BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

COMMENTS SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION

In Case No. 18-1419-GA-EXM, the Ohio Consumers' Counsel (OCC) and The Ohio Partners for Affordable Energy (OPAE) filed separate motions requesting that the Public Utilities Commission of Ohio (PUCO or Commission) modify the exemption granted to Dominion Energy Ohio (Dominion) in Case No. 12-1842-GA-EXM.

As a result of Case No. 12-1842-GA-EXM (2013 Case),[1] PUCO staff (Staff) collected data to assist the Commission with the direction of future actions pertaining to natural gas competition.[2] This data from Dominion pertains to the impact of its exit of the merchant function. In addition, Staff also collects data from the Commission's Call Center regarding customer experiences with Dominion's choice program. For the reasons stated below, Staff believes the data supports the motions filed by OCC and

---

1 *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 (2013 Case), Opinion and Order (January 9, 2013) (2013 Order).

2 2013 Order at 17.

OPAE, and therefore Staff asks that the Commission modify the exemption granted to Dominion.

BACKGROUND

On May 26, 2006, the Commission issued an order approving Dominion's request for an exemption from the requirements in Chapter 4905 regarding commodity sales service.[3] The Commission approved Phase 1 of Dominion's plan to exit the merchant function through a pilot program to test alternative market-based pricing of commodity sales.[4] The order allowed Dominion to change its mechanism to purchase gas commodity from the gas cost recovery model to an auction-based model called the Standard Service Offer (SSO).

On June 18, 2008, the Commission approved Dominion's request for an exemption allowing Dominion to implement Phase 2 of its plan to exit the merchant function with modifications (2008 Order).[5] In Phase 2, the winning bidders of the auction-based model would directly serve customers assigned to them as a Standard Choice Offer (SCO) customer. In addition, choice-eligible residential and commercial customers who either cancelled their contract with a Competitive Retail Natural Gas Service (CRNGS) provider or whose CRNGS contract ended, would be assigned to a

---

[3] Such exemption is governed by R.C. 4929.04.

[4] *In the Matter of the Application of The East Ohio Gas Company dba Dominion East Ohio for Approval of a Plan to Restructure Its Commodity Service Function*, Case No. 05-474-GA-ATA (2005 Case), Opinion and Order at 27 (May 26, 2006) (2005 Order).

[5] *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 at 3 (June 18, 2008) (2008 Order).

Monthly Variable Rate (MVR) provider if the customer did not affirmatively select the SCO.

On January 9, 2013, the Commission issued the 2013 Order, which modified the 2008 Order. In the 2013 Order, the Commission adopted, with modifications, a settlement that continued Phase 2 of Dominion's plan. The settlement provided for the assignment of choice-eligible residential customers to the MVR if the customer did not affirmatively select the SCO tariff service or enter into a contract with a CRNGS provider. In addition, choice-eligible customers from certain rate classes may no longer default into, or have an option to receive, SCO commodity service. Those affected included nonresidential customers.[6] Instead, for those customers who have not selected a new CRNGS provider, Dominion will assign one from a rotating list of CRNGS providers registered to provide default service using the supplier's MVR. This practice is subject to the limitation set forth in the MVR commodity service portion of Dominion's tariff.

Dominion's MVR Commodity Service rate schedule directs that MVR commodity service is to be provided by CRNGS providers participating in Dominion's Energy Choice program pursuant to the 2008 Order. MVR commodity service is rendered in conjunction with Dominion's Energy Choice Transportation Service-Residential (ECTS-R), Energy Choice Transportation Service-Nonresidential (ECTS-NR), and Large Volume Energy Choice Transportation Service (LVECTS). The price for MVR

[6] Specifically, customers from the following rate classes could no longer receive SCO commodity service: Energy Choice Transportation Service-Nonresidential (ECTS-NR), and Large Volume Energy Choice Transportation Service (LVECTS), General Sales Service – Non-Residential (GSS NR), and Large Volume General Sales Service (LVGSS).

