

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

ENTRY

Entered in the Journal on October 31, 2019

{¶ 1} The East Ohio Gas Company d/b/a Dominion Energy Ohio (DEO or Company) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 2} R.C. 4929.04 authorizes the Commission, upon the application of a natural gas company, to exempt any commodity sales service or ancillary service from all provisions of R.C. Chapters 4905, 4909, and 4935, with certain exceptions; from specified sections of R.C. Chapter 4933; and from any rule or order issued under those chapters or sections, including the obligation under R.C. 4905.22 to provide the commodity sales service or ancillary service, and subject to certain requirements.

{¶ 3} R.C. 4929.08 provides that the Commission, upon the motion of any person adversely affected by an exemption granted under R.C. 4929.04, and after notice and hearing, may abrogate or modify any order granting an exemption, if the Commission determines that the findings upon which the order was based are no longer valid and that the abrogation or modification is in the public interest. Further, the abrogation or modification must not be made more than eight years after the effective date of the order, unless the affected natural gas company consents.

{¶ 4} On December 28, 2007, in Case No. 07-1224-GA-EXM, DEO filed an application, pursuant to R.C. 4929.04, for approval of a general exemption of certain natural gas commodity sales from specified provisions contained in R.C. Chapters 4905, 4909, 4933, and 4935.

{¶ 5} On June 18, 2008, in Case No. 07-1224-GA-EXM, the Commission approved the terms of a stipulation and recommendation filed by various parties on April 10, 2008, in response to DEO's application. The Commission authorized DEO to implement phase two of its plan to exit the merchant function, in which DEO implemented a standard choice offer (SCO), wherein suppliers bid for the right to supply gas in tranches to choice-eligible customers at a retail level. On January 9, 2013, in Case No. 12-1842-GA-EXM, the Commission granted DEO's motion to modify the exemption approved in Case No. 07-1224-GA-EXM and adopted a stipulation and recommendation that authorized DEO to discontinue the availability of its SCO to choice-eligible non-residential customers beginning in April 2013.

{¶ 6} On March 9, 2018, in Case No. 12-1842-GA-EXM, the Ohio Consumers' Counsel (OCC) filed a motion, pursuant to Ohio Adm.Code 4901:1-19-11, to modify the exemption granted by the Commission on January 9, 2013. Specifically, OCC sought to reestablish the SCO as the default service for all choice-eligible residential customers and to eliminate the monthly variable rate (MVR) applicable to certain residential customers who have not selected a supplier, governmental aggregation program, or the SCO. OCC contended that the findings upon which the exemption was granted are no longer valid and that the approved structure is no longer a reasonable approach for pricing natural gas for residential customers. OCC noted that, in some instances, the MVR has been significantly higher than the SCO.

{¶ 7} On March 12, 2018, in Case No. 12-1842-GA-EXM, Ohio Partners for Affordable Energy (OPAE) filed a motion requesting that the Commission reestablish the SCO as the default service for non-residential customers, as well as residential customers. OPAE also noted that it supported OCC's motion.

{¶ 8} On March 23, 2018, in response to the motions filed by OCC and OPAE, DEO moved to intervene to the extent that intervention was deemed necessary. DEO also stated that, consistent with Ohio Adm.Code 4901:1-19-11, it would wait for further guidance from

the Commission regarding the procedures to be applicable, before the Company offered substantive comments on OCC's and OPAE's motions.

{¶ 9} On March 26, 2018, Retail Energy Supply Association (RESA), along with Direct Energy Business Marketing, LLC and Direct Energy Services, LLC (collectively, Direct Energy), filed a joint motion for an extension of time. Noting that OCC's and OPAE's motions were filed on March 9, 2018, and March 12, 2018, respectively, RESA and Direct Energy sought an extension of the deadlines such that memoranda contra would be due on the same date.

{¶ 10} On March 30, 2018, DEO filed a response to OCC's and OPAE's motions, reiterating that the Commission should establish a process for full consideration of the motions. DEO also stated that the Company was willing to take part in a collaborative process and seek to identify reasonable solutions to address the concerns raised in the motions. On that same date, RESA and Direct Energy filed joint memoranda contra OCC's and OPAE's motions.

{¶ 11} OCC and OPAE filed replies in support of their motions on April 6, 2018.

{¶ 12} Ohio Adm.Code 4901:1-19-11 provides that the Commission shall order such procedures as it deems necessary, consistent with Ohio Adm.Code Chapter 4901:1-19, in its consideration of whether to modify an order granting an exemption.

{¶ 13} By Entry dated September 13, 2018, the attorney examiner noted that the Commission has issued a final exemption order in Case No. 12-1842-GA-EXM and that additional filings in the case after issuance of the final order have been primarily for the purpose of considering and implementing DEO's auctions. The attorney examiner, therefore, directed OCC and OPAE to refile, in the above-captioned case, their motions for modification of the exemption order, pursuant to R.C. 4929.08 and Ohio Adm.Code 4901:1-19-11. Further, the attorney examiner stated that, consistent with Ohio Adm.Code 4901:1-19-11, a procedural schedule, including an opportunity for responding to the motions of

OCC and OPAE, would be established after OCC and OPAE have refiled their motions in the new docket.

