

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Motion to Modify the	:	
Exemption Granted to the East Ohio Gas	:	Case No. 18-1419-GA-EXM
Company d/b/a Dominion Energy Ohio.	:	

MOTION TO INTERVENE
OF
DOMINION ENERGY SOLUTIONS, INC.

By its opinion and order of June 18, 2008 in Case No. 07-1224-GA-EXM, the Commission authorized East Ohio Gas Company d/b/a Dominion Energy Ohio (“DEO”) to implement phase two of its plan to exit the merchant function by transitioning to a standard choice offer (“SCO”) service for choice-eligible customers that are not enrolled with a competitive retail natural gas service (“CRNGS”) provider or are not members of a governmental aggregation.¹ Unlike the standard service offer (“SSO”) service it replaced, whereby customers received natural gas procured by DEO through periodic wholesale auctions,² the SCO auction process was designed to permit CRNGS providers to bid for the right to provide retail service directly to tranches of eligible customers. In addition, the approved plan provided that, upon expiration of their existing supplier contracts, choice-eligible customers that do not enroll with a CRNGS provider or become a member of an opt-out aggregation are required to affirmatively elect SCO service within a specified period in order to receive service at the SCO

¹ See *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 07-1224-GA-EXM (Opinion and Order dated June 18, 2008).

² See *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a Plan to Restructure Its Commodity Service Function*, Case No. 05-474-GA-ATA (Opinion and Order dated May 26, 2006),

price. Failure to make this election results in the customer being assigned, on a rotating basis, to CRNGS providers participating in the program, with service to be priced at the posted monthly variable rate (“MVR”) of the provider to which the customer is assigned.

Several years later, the Commission, by its January 9, 2013 opinion and order in Case No. 12-1842-GA-EXM, authorized a modification to the DEO exit plan proposed by DEO and the Ohio Gas Marketers Group (“OGMG”), adopting a stipulation submitted by DEO, OGMG, and the Office of the Ohio Consumers’ Counsel (“OCC”).³ The approved stipulation made no change to the SCO and MVR provisions of the plan relating to residential service, but eliminated the SCO option for non-residential customers, which meant that a choice-eligible non-residential customer that did not contract with a CRNGS provider or become a member of an opt-out governmental aggregation would be assigned automatically to the next-up CRNGS provider and would be served at that provider’s posted MVR.

On March 9, 2018, OCC filed a motion in Case No. 12-1842-GA-EXM pursuant to Rule 4901:1-19-11, Ohio Administrative Code (“OAC”), requesting that the Commission modify the DEO plan by eliminating the MVR mechanism for residential customers and reestablishing the SCO as the default commodity service for residential customers that do not enroll with a CRNGS provider or become a member of an opt-out governmental aggregation upon the expiration of their supplier contract. The OCC motion was followed by a related motion filed March 12, 2018 by Ohio Partners for Affordable Energy (“OPAE”) requesting that the MVR be eliminated for non-residential customers and that the SCO be reestablished as the default

³ See *In the Matter of the Application to Modify, in Accordance with Section 4929.08, Revised Code, the Exemption Granted to The East Ohio Gas Company d/b/a Dominion East Ohio in Case No. 07-1224-GA-EXM*, Case No. 12-1842-GA-EXM (Opinion and Order dated January 9, 2013).

commodity service for non-residential customers not under contract with a CRNGS provider or members of a governmental aggregation.

By entry dated September 13, 2018, the attorney examiner directed OCC and OPAE to refile their respective motions in a new docket to be designated as Case No. 18-1419-GA-EXM. OPAE refiled its motion in Case No. 18-1419-GA-EXM on September 14, 2018, but OCC, although filing a motion to intervene on February 1, 2019, did not refile its motion for a proposed modification of the DEO plan until August 16, 2019.⁴ That same day, the attorney examiner issued an entry establishing a procedural schedule for the case, including a deadline for filing motions to intervene of September 27, 2019.

