

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.	:	

MEMORANDUM CONTRA
OCC AND OP&E MOTIONS
AND
INITIAL COMMENTS
OF
DOMINION ENERGY SOLUTIONS, INC.

BACKGROUND:

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 members of a governmental aggregation.¹ Unlike the standard service offer (“SSO”) service it replaced, whereby non-shopping 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

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),

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 price. Failure to make this election results in the customer being assigned, on a rotating basis, to CRNGS providers participating in the MVR program, with service to be priced at the lowest posted monthly variable rate 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 lowest 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 existing 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

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).

MVR be eliminated for non-residential customers and that the SCO be reestablished as the default 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 and a deadline for filing of a memorandum contra and/or initial comments of October 4, 2019. The deadline for filing initial comments was subsequently extended to October 11, 2019 by entry of October 3, 2019.

Dominion Energy Solutions, Inc. (“DES”), which moved to intervene on August 22, 2019, 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 participating supplier in the DEO MVR program. DES opposes the OCC and OPAE motions and hereby files its memorandum contra and initial comments in accordance with the October 3, 2019 entry.

IMPORTANT CONSIDERATIONS:

DES begins with the observation that the residential MVR program has been in place for well over a decade and that the current non-residential MVR program has been in place for almost seven years. The lengthy duration of these programs is important for two reasons.

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.

First, R.C. 4929.08(A)(2) limits the Commission's authority to abrogate or modify an exemption plan without the host gas distribution utility's consent to no more than eight years after the effective date of the order implementing the plan. The reason for this jurisdictional limitation is readily apparent. Plainly, the legislature, in establishing a policy of promoting the movement to a competitive commodity supply market, did not want a future Commission to undo a previously-approved exemption plan, or phase thereof, without the utility's consent where there had already been ample opportunity to abrogate or fine-tune the exemption. Here, because the current DEO residential MVR program was approved by the Commission's June 18, 2008 order in Case No. 07-1224-GA-EXM, the plan cannot be eliminated or changed without DEO's consent.

Second, both the residential and non-residential MVR programs are mature programs, which were designed to encourage customer engagement in the selection of a source of commodity supply, a step necessary to set the stage for DEO's ultimate exit from the merchant function. The evidence in this proceeding will show that DEO has well over 1 million residential customers, of which, only some 2,600 are served under the MVR program. And, although the numbers cannot be known with certainty, it is reasonable to assume that, although some of these 2,600 customers remain with their MVR supplier simply because of inertia, others stay with their MVR supplier because they find the MVR rate they are paying acceptable. Further, information provided by DEO in discovery shows that some 75 percent of these residential customers move out of the MVR program within three years, which is evidence of the kind of engagement that the program was intended to foster. Thus, it is fair to say that, by and large, the residential MVR program has achieved the intended result of encouraging customer engagement. Although, intuitively, one might expect that commercial customers would be more savvy in exploring

commodity supply options, the evidence will show that some 23 percent of non-residential customers are still served under the MVR program. Thus, the effort to encourage these customers to engage must continue, rather than eliminating the MVR program and allowing these customers to default to the SCO rate as advocated by OP&E.

In so stating, DES recognizes that, as OCC points out in its motion, there are instances in which some unscrupulous suppliers have gamed the system by posting an exorbitant price, relying on the possibility that some customers assigned to them under the MVR program will not engage and will pay these prices notwithstanding that they are well above market. However, the fix for this problem is not to eliminate the longstanding MVR program, but to modify the requirements for supplier participation to weed out these bad actors. To this end, DES would offer the following proposal.

THE DES PROPOSAL:

DES proposes that, to participate in the MVR program, a supplier should be required to meet one of two eligibility criteria. First, certified CRNGS providers that serve at least 1,000 non-MVR customers on DEO, either under individual contracts or as the supplier to governmental aggregations, should automatically be permitted to participate in the MVR program. That these suppliers have been able to attract a significant number of customers shows that they are actively competing for customers in the DEO market and are offering competitively-priced products that customers find attractive and that meet those customers' needs.

Second, providers that do not meet this requirement would still qualify to participate as an MVR supplier so long as their lowest posted monthly variable price is equal to or less than the median price for monthly variable rate products on the apples-to-apples chart. It must be

remembered that the MVR program was never intended to assure that MVR customers would receive the lowest possible price. Rather, as previously discussed, the intent was to promote customer engagement. However, the use of the median posted price as a cap as an alternative criterion would provide a safety net for those customers who, despite past educational efforts, still do not understand customer choice, and would also prevent bad-actor suppliers from gaming the system.

DES also recommends that the notice sent to customers that are about to be assigned to an MVR supplier be reevaluated to assure that the notice fully explains the customer's options. The notice should include prominently displayed language that alerts the customer that there may be options available that will result in a more favorable pricing than the customer will receive from the MVR supplier to which the customer will be assigned after two months on SCO service and advise the customer as to how to explore these options. Again, the goal is, and should remain, customer engagement, and an effective customer notice will encourage customers to engage.

Finally, DES recommends that consideration be given to modifying the MVR program by providing that, after one year with an MVR provider, the customer would be reassigned to the next-up MVR supplier. Such a measure would provide an additional opportunity for notifying the customer of the available options (*i.e.*, enrolling with another CRNGS provider, becoming a member of an opt-out governmental aggregation if available, or, in the case of a residential customer, affirmatively electing SCO service), thereby encouraging customer engagement. This approach could also lead the customer's current MVR supplier to offer a contract with favorable pricing in an attempt to retain a customer with whom it already has a relationship.

CONCLUSION:

No participant in this proceeding wants to see MVR customers subjected to exorbitant rates for commodity service. However, the answer is not to eliminate the MVR program, a measure which would, in effect, throw the baby out with the bathwater and represent a giant step backwards on the road to DEO's ultimate exit from the merchant function. Rather, the solution is to establish criteria for supplier participation in the MVR program that will weed out the bad actors, while, at the same time, continue to encourage customer engagement in furtherance of the state policy of promoting competition. DES appreciates the opportunity to comment on the OCC and OPAE motions, and urges the Commission to deny those motions for the reasons set forth herein.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of the foregoing has been served upon the following persons by electronic mail this 11th day of October 2019.

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Summary: Memorandum Memorandum Contra Motions of OCC and OPAE and Initial Comments of Dominion Energy Solutions, Inc. electronically filed by Mr. Barth E. Royer on behalf of Dominion Energy Solutions, Inc.