commodity service is determined by the customer's randomly assigned CRNGS provider's posted MVR price. These providers are required to post or otherwise make available the MVR price by the first of each month for the applicable billing period; ensure that the provider's MVR price charged for a monthly billing period is no greater than any of its monthly variable rates (Competitive MVRs) posted on the PUCO's Apples-to-Apples Chart[7] for the same billing period; and have a Competitive MVR posted on their list of active offers available to all eligible customers on the PUCO's Apples-to-Apples Chart.[8]

In the 2013 Order, the Commission stated that it "believes that a maximum amount of information should be provided regarding the impact of DEO's exit."[9] Accordingly, it directed Dominion to provide to Staff, OCC and any other interested party the information recommended by various parties "so that all parties can become better informed regarding the effect of DEO's exit on competition and customers," including any data Staff determines is necessary to adequately provide information to assist the Commission with the direction of future actions pertaining to natural gas competition.[10] Staff's recommendation is informed by the data received from Dominion regarding the impact of its exit of the merchant function and from the Commission's Call

---

[7] Public Utilities Commission of Ohio, Residential Apples to Apples Comparison Chart, available at: http://energychoice.ohio.gov/ApplesToApplesCategory.aspx?Category=NaturalGas (last accessed Oct. 1, 2019).

[8] *See* Gas Rate Schedules of Dominion Energy Ohio, Fourth Revised Sheet No. B-MVR 1 (effective May 12, 2017).

[9] 2013 Order at 17.

[10] *Id*.

Center and formal complaint filings regarding customer experiences with Dominion's choice program

In the 2013 Order, the Commission further stated, "the Commission wishes to clarify that nothing precludes us from reestablishing the SCO or other pricing mechanism, if we determine that DEO's exit is unjust or unreasonable for any customer class. As provided for in Section 4929.08, Revised Code, the Commission is permitted to abrogate or modify the exemption provided for in this order within eight years after the effective date of this order, without DEO's consent."[11] Thereafter, OCC and OPAE filed motions requesting that the Commission modify the 2013 Order by eliminating the MVR.

ANALYSIS

Staff supports both the OCC's and OPAE's motions to modify the exemption granted to Dominion in the 2013 Order. Specifically, Staff supports the re-establishment of the SCO as the default service to all customers including residential and all other classes of non-residential customers. R.C. 4929.08 and Ohio Adm.Code 4901:1-19-11(A) allows the Commission to modify or abrogate any order granting exemption or exit-the-merchant-function plan under R.C. 4929.04 if both of the following conditions are met:

> "(1) The Commission determines that the findings upon which the order was based are no longer valid and that the modification or abrogation is in the public interest.
>
> (2) The modification or abrogation is not made more than eight years after the effective date of the order, unless the affected natural gas company consents."

[11] *Id*. at 16-17.

Staff finds that the second condition is met because the Commission issued the 2013 Order less than eight years ago.

Staff also finds that the first condition is met because the Commission based its approval, in part, on the understanding that the modification of the 2013 Order would encourage the development of retail competition. The 2013 Order discontinued the SCO for non-residential customers and placed the remaining SCO non-residential customers on the MVR commodity service. The 2013 Order continued to allow residential customers to be moved to the MVR commodity service if those customers who were previously shopping did not affirmatively select the SCO. Staff has been continually collecting data on the number of customers placed on the MVR and the rates the various types of customers are paying. The data shows that (1) many of the rates being charged to MVR customers are unreasonably high; (2) the MVR and/or the elimination of the SCO for non-residential customers is not encouraging customers to engage with the market, therefore not further developing the market; and (3) the MVR causes customer confusion. As a result, Staff believes that the market is not protecting customers.