Dominion Energy Solutions, Inc. ("DES") is a Commission-certified CRNGS provider authorized to offer competitive retail natural gas service to customers within the area served by DEO and is also a participant in the DEO MVR program. As such, DES has a real and substantial interest in this proceeding, and may be adversely affected by the ultimate disposition of the issues raised by the OCC and OPAE motions. Accordingly, DES hereby moves to intervene pursuant to R.C. 4903.221 and Rule 4901-1-11, Ohio Administrative Code ("OAC").

As more fully discussed in the accompanying memorandum, DES is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect its interests. Further, DES's interest in this proceeding is not represented by any existing party, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues involved without unduly delaying the proceedings or unjustly prejudicing any existing party.

⁴ Actually, OCC did not refile its original motion. Rather, OCC filed an amended version of its motion that introduces additional proposals that were not part of the original motion.

WHEREFORE, DES respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted,

/s/ Barth E. Royer

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MEMORANDUM IN SUPPORT
OF
MOTION TO INTERVENE
OF
DOMINION ENERGY SOLUTIONS, INC.

R.C. 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding.” As a CRNGS provider on DEO’s system, and as a participating supplier in the DEO MVR program, there can be no question that DES may be adversely affected by the modifications to the DEO exit plan sought by OCC and OP&E through their respective motions. Moreover, not only does DES satisfy the underlying statutory test, but it also satisfies the standards governing intervention set forth in the Commission’s rules.

Rule 4901-1-11(A), OAC, provides, in pertinent part, as follows:

(A) Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his ability to protect that interest, unless the person's interest is adequately represented by existing parties.

As a CRNGS provider and a participant in the DEO MVR program, DES plainly has a real and substantial interest in a proceeding that could impact a market in which it competes.

Although DES does not believe this to be a close question, each of the specific considerations that the Commission, pursuant to Rule 4901-1-11(B), OAC, must take into account in applying the Rule 4901-1-11(A)(2), OAC, standard also fully supports granting DES's motion to intervene. Rule 4901-1-11(B), OAC, provides as follows:

In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner case shall consider:

- (1) The nature and extent of the prospective intervenor's interest.
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person's interest is represented by existing parties.

First, as previously explained, DES's interest in connection with the proposals contained in the OCC and OPAE motions is obviously direct and substantial. The OCC proposal would modify a Commission-approved stipulation to which DES was a signatory, and both the OCC the OPAE proposals would adversely affect DES in its role as a CRNGS provider and as a participant in the DEO MVR program. Second, DES's position is that the modifications advocated by OCC and OPAE represent a step backwards from an orderly transition to DEO's complete exit from the merchant function, a position that relates directly to the merits of the case. Third, DES's motion to intervene has been filed in compliance with the procedural schedule set forth in the August 16, 2019 entry, and granting its motion will not unduly delay or prolong the proceeding. Fourth, DES has been a frequent participant in cases involving the establishment of

competitive gas markets in Ohio and the numerous other states in which it does business. Thus, DES will bring substantial experience to bear on the issues raised by the OCC and OPAE motions. Finally, no motions to intervene have been granted to date so, by definition, there are no existing parties that represent DES's interest. Accordingly, granting DES intervenor status is consistent with all the considerations set out in Rule 4901-1-11(B), OAC, as well as with the Commission's longstanding stated policy "to encourage the broadest possible participation in its proceedings."⁵

WHEREFORE, DES respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted,

/s/ Barth E. Royer

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⁵ See, e.g., *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR (Entry dated January 14, 1986, at 2).

Certificate of Service

I hereby certify that a copy of the foregoing has been served upon the following persons by electronic mail this 22nd day of August 2019.

/s/ Barth E. Royer

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8/22/2019 3:45:21 PM

in

Case No(s). 18-1419-GA-EXM

Summary: Motion Dominion Energy Solutions, Inc. Motion to Intervene electronically filed by Mr. Barth E. Royer on behalf of Dominion Energy Solutions, Inc.