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 Energy Ohio.	: : :	Case No. 18-1419-GA-EXM

REPLY COMMENTS OF DOMINION ENERGY SOLUTIONS, INC.

Pursuant to the modified procedural schedule established by the attorney examiner's October 3, 2019 entry in this docket, Dominion Energy Solutions, Inc. ("DES") hereby submits its reply comments in response to the initial comments filed by the Office of the Ohio Consumers' Counsel ("OCC") and Commission staff ("Staff"). DES disagrees with those comments for the reasons set forth below.

Although both OCC and staff attempt to blur the distinction in their respective comments, there are, in fact, two quite different motions before the Commission in this case. By its August 16, 2019 motion, OCC seeks to eliminate the MVR program for residential customers established by the Commission in its opinion and order of June 18, 2008 in Case No. 07-1224-GA-EXM (the "2008 Order"), and to establish the SCO rate as the default rate for residential customers who do not enter into a new contract for commodity service with a CRNGS provider upon the expiration of their existing contracts. On the other hand, the motion filed by Ohio Partners for Affordable Energy on September 14, 2018 asks the Commission to undo its January 9, 2013 opinion and order in Case No. 12-1842-GA-EXM (the "2013 Order"), which eliminated the SCO as the default rate for non-residential customers by terminating the non-residential MVR program and reestablishing the SCO as their default rate.

The threshold question in this case is whether the Commission has the legal authority to grant the pending OCC and OPAE motions. R.C. 4929.08 authorizes the Commission to abrogate or modify an order granting an exemption only when two specified conditions are met. First, the Commission must determine that "the findings upon which the order was based are no longer valid and that the abrogation or modification is in the public interest."[1] Second, the abrogation or modification cannot be made "more than eight years after the effective date of the order, unless the affected natural gas company consents."[2] Here, the modification OCC requests is a modification of the residential MVR program that was established by the 2008 Order, and, thus, would require DEO's consent even if the Commission were to determine that the findings in that order are no longer valid and that the modification is in the public interest.

Not surprisingly, OCC sidesteps this issue in its comments by clinging to the pretense that it is seeking a modification of the 2013 Order, notwithstanding that the 2013 Order made no changes to the residential MVR program.[3] OCC then continues to muddy the waters by relying on language from the 2013 Order explaining the basis for eliminating the SCO as an option for non-residential customers as its rationale for eliminating the residential MVR program[4] – a program to which OCC specifically agreed in the stipulation that was adopted by the Commission in Case No. 07-1224-GA-EXM – despite the fact that SCO service remains an option for residential customers under the DEO residential MVR program. As the Commission

[1] *See* R.C. 4928.08(a)(1).

[2] *See* R.C. 4928.08(a)(2).

[3] Indeed, OCC goes so far as to state that DEO began the MVR program for residential customers on April 15, 2015, citing the tariff change filed on that date. *See* OCC Comments at 4. However, this tariff change has nothing whatever to do with the residential MVR program, which was approved by the 2008 Order and which has never been modified since.

[4] *See* OCC Comments, 10-11.

well knows, OCC has long championed the notion that default service may, in many instances, represent an affirmative customer choice. The DEO residential MVR program, which requires customers coming off an existing supplier contract to enroll with a supplier or affirmatively elect SCO service within a specified period to avoid being assigned to an MVR supplier was consistent OCC's theory that SCO service is itself a competitive choice. More to the point, even if OCC's claims that the Commission's stated expectations in eliminating the SCO options for non-residential customers have not been fulfilled are valid (which they are not), this would not be a reason to eliminate the residential MVR program.

DEO has almost 1.1 million residential customers, of which, only approximately 2,600 are currently being served under the residential MVR program. Further, information provided by DEO in discovery shows that almost half of the residential MVR customers move out of the MVR program within one year, and 75 percent move out of the program within three years. Moreover, although the numbers cannot be know with certainty, it is reasonable to assume that, of those that remain, some do so because they find the MVR rate the are paying acceptable. In short, the residential MVR program has unquestionably enhanced customer engagement, which is a necessary step along the road to DEO's ultimate exit from the merchant function.