{¶ 14} On September 14, 2018, OPAE refiled its motion for modification of the exemption order in the above-captioned proceeding, as directed by the attorney examiner in the September 13, 2018 Entry. OCC amended and refiled its motion on August 16, 2019.

{¶ 15} By Entry dated August 16, 2019, the attorney examiner established a procedural schedule for this case.

{¶ 16} On September 30, 2019, DEO filed its proofs of publication of notice of the evidentiary hearing.

{¶ 17} On October 2, 2019, RESA, Direct Energy, Interstate Gas Supply, Inc., and Dominion Energy Solutions, Inc. (Joint Movants) filed a joint motion requesting a 30-day continuance of the procedural schedule. In support of their request, Joint Movants stated that the parties had begun to explore a full or partial resolution of the issues and that additional time was needed to engage in meaningful settlement discussions.

{¶ 18} On October 3, 2019, the attorney examiner found that a brief extension was warranted and, accordingly, granted Joint Movants' motion for continuance, in part. Specifically, the attorney examiner indicated that comments and/or memoranda contra OPAE's and OCC's motions should be filed by October 11, 2019, reply comments and/or replies to memoranda contra OPAE's and OCC's motions should be filed by October 25, 2019, and direct testimony should be filed by November 1, 2019. Additionally, the attorney examiner directed that the evidentiary hearing would commence, as scheduled, on November 5, 2019, for the purpose of taking any public testimony, and then be continued to November 12, 2019.

{¶ 19} On October 30, 2019, Joint Movants filed a second motion for continuance requesting a two-week continuance of the deadline for direct testimony and a three-week

continuance of the evidentiary hearing, along with a request for an expedited ruling. Joint Movants propose to continue the deadline for the filing of direct testimony from November 1, 2019, to November 15, 2019. Additionally, Joint Movants request to call the evidentiary hearing as scheduled on November 5, 2019, but continue the hearing from November 12, 2019, to December 3, 2019. In support of their request, Joint Movants state that the parties have had multiple, meaningful conversations in an effort to resolve the issues in this matter and would like sufficient time to prepare a stipulation for consideration and hold further conversations without proceeding with litigation preparation. Additionally, Joint Movants would like to avoid filing multiple sets of testimony, some of which could be mooted, if a stipulation is presented in this matter. Lastly, Joint Movants, pursuant to Ohio Adm.Code 4901-1-12(C), request expedited treatment of their motion, and represent that Staff and DEO do not oppose the sought extension or an expedited ruling. OPAE does not object to the expedited ruling, but objects to the extension, and OCC opposes both requests.

{¶ 20} On October 31, 2019, OCC filed a memorandum contra Joint Movants' request for an extension and expedited treatment. Specifically, OCC states that Joint Movants have had more than sufficient time to prepare a stipulation and that the current procedural schedule allows time for settlement negotiations, as needed. Additionally, OCC suggests that Joint Movants' motion is an out-of-time interlocutory appeal of the attorney examiner's October 3, 2019 Entry. Lastly, OCC represents that recent Commission precedent, in Case No. 19-957-GE-COI, was to deny a continuance, where OCC sought a continuance for additional case preparation time.

{¶ 21} The attorney examiner recognizes that many of the parties, as indicated in several comments that have been filed since the first extension was granted, are seeking to resolve this matter through collaborative efforts to reach an agreed-upon outcome. In order to afford the parties additional time to engage in further settlement negotiations and prepare a stipulation and, pursuant to Ohio Adm.Code 4901-1-12(C), the attorney examiner finds that Joint Movants' request for a brief extension is reasonable and should be granted;

however, the attorney examiner cautions the parties that any additional extension requests will be viewed unfavorably, in light of the fact that this proceeding was initiated more than a year ago. Accordingly, the procedural schedule shall be modified as follows:

- (a) November 5, 2019 – The evidentiary hearing will be called, as currently scheduled, at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-D, Columbus, Ohio 43215-3793.
- (b) November 15, 2019 – Deadline for the filing of direct testimony.
- (c) December 3, 2019 – The evidentiary hearing will resume at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio 43215-3793.

{¶ 22} It is, therefore,

{¶ 23} ORDERED, That Joints Movants' motion for a continuance and request for expedited treatment be granted. It is, further,

{¶ 24} ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Lauren L. Augostini

By: Lauren L. Augostini
Attorney Examiner

JRJ/hac

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10/31/2019 3:52:35 PM

in

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Summary: Attorney Examiner Entry granting motion for continuance and request for expedited treatment electronically filed by Heather A Chilcote on behalf of Lauren L. Augostini, Attorney Examiner, Public Utilities Commission of Ohio