1.) **Many of the rates being charged to MVR customers are unreasonably high.**

Customers are randomly assigned to listed MVR CRNGS providers, therefore, the MVR commodity service does not provide customers with a choice of who provides their natural gas commodity service or at what price. For example, if a customer is assigned to a CRNGS provider charging $5.20 per MCF (one thousand cubic feet) and used 15 MCF in one month, the customer would pay $78, but a customer assigned to a provider charging $3.60 per MCF for the same usage would only pay $54 for a difference of $24 for one month of service.[12] A customer will not know the impact of the assignment until the customer receives the next bill. That means that the customer will be on that rate for at least one more month. The rates listed in the chart below are a snapshot of the MVR rates per MCF for February 2019.[13] For reference, the SCO for February 14, 2019 was $3.020 per MCF.

MVR Rates - February 14, 2019	
$3.75	$5.25
$6.49	$6.26
$3.70	$5.89
$4.60	$5.99
$3.02	$3.60
$4.19	$5.72
$4.50	$6.50
$4.99	$9.25
$4.38	$3.63
$7.19	$3.94

The MVR unreasonably allows suppliers an opportunity to bill the natural gas provided to their assigned MVR customers at a rate that is considerably higher than the same month's SCO without incurring any marketing and other costs to

[12] The rate that was provided for comparison is a randomly selected option and not one of the higher end rates or near the potential lower rates that could be selected for a residential customer.

[13] Email from Kirsten Janecko, Business Performance Analyst, Dominion Energy Ohio to Gas_energy_choice@dominionenergy.com, dated February 13, 2019.

acquire and maintain customers. By contrast, the SCO, which itself is a choice for customers, is almost always the lowest price offered to Dominion East Ohio residential customers and has repeatedly been among the lowest natural gas prices in Ohio.

In addition, the Commission based the 2013 Order on the belief that customers will be protected by the market.[14] As the data above shows, the market has not had the protective effect as the Commission believed it would and customers have been paying unreasonably high bills as a result.

2.) **The MVR is not encouraging customers to engage with the market and may be hindering the further development of the market.**

Notwithstanding the prices MVR customers are paying, the number of customers taking service under the MVR does not vary significantly month to month and has not meaningfully decreased since Dominion's exit, meaning that customers are remaining on the assigned rate for months at a time. This demonstrates that the MVR has not been successful in encouraging customers to avail themselves of other competitive options. This is despite Staff's insistence that significant efforts be made to educate them on the choices available.[15]

As an example, in the 2013 case, Dominion witness Murphy's testimony in support of the modification of the exemption order stated that the amount of non-

---

[14] 2013 Order at 15.

[15] *See, e.g.,* the 2013 Case, Direct Testimony of Barbara Bossart (Oct. 4, 2012).

residential customers on the SCO at that time was 14,000.[16] Mr. Murphy stated that there is a core of non-residential customers who will continue to rely on the SCO rate and thereby hinder DEO's exit of the merchant functions and the formation of a more competitive natural gas commodity market. The 2013 Order eliminated the non-residential SCO option leaving the MVR as the default option for non-residential customers. The subsequent data collected by Staff shows that the average number of non-residential customers that currently remain on the MVR service is over 12,000 per month. Thus, after six years of no SCO option for non-residential customers, the MVR has failed to encourage market development. Staff is concerned about the financial harm done to customers who stay on the MVR for an extended period of time. Staff believes that this effect is contrary to the effect the Commission sought to achieve. Eliminating the MVR and transferring the current MVR customers back to the SCO would be beneficial to the vast majority of current MVR customers who are in the Dominion market and would continue to allow them to become customers of fair and competitive retail shopping programs. This would further the potential benefits from the development of the market.

3.) **The MVR causes customer confusion.**

The Commission believed at the time of the 2013 Order that with appropriate information and education, customers would be able to make informed decisions

16 *See, e.g.,* the 2013 Case, Direct Testimony of Jeffrey A. Murphy at 5-6 (Sept. 13, 2012).

when SCO service is discontinued.[17] In the intervening time, Staff has collected data primarily in the form of customer contacts from residential and commercial customers to the Commission's Call Center, indicating that the Commission's belief on this topic has not come to fruition.

The Commission's Call Center routinely receives calls from customers who are confused about the assigned CRNGS provider appearing on their bills. The focus of many of the customer complaints centers on the customer's review of the bill and noticing a CRNGS provider which the customer did not elect and a rate that was not agreed upon for the applicable gas charges.[18] In addition, many customers have complained about the high bill amount due to the increase in the commodity rate from previous billing statements.[19] These complaints show what an impact defaulting to the MVR rate could have on a customer's bill and the confusion the MVR tariff has caused.

CONCLUSION

For the foregoing reasons, the 2013 Order is not serving the purpose intended by the Commission and, therefore, modification of the 2013 Order is in the public interest. The data shows that (1) many of the rates being charged to MVR customers are

---

17 2013 Order at 15.

18 See *In the Matter of the Complaint of Mate Brkic v. The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 18-0122-GA-CSS. (This formal complaint demonstrates the confusion of the customers as the customer thought they were slammed by the CRNGS provider.)

19 See *In the Matter of the Complaint of Taylor Road Synagogue v. Spark Energy, LLC*, Case No. 19-0629-GA-CSS. (The customer in this complaint stated it was charged $9.25 per MCF on the MVR rate from January to March 2018. According to the PUCO's Energy Choice website, the SCO rate at that time was $2.74 per MCF in January, $3.63 per MCF in February and $2.64 per MCF in March.)

unreasonably high; (2) the MVR and/or the elimination of the SCO for non-residential customers is not encouraging customers to engage with the market therefore not further developing the market; and (3) the MVR causes customer confusion. Furthermore, the policy of the state is to promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail customers with the supplier, price, terms, conditions and quality options they elect to meet their respective needs.[20] Staff does not believe that assigning a customer to an MVR which causes confusion and charges unconscionable rates meets the needs of Ohio's gas customers.

Staff believes it would be reasonable to eliminate the MVR as an option for all customers. It is not needed to further enhance competition since approximately 70% of Dominion's residential customers are involved in the CHOICE market,[21] either through their own shopping efforts or through an aggregation group.

Staff recommends that the Commission modify the 2013 Order to eliminate the MVR commodity tariff and allow customers the option to retain or return to the SCO tariff service.

---

20 R.C. 4929.02(A)(2).

21 Public Utilities Commission of Ohio, Ohio Customer Choice Activity, available at: https://www.puco.ohio.gov/industry-information/statistical-reports/ohio-customer-choice-activity/ (last accessed Oct. 1, 2019).

Respectfully submitted,

Dave Yost

Ohio Attorney General

John H. Jones
Section Chief

/s/Werner L. Margard III

Werner L. Margard III
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, OH 43215
614.466.4397 (telephone)
614.644.8764 (fax)
werner.margard.@ohioattorneygeneral.gov

On behalf of the Staff of the Public Utilities Commission of Ohio

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Amended Motion to Modify Finding of Completeness, submitted on behalf of the Staff of the Ohio Power Siting Board, was served via electronic mail upon the following parties of record, this 11th day of October, 2019.

/s/ *Werner L. Margard III*
Werner L. Margard III
Assistant Attorney General

Parties of Record:

glpetrucci@vorys.com
Bethany.allen@igs.com
sdismukes@eckertseamans.com
cmooney@ohiopartners.org
Jamie.williams@occ.ohio.gov
barthroyer@aol.com
kennedy@whitt-sturtevant.com
tracy.greene@occ.ohio.com
shelliclark@gmail.com
mfleisher@dickinsonwright.com
mjsettineri@vorys.com
terry.etter@occ.ohio.gov
andrew.j.campbell@dominionenergy.com
cpirik@dickinsonwright.com
joe.oliker@igs.com
Michael.nugent@igs.com
Fdarr2019@gmail.com