

**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) 12-1842-GA-EXM
No. 07-1224-GA-EXM.)

**MEMORANDUM IN SUPPORT OF
JOINT INTERLOCUTORY APPEAL AND MOTION FOR STAY OF
THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO**

I. INTRODUCTION

In accordance with Rules 4901-1-12 and -15, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO or the Company) hereby files this Memorandum in Support of the November 9, 2015 Joint Interlocutory Appeal and Motion for Stay filed by Joint Intervenor Retail Energy Supply Association (RESA) and Ohio Gas Marketers Group (OGMG). DEO is concerned that the November 2 Entry may result in the disclosure of confidential information and that such disclosure could affect the integrity of DEO's Energy Choice market. Therefore, for reasons explained below, DEO requests that the Commission grant the Joint Intervenor's Interlocutory Appeal and Motion for Stay.

II. ARGUMENT

In their filing, the Joint Intervenor explain how the ruling in the November 2 Entry will require the disclosure of confidential information, including information concerning the number and salaries of full-time and part-time employees; supplier descriptions of their products offered; and value-added services, including promotions. DEO supports the Joint Intervenor's filings, and it submits this memorandum not to restate the law and its applicability, but to express DEO's own concerns regarding the distortions of the competitive market that could result from disclosure. The Energy Choice market is robustly competitive, and the Commission should

ensure that its regulation of competitive retail natural gas (CRNG) suppliers does not threaten that market's integrity.

A. State policy requires the Commission to support and protect the development of the competitive marketplace.

As DEO explained in its April 8 Motion for Protective Order, the Commission must consider the state's energy policy in ruling on these issues. Ohio's policy favors the promotion and protection of competitive commodity markets. That policy requires the Commission to support "the continuing emergence of competitive natural gas markets" and to "promote . . . effective competition." R.C. 4929.02(A)(6)–(8). These policies are mandatory; the Commission "shall follow" them. R.C. 4929.02(B). Consistent with these policies, an exemption from regulation (such as the exemption necessary to continue conducting the SCO commodity auctions) may be granted only if "effective competition" exists in DEO's service area. R.C. 4929.04(A)(1). The Commission thus must consider the effect that disclosure would have on the competitive markets behind DEO's system.

At present, the Energy Choice market is flourishing. For that market to continue to flourish, suppliers must have assurance that participation in the Choice program does not require disclosure of confidential business information. Competitors in other markets are not required to publicly divulge the kinds of competitively sensitive information at issue here. If CRNG suppliers are forced to reveal such information, it can only have distorting effects on the Choice market, which would contravene the policy of the State of Ohio.

B. Individually, and especially in combination, disclosure of information at issue would likely distort the market.

Market distortion would predictably follow from disclosure of the information at issue. There is no need to restate the Joint Intervenors' arguments, but DEO would emphasize that in total, the three categories of information subject to disclosure—each individual supplier's

employment roster and payroll, entire product line, and description of promotions and value-added services—would represent a near-complete revelation of each supplier’s local business model.

Such a wide-ranging disclosure of sensitive information has been neither permitted nor contemplated in the past. The various near-term tactics that individual competitors might undertake following such disclosure are problematic enough. But even more concerning to DEO is the long-term impact that could result if Choice suppliers do not believe that the Commission will provide appropriate protection of market participants. Disclosure of the information at issue could result in severe market distortions.

C. The Commission should take care not to undermine its past investment in the Energy Choice program.

DEO believes that markets should be driven by supply and demand, without government intervention unduly influencing market outcomes. If the disclosure of information such as product descriptions or promotional offerings could have a detrimental effect on a suppliers’ business operations—effects such as a reduction in the particular rate offers, “freeloading” by less diligent competitors at the expense of other suppliers, or escalations in pricing—then that disclosure is not just unwarranted but harmful. The Choice program of today is the beneficiary of 15 years of careful development. The market undergirding the Choice program must be protected.

No one questions that the Commission, in supervising the Choice program, should have access to sensitive information. Indeed, the original purpose of the Commission’s request for the information from suppliers was to study the consequences of DEO exiting the merchant function for nonresidential customers. Like the CRNG suppliers, DEO’s understanding has always been that such information would be used only for that purpose and that it would be assiduously

protected. The CRNG suppliers have done what was asked and made confidential information available to the Commission. There is no compelling reason for the Commission to provide this information to the public.

D. The Commission should grant the Joint Intervenors' Motion for Stay of the November 2nd Entry.

As stated in the Interlocutory Appeal, the November 2 Entry requires submission of the revised data by November 16, before the Commission will have an opportunity to rule on the interlocutory appeal. A stay is appropriate in this instance to ensure the protection of the data until the appeal is resolved. DEO agrees with the Joint Intervenors that there is no substantial harm to other parties by the requested stay and that the stay is consistent with the public interest.

III. CONCLUSION

For the foregoing reasons, DEO requests that the Commission reverse the ruling in the November 2 Entry and rule that the CRNG supplier information as described in the Interlocutory Appeal continue to be treated confidentially, and provide any other necessary and proper relief.

Dated: November 16, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of DEO's Memorandum in Support was served by electronic mail this 16th day of November, 2015 to the following:

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Summary: Memorandum in Support of the Joint Interlocutory Appeal and Joint Motion for Stay of the Retail Energy Supply Association and the Ohio Gas Marketers Group electronically filed by Mr. Andrew J Campbell on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio