVR price is not transparent to consumers.

In spite of the beneficial features of the SCO as a market-based offer determined by a transparent competitive auction, suppliers are able to compete with the SCO option. Bilateral contracts may serve some customers' needs by offering various terms and conditions, such as long-term contracts or fixed-price contracts. OPAE Ex. 2 at 20-22. Roughly 50% of Columbia's commercial customers are served by competitive options other than the SCO. Id. The SCO is clearly not crowding out other competitive options. There is robust competition for natural gas service in Columbia's service area, which is exactly what Ohio law seeks to promote. Revised Code 4929.02(A)(3) states that it is the policy of the state to promote a diversity of natural gas supplies and suppliers by giving consumers effective choices over the selection of supplies and suppliers. Bilateral contracts, government aggregation, and the SCO represent options that are consistent with the state's policy because they represent a diversity of competitive options. OGMG/RESA witness Parisi acknowledged "[u]nder Ohio law government aggregation is considered a choice." Tr. II at 201. Bilateral contracts and the SCO are also choices.

State policy also seeks avoid subsidies flowing to and from regulated and unregulated businesses, but there is nothing unfair about the SCO auction; it is simply a different approach to harnessing competition which obviates the need for regulation. Suppliers are free to bid in the auction and all bidders are certified suppliers. Through the auction, suppliers get customers without having to incur any customer acquisition costs. In short, suppliers themselves benefit from the auctions.

Suppliers already provide the natural gas commodity to all customers in Columbia's service area using various competitive mechanisms to set the price, but that apparently is not enough for the Marketers. Now, the Marketers want to eliminate the competitive option that keeps prices low. As witness Magnani, testifying on behalf of the supplier Hess Corporation, explains:

> If you take – with SCO in the marketplace, the other suppliers will tend to drive their prices as low as absolutely possible. Not that they could compete directly with the SCO, but at least they would be closer to it.

> If you take SCO out of the marketplace, then you would have competition but it wouldn't necessarily be driven to those lower levels.
>
> Tr. II at 129.

The elimination of SCO service will take away a competitive option that customers now have. The point of this amended joint motion and attached stipulation is to squelch competition and harm commercial consumers. Ohio law does not limit the definition of competition to bilateral contracts. The authority for government aggregation makes clear that the General Assembly wants a diverse marketplace that harnesses competition in a variety of ways to the benefit of consumers. That is what the current market provides through the SCO and the other competitive choices now available. The amended stipulation would eliminate the SCO for commercial customers, which would harm those customers and, as a result, is not in the public interest.

Moreover, the Commission incorrectly believes that there is some benefit to the amended stipulation's attempt to study the impact of the elimination of SCO service for commercial customers. This is nonsense. There is no value in sacrificing commercial customers for the purpose of conducting studies on how they are harmed by the elimination of SCO service. SCO service will be a competitive option that commercial customers no longer have if Columbia exits the merchant function for non-residential customers. SCO service is the lowest priced competitive option. It defies logic and common sense to pretend that eliminating a customer choice, and the least-cost customer choice at that, might somehow require study to determine its impact. The record established in this case makes clear that if non-residential customers lose SCO service, they will pay higher prices. The analysis has been completed. There is nothing left to study. When the distribution utility exits the merchant function, customers pay higher rates. When a distribution utility exits the merchant function, suppliers win and customers lose. The studies proposed in the amended stipulation have no value.

The Commission also approved the new security requirement fee to be charged exclusively to SCO suppliers. The Commission claimed that it was "persuaded" by the arguments of OGMG and RESA, who represent marketers that are anxious to pay the new fee. 2013 Order at 15, 13. OGMG and RESA want to pay the new fee because they receive a "significant number of customers through the auction" and are relieved of various education and administrative costs. They argue that if a supplier does not want to pay the fee, the supplier should not bid in the auction and if a customer does not like the higher SCO cost, the customer can avoid the SCO. 2013 Order at 13. This is a falsely generous position for the Marketers to take.

Although the Commission has no idea what costs the SCO fee is intended to recover, the Commission was persuaded by OGMG and RESA that the fee was small. Id. The Commission also stated that it was important that there are adequate liquid accounts available in the event of an SCO supplier default. The Commission recognized that there have been no SCO supplier defaults in Columbia's service territory since late 2000, but the Commission claimed that that was no reason to ignore the need to ensure that, in the event a default happens in the future, customers are protected and the public interest is preserved. 2013 Order at 15.

In fact, the purpose of the additional security fee to be paid by SCO suppliers is to make SCO service more expensive and pave the way for the elimination of

SCO service. The first stipulation included a provision that would impose a charge of $0.10/Mcf on SCO suppliers. The second amended stipulation includes a provision that reduces the charge imposed on SCO suppliers to $0.06/Mcf. The $0.06/Mcf fee has the potential to cost customers using 85 mcf per year on SCO service an additional $5.10. Tr. I at 111-112. This would cost all SCO customers an additional $4.8 million per year. Id. The fee is ostensibly an extra security deposit charged to SCO suppliers, but since the unspent funds are not returned to the SCO suppliers paying the deposit, it is simply a fee applicable to SCO suppliers.

OCC witness Hayes testified that OCC disagrees with the rationale for the $0.10 fee and now the $0.06 fee. Hayes views the fees as an unnecessary cost to the SCO supplier. Tr. I at 110. And, the fee is discriminatory as it is charged only to SCO suppliers, and it is not charged to choice suppliers. Tr. I at 110. The extra $0.06 goes into the SCO supplier's SCO rate so that the SCO rate is $0.06 higher than it would be otherwise. Tr. II at 169. If there is no default, the unused fee reduces the CHOICE/SCO Reconciliation Rider for *all* customers, a subsidy to customers receiving service through bilateral contracts or government aggregations who did not pay the fee in rates as SCO customers do.

