

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

I. INTRODUCTION

On January 9, 2013, the Public Utilities Commission of Ohio (“Commission” or “PUCO”) issued an Opinion and Order (“Order”) approving the Stipulation. On February 5, 2013, the Utility filed an Application for Rehearing to clarify Dominion’s obligations to provide information under the Order.¹ In accordance with the

¹ Application for Rehearing at 1 (February 5, 2013).

Commission's Rules,² OCC hereby files its Memorandum Contra to Dominion's Application for Rehearing.

II. ARGUMENT

The Stipulation provides that Dominion would not be allowed to apply to end the standard offer for residential customers unless the PUCO has already ended the standard offer option for non-residential customers, and the results of ending that non-residential standard offer option had been studied and found to benefit customers.³ The Order stated that "[the Commission] believes that a maximum amount of information should be provided regarding the impact of [Dominion's non-residential] exit."⁴

The Commission's Order is consistent with the recommendations of OCC's expert witness, Mr. Bruce Hayes, who advocated for the Commission to order the appropriate studies of the Choice Market, Choice Marketer behavior, natural gas prices and non-residential customer impacts and feedback.⁵ Other interested parties advocated similar positions.⁶ Even Dominion's witness, Jeffrey Murphy, found importance in studying the impact of the Utility's Exit on its non-residential customers, stating: "[t]his and other information that will be gleaned from a full exit for non-residential customers will provide valuable insight whether it would be

² Ohio Adm. Code 49010-1-35(B).

³ Stipulation at 4 (June 15, 2012).

⁴ Order at 17 (February 5, 2013).

⁵ OCC Hearing Ex. No. 2, Revised Direct Testimony of Bruce M. Hayes (October 16, 2012).

⁶ Staff witness Bossart on cross-examination, Tr. Vol. I at 151 (October 16, 2012), see also Marketer Hearing Ex. No. 2, Direct Testimony of Teresa L. Ringenbach at 6-7 (September 13, 2012).

appropriate to fully exit the merchant function for residential customers, whether [Dominion] (or another LDC) eventually seeks to do so.”⁷

In order for Dominion to conduct the required studies, a certain amount of the required information that is outside of Dominion’s possession and control would need to be supplied to Dominion by the competitive retail natural gas suppliers (“Marketers”) who participate in Dominion’s Choice Program. To that end, Dominion now seeks clarification on certain aspects of the Commission’s Order pertaining to the obligation of Dominion to conduct these important studies and establish who is to provide such information.

In its Application for Rehearing, Dominion stated:

But DEO’s concerns arise with the provisions regarding who is obliged to provide that information. DEO would highlight three statements in particular:

we direct DEO to provide . . . the information recommended by Staff, OCC, and OGMG and RESA, so that all parties can become better informed regarding the effect of DEO’s exit on competition and customers.

DEO should meet with Staff and other interested stakeholders . . . and determine what data should be analyzed, and how it should be provided, including any data Staff determines is necessary . . .

DEO and suppliers shall collect the information that Staff determines is necessary and provide such information to Staff.⁸

From these statements in the Commission’s Order, Dominion raises the following concerns, “[t]he first concern is that the Order may be read to impose an obligation on

⁷ Dominion Hearing Ex. No. 1, Direct Testimony of Jeffrey A. Murphy at 8 (September 13, 2012).

⁸ Application for Rehearing, Memorandum in Support at 1 (February 5, 2013).

Dominion that it cannot meet. * * * The problem is that much of that information is not readily available to [Dominion].”⁹ Dominion has over-stated this concern.

The Commission’s Rules provide the Utility with substantial oversight of its Choice Program Marketers. Ohio Adm. Code 4901:1-29-13 states:

- (A) At a minimum, the incumbent natural gas company tariff shall include provisions governing the relationship between the retail natural gas supplier and the governmental aggregator for competitive retail natural gas service. Such provisions shall address:
 - (7) Dispute resolution process (between the incumbent natural gas company and the retail natural gas supplier or governmental aggregator).
 - (8) Standard operating rules.
 - (11) Supplier agreement.
- (B) A natural gas company shall execute a supplier agreement with each retail natural gas supplier and governmental aggregator to operate under the terms of the natural gas company’s tariff. * * *

Therefore, the Commission can note, in a rehearing ruling, that its Rules provide Dominion with the wherewithal to obtain from Marketers the desired information in a timely and cooperative manner, so that Dominion can perform the studies. If the information from Marketers is not forthcoming to Dominion, then the PUCO’s rules of practice, Ohio Admin. Code Chapter 4901-1, provide Dominion with the ability to seek the PUCO’s involvement in ensuring the availability of the information. Before that, there are informal processes that can be used to resolve issues. Accordingly, the PUCO should maintain, in any rehearing ruling, Dominion’s responsibility to perform the studies on the standard offer that is an extremely successful rate mechanism for promoting affordable natural gas for Ohioans.

⁹ Application for Rehearing, Memorandum in Support at 1 (February 5, 2013).

Dominion's other raised concern in the Application for Rehearing has to do with ambiguity surrounding who should be responsible for providing the information.

Dominion states:

The other, related concern is that some of the directives could be read to conflict with each other, which in turn could create ambiguity regarding responsibility. For example, it is not clear whether DEO *alone* is responsible for providing all information (as the first quoted statement suggests) or whether DEO *and the suppliers* are to share the responsibility (as the third statement suggests). Likewise, it is not clear whether DEO is under a standing obligation to provide any and all data and analysis referenced in any witness's testimony (as the first statement suggests) or whether Staff and the stakeholders will informally determine what information is needful and how it shall be provided (as the second statement suggests).¹⁰

The Order gives Dominion responsibility for conducting the studies. The information that Dominion determines it needs to conduct those studies may be from sources within its control and outside its control (i.e. Choice Program Marketers). There should be no confusion here; it is for Dominion to make certain that the Marketers provide the information upon Dominion's request. If necessary to assure cooperation from the Marketers, Dominion should establish within its tariffs and Supplier Agreements the provisions necessary to assure cooperation. Again, there is no need for the Commission to clarify its Order for Dominion on this issue.

Compliance with the Commission's Order is ultimately Dominion's responsibility. If the Commission needs to clarify anything on rehearing its clarifications can include that the Utility shall use all resources at its disposal to assure Marketer cooperation. In light of the tools that Dominion has at its disposal -- set forth in the Commission's Rules -- the Commission should find it unnecessary to clarify its Order as

¹⁰ Application for Rehearing, Memorandum in Support at 2 (February 5, 2013).

Dominion has requested. Those clarifications can note that Dominion has the ability to modify its relevant Choice Program tariff(s) and Marketer/Supplier Agreement(s) for purposes of Marketer provision of information. As noted above, there are also informal processes that can be used to obtain the information for the studies Dominion is to perform on this important issue of consumer access to a standard offer.

III. CONCLUSION

The Commission should proceed as needed to ensure that Dominion can perform the studies required of it on the important subject of the standard offer that has served Ohioans so well in recent years.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Memorandum Contra* has been served upon the below-named counsel via electronic service this 15th day of February 2013.

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/15/2013 12:37:17 PM

in

Case No(s). 12-1842-GA-EXM

Summary: Memorandum Memorandum Contra Dominion East Ohio's Application for Rehearing by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Sauer, Larry S.