Although OCC rails about the outrageous MVR prices posted by some suppliers, DES adamantly disagrees with OCC's contention that the MVR program cannot be fixed.[5] As DES noted in its initial comments, 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, but to beef up the eligibility requirements for suppliers wishing to participate in the program so as to

[5] *See* OCC Comments, 2.

weed out the bad actors whose business plans are built on gaming the system. One would think that OCC, which has a statutory mandate "to follow the policies of the state as set forth in Chapter 4929. of the Revised Code that involve supporting retail natural gas competition" would understand this.[6]

The Staff, which supports the OCC and OPAE motions in its comments, also takes the position that the 2013 Order is the start point for determining the eight-year period after which the Commission cannot abrogate or modify an order approving an exemption plan without the utility's consent.[7] However, as explained above, the 2013 Order made no changes to the residential MVR program approved by the 2008 Order, and, thus, the date of the 2018 Order is the relevant date for determining if the residential MVR program can be modified without DEO's consent under the R.C. 4928.02(A)(2) criterion. Although RESA and IGS argue in their memorandum contra the OPAE motion that non-residential MVR program also began with the 2008 Order,[8] if the Commission finds that, due to the elimination of the SCO option for non-residential customers in the 2013 Order, that program can now be modified without DEO's consent, under R.C. 4928.08(A)(2), the Commission must still find that the proposed modification is in the public interest. DES respectfully submits that the Staff proposal to do away with the MVR entirely and to reestablish the SCO as the default service for non-residential customers does not satisfy this requirement.

As DES understands it, the Staff position that the MVR program should be eliminated is based on three factors. First, Staff states that many of the MVR rates are unreasonably high.[9]

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[6] *See* R.C. 4911.02(C).

[7] *See* Staff Comments, 6.

[8] *See* RESA/IGS Comments, 6-8.

[9] *See* Staff Comments, 6-8.

This is a fixable problem. As proposed by DES in its initial comments, one solution would be to require that to be eligible to participate as a supplier in the MVR program, a supplier's posted monthly variable price must be equal to or lower than the median monthly variable price posted on the Commission's apples-to-apples chart. This would not only prevent suppliers posting exorbitant prices from participating in the program, but would also put downward pressure on the median price itself.

Staff also bemoans the fact that "MVR commodity service does not provide customers with a choice of who provides their natural gas commodity service or at what price" and goes on to point out that SCO service, which, like OCC Staff sees as choice for customers, is often priced below posted supplier offers.[10] DES cannot permit this too pass without comment. Under the current MVR program customers do, in fact, have a choice of suppliers and prices, and, in the case of residential customers, the choice includes electing to receive SCO service. It is only if the customer fails to enter into a new contract with a supplier or fails to affirmatively elect SCO service after the expiration of the customer's existing contract that the customer is a assigned to an MVR supplier. Thus, a customer that winds up with an MVR supplier did have the opportunity to make a choice, but did not do so. Killing the MVR program will also kill this the opportunity for customer engagement, an outcome contrary to the result the MVR program is designed to encourage.

Second, Staff asserts that "(T)he MVR is not encouraging customers to engage with the market and may be hindering the further development of the market."[11] In support of this proposition, Staff points to the evidence in Case No. 12-1842-GA-EXM that showed that, at that

[10] *Id.*

[11] *See* Staff Comments, 8-9.

time, 14,000 non-residential customers were receiving SCO service, whereas, after the MVR replaced the SCO as the default option as a result of the 2008 Order, the number of non-residential MVR customers averages something over 12,000 per month. Although Staff concludes from this data that the MVR program has failed to encourage market development, these numbers show that more customers have become engaged than when the SCO was the default option, which is consistent with the Commission's stated objective. The real question is which approach will do more to shake lose those non-residential customers that remain on default service solely because of inertia, thereby impeding DEO's exit from the merchant function. Reestablishing the SCO as the default service would represent a giant step backwards on the road to a fully-competitive market.

Third, Staff supports eliminating the MVR program because it has caused customer confusion.[12] DES does not dispute that the MVR program has created confusion on the part of some customers. However, this problem can be addressed by improving the notice a customer receives from DEO prior to being assigned to an MVR supplier. As proposed by DES in its initial comments, this notice should include prominently displayed language that alerts the customer that there may be options available that will result in a more favorable price than the customer will receive from the MVR supplier to which the customer will be assigned and should advise the customer how to explore these options. In so stating, DES concedes that educational efforts, no matter how robust, cannot totally eliminate customer confusion. Indeed, although Choice programs have been around for decades, there is still a segment of customers that does not understand that customers have options for commodity service. However, the goal of the

[12] *See* Staff Comments, 9-10.

MVR program is, and should remain, to promote engagement, and an effective customer notice will encourage customers to engage.

It is apparent that initial comments filed by OCC and Staff were fueled by the actions of certain MVR suppliers that posted unreasonable exorbitant rates that resulted in some customers unwittingly paying unreasonable prices for commodity service. However, this is a fixable problem, and, thus, the Commission should not derail the orderly plan for transitioning to a fully-competitive market that DEO embarked upon over 14 years ago with the filing of its application for an exemption in Case No. 05-0474-GA-ATA.

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 25th day of October 2019.

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Summary: Comments Reply Comments of Dominion Energy Solutions, Inc. electronically filed by Mr. Barth E. Royer on behalf of Dominion Energy Solutions, Inc.