Hess witness Magnani also opposed the $0.06 cent additional security deposit provision in the stipulation. As Mr. Magnani testified there is already a security deposit that Columbia requests and there is no reason SCO suppliers should be made to pay an additional $0.06. The cost of an SCO supplier default falls back on the SCO suppliers who serve SCO customers. Tr. II at 168-169. If Columbia needs the extra $0.06 in security, Columbia can merely ask the suppliers to *deposit* it, rather than pay it as a fee. The extra fee should not exist because it is not necessary. Tr. II at 169. The charge either at $0.10 or $0.06 is still a ridiculous charge to force SCO suppliers to pay. Tr. II at 177-178.

Marketers supplying SCO service compete with marketers that sell gas via bilateral contracts. SCO customers are retail customers, just like customers in bilateral contracts. There is no purpose for the new fee added to SCO service other than to make it possible for suppliers selling bilateral contracts to better compete with the price set in an SCO auction.

There has never been a default by an SCO supplier. There have been defaults by marketers in bilateral contracts, so following the principal of cost causation the extra security requirement should be assessed on those marketers who have defaulted in the past and could possibly default. If Columbia is so concerned about defaults and its risk analysts are incapable of making sound judgments when they establish security deposits, Columbia should assess the extra deposit on all suppliers, thus ensuring a level playing field among all competitive options and competitive suppliers.

The third part of the test for stipulations has also not been met. The amended stipulation conflicts with regulatory policy and practice because it violates or ignores Ohio statutes at R.C. Sections 4929.08(A), 4929.04, 4929.02(A) and Ohio Administrative Code Rules 4901:1-19-04 and 4901:1-19-12.

The Commission should have recognized the stipulation for what it is: a deal that benefits only suppliers and Columbia at the expense of customers. The stipulation does nothing to ensure that natural gas prices are just and reasonable and that competition is enhanced. The stipulation fails all three parts of the Commission's three-part test for the reasonableness of stipulations.

III. Conclusion

The criteria at R.C. Section 4929.08(A) for a modification of an exemption order have not been met because no findings of the existing exemption orders are now invalid. The joint motion was falsely made as a request for a modification of an existing order, but it is a request for a new exemption order. To extend the pipeline contracts and impose an exit from the merchant function, an application for a new alternative rate plan for a new term should have been filed under Revised Code Section 4929.04. All the filings required by Ohio Administrative Code Rule 4901:1-19-04, should have been made. The Commission has no authority to violate or ignore Ohio law, nor is it in the public interest. The joint motion for a modification under Revised Code Section 4929.08(A) should have been denied. An application for a new exemption order should have been made.

In addition, the amended joint motion, which is a motion to modify an existing exemption order, fails to follow the provisions of O.A.C. Rule 4901:1-19-12 for a modification to an existing exemption. This is because the joint motion is a request for a new exemption order and is not a request for a modification of an existing order. Like the statute for a modification, the rule for a modification does not fit the joint motion. If the filing had been made correctly, it would have been made pursuant to Ohio Administrative Code Rule 4901:1-19-04 for a new exemption.

The joint motion also is not in the public interest because it violates the policy of the state of Ohio. R. C. 4929.02(A). Eliminating SCO service and requiring non-residential customers to choose a marketer or have Columbia choose a marketer for them conflict with the policy of the state of Ohio. There is no longer a transaction between a willing buyer and willing seller. 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, and they are deprived of the choice not to choose an individual supplier. Opt-out government aggregations are considered a choice under Ohio law, and SCO service is identical in nature to a government aggregation. The state's policy is not a one-way street benefiting suppliers. The requested modification to eliminate the SCO service will raise prices choice-eligible non-residential customers pay, forcing those consumers to confront opaque and highly volatile markets alone without any benchmark to guide them and taking away a competitive choice that those customers currently choose. The requested modification reduces competitive options. The evidence demonstrates that the SCO conforms to the state's energy policy and must not be eliminated for non-residential customers.

The amended stipulation and recommendation should have been rejected because it violates all three parts of the Commission's three part test for the reasonableness of stipulations. First, the stipulation is not the product of serious bargaining. The only customer group adversely affected by the amended stipulation, the commercial customers of Columbia, was excluded from the settlement negotiations. The bargaining parties worked together to harm commercial customers to their own benefit. There can be no serious bargaining when the customer group to be harmed is excluded from the settlement negotiations.

The second part of the three-part test for evaluating stipulations has also not been met. The stipulation, as a package, does not benefit ratepayers and the public interest. The stipulation will raise the prices for natural gas service for commercial customers who lose the SCO service. It also discriminates against SCO suppliers by imposing an unnecessary additional security fee on SCO suppliers.

The third part of the test for stipulations has not been met. The stipulation conflicts with regulatory policy and practice because it violates or ignores Ohio statutes at R.C. Sections 4929.08(A), 4929.04, 4929.02(A) and Ohio Administrative Code Rules 4901:1-19-04 and 4901:1-19-12.

The Commission should have denied the amended joint motion and rejected the amended stipulation. The Commission should grant rehearing and conform its findings of fact and conclusions of law to Ohio law.

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 on this 8th day of February 2013.

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