

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**MEMORANDUM CONTRA MARKETERS' MOTION FOR CONTINUANCE
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Today, tomorrow and for every day of the energy Marketers'¹ requested extension of the case schedule, Ohioans will continue to be ripped off (as they have been for years) by marketers in the Dominion-area monthly variable rate program. The PUCO Staff called it "unconscionable."² The PUCO should deny the Marketers' extension, which the PUCO already addressed in the Marketers' previous extension request four weeks ago. The Marketers assert that they "would like sufficient time to prepare a stipulation for consideration and hold further conversations without proceeding with litigation preparation."³ They have had more than sufficient time to date to prepare a stipulation. The PUCO's focus should now be on consumers, and not on marketers who are profiting from excessive charges at consumer expense for every day of delay they seek (two weeks for filing testimony and three weeks for the hearing).

This case involves a program that randomly assigns customers to gas marketers without the customers' consent and usually at prices that are significantly above market

¹ The Marketers are the Retail Energy Supply Association, Direct Energy Business Marketing, LLC, Direct Energy Services, LLC, Interstate Gas Supply, Inc., and Dominion Energy Solutions, Inc.

² PUCO Staff Comments (October 11, 2019) at 11.

³ Joint Motion for Continuance (October 2, 2019) ("Marketers' Motion") at 1.

rates. The Office of the Ohio Consumers' Counsel, on March 9, 2018 and then again on August 15, 2019, requested that the Public Utilities Commission of Ohio ("PUCO") recognize the "Monthly Variable Rate" program as a failed experiment and to cut consumers' losses by ending it. Accordingly, the PUCO should protect consumers by eliminating the "Monthly Variable Rate" program for residential customers in the Dominion Energy Ohio ("Dominion") service territory.

As stated above, Marketers previously sought a 30-day extension of the original procedural schedule in this case (also two days before a deadline). At that time they argued, in part, that more time was needed to allow for continued settlement discussions.⁴ The PUCO denied the full request, granting only a shorter continuance of one week.⁵ Despite the PUCO's denial of the requested continuance, the Marketers once again make an eleventh-hour request for an additional three-week continuance of the hearing, arguing, again, that more time is still needed to continue settlement discussions.⁶ The Marketers are wrong for several reasons.

First, the current schedule allows time for settlement negotiations, as needed. Second, the Marketers' have filed the wrong pleading and, therefore, their filing is legally flawed. The Marketers' motion is essentially an out-of-time interlocutory appeal of the Attorney Examiner's prior ruling that denied their request for a three-week continuance. The Marketers' apparent unhappiness with that ruling should have been addressed under the PUCO's rules by filing an interlocutory appeal (Ohio Adm. Code 4901-1-15), not by

⁴ *Id.* at 3.

⁵ Entry (October 3, 2019), ¶18.

⁶ *See* Marketers' Motion at 3.

filing another motion. Any interlocutory appeal of the PUCO's ruling is too late.⁷ The PUCO should reject the Marketers' request on this ground alone. Third, recent PUCO precedent – in another case involving a marketer (PALMco) ripping-off consumers – was to deny a continuance, where OCC sought a continuance for additional case preparation time.⁸

Given that the Marketers have not shown good cause, the existing deadlines should remain. If a settlement is filed, the PUCO can then adjust its procedural schedule. For its part, OCC will continue to be available for settlement negotiations without an extension, as OCC has been to date.

The PUCO should protect consumers and deny the Marketers' request for a continuance.

⁷ Interlocutory appeals of Attorney Examiner rulings must be filed within five days of the ruling, under Ohio Adm. Code 4901-1-15. That rule also allows parties who do not take an interlocutory appeal to address the ruling in their initial brief or any other appropriate filing. *See* Case No. 05-1444-GA-UNC, Entry (February 12, 2007), ¶10.

⁸ *See* Case No. 19-957-GE-COI, Entry (September 3, 2019).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served via electronic transmission upon the parties this 31st day of October 2019.

/s/ Terry L. Etter

Terry L. Etter
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The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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Summary: Memorandum Memorandum Contra Marketers' Motion for Continuance by The Office of The Ohio Consumers' Counsel electronically filed by Mrs. Tracy J Greene on behalf of Etter, Terry L.