**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of Tariff Revisions.In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion Energy Ohio for Approval of Carbon Offset Program. | )))))))) | Case No. 22-179-GA-ATACase No. 22-180-GA-UNC |

**REPLY BRIEF**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# INTRODUCTION

Dominion Energy Ohio (“Dominion”) and a group of natural gas marketers[[1]](#footnote-2) want the PUCO to approve a Settlement that would establish Dominion’s so-called “Decarbon Ohio Program.” In what is supposed to be Ohio’s competitive marketplace, the program would involve monopoly Dominion obtaining state government approval for “educating” consumers by promoting certain marketers’ competitive carbon offset products. In return, Dominion could boost its own environmental, social and corporate governance (“ESG”) standing by associating itself with unregulated carbon offset products.[[2]](#footnote-3) However, to protect consumers and effective competition in Ohio, the monopoly utility (Dominion) should leave the marketing of natural gas to the energy marketers in the competitive market.

Carbon offset opportunities can be a good thing for consumers. But it would be a bad idea to allow a monopoly utility (Dominion) to involve itself in the promotion of energy marketers’ competitive products. That is a lesson learned from the infamous and now defunct Monthly Variable Rate (“MVR”) program in Dominion’s service area. That program assigned gas marketers to a certain segment of customers with the result of unconscionable rates charged to those consumers.[[3]](#footnote-4)

In this regard, the Settlement provides no assurance that marketers participating in the program will not use claimed carbon offsets to lure consumers to unreasonable rates. That would be an example of “greenwashing.”

As explained in OCC’s initial brief, the marketer/Dominion settlement fails all three prongs of the PUCO’s three-prong settlement standard. As also explained, the settlement should not even be considered as qualifying for the settlement standard that favors utilities like Dominion.

For the reasons explained below and in OCC’s Initial Brief, the PUCO should reject the Settlement.

# ARGUMENT

## The Settlement’s Decarbon Ohio Program is unnecessary and harmful to consumers and the public interest. The PUCO should reject the Settlement.

OCC presented ample unrefuted evidence demonstrating how the Settlement would harm consumers and competition.[[4]](#footnote-5) However, Dominion, RESA, and the NRG marketers argue in their briefs that the Decarbon Ohio Program in the Settlement is necessary to address environmental concerns and consumers’ desire for carbon offset products.[[5]](#footnote-6) It is not. To the contrary, consumers already have access to competitive carbon offset products without monopoly Dominion’s involvement, regardless of whether the PUCO approves the Settlement.

Dominion concedes that there is already a “robust competitive supply market.”[[6]](#footnote-7) More specifically, Dominion states that it “***recognizes that there is an existing competitive supply market for carbon offsets*** and seeks only to facilitate customer evaluation of different suppliers and supplier offerings, giving them the tools they need to choose the one that is right for them.”[[7]](#footnote-8) Dominion’s statements corroborate OCC witness Andrew Tinkham’s testimony that numerous marketers (including IGS, Tomorrow Energy, and CleanSky Energy) already offer competitive carbon offset rates in Ohio. Those offers are on the PUCO’s Apples to Apples website.[[8]](#footnote-9) Thus, the PUCO should summarily reject claims by Dominion, RESA, and the NRG marketers that the Settlement is needed for consumers to access competitive carbon offset products.

The stated purpose of the Decarbon Ohio program in the Settlement is to “educate” consumers by promoting and verifying the carbon offset offers of natural gas marketers that *participate* in the program.[[9]](#footnote-10) However, Dominion will not educate consumers about *all*

carbon offset products offered in Ohio. The Decarbon Ohio Program will only promote and verify for consumers the carbon offset products of marketers that participate in the program.

Dominion witness Ella Hochstetler testified that the purpose of the program is to enable consumers “to identify participating suppliers” and to “increase awareness” of the offerings of “participating suppliers.”[[10]](#footnote-11) The NRG marketers state that “the Program would provide ***enhanced visibility*** of participating supplier offerings with carbon offsets and customer education through a coordinated approach by the utility and participating suppliers.”[[11]](#footnote-12) RESA claims that the Decarbon Ohio Program “will not establish Dominion as a promoter of specific suppliers or as an advertiser of specific offers.”[[12]](#footnote-13) But the testimony of Dominion’s own witness and the NRG marketers’ brief demonstrate the opposite.

The program’s promotion of participating marketer offers would harm consumers in several ways. As OCC explained in its brief, marketers that participate in the program are allowed to use a “Decarbon Ohio” trademark at no cost for marketing service to consumers.[[13]](#footnote-14) This would provide a marketer participating in the program with an inappropriate competitive edge, under the auspices of a utility monopoly and approval by state government (PUCO), over a non-participating marketer.[[14]](#footnote-15) OCC witness Tinkham testified that this aspect of the Decarbon Ohio Program is contrary to Dominion’s Standards of Conduct language in its tariff. The tariff prohibits Dominion from providing any marketer preference over any other marketer.[[15]](#footnote-16)

In addition, because participating marketers will be promoted by Dominion, consumers may view participating marketers more favorably than non-participating marketers. This creates an uneven playing field for marketers, which ultimately harms consumers. Through marketing or visiting the Dominion website, consumers might not realize there are other options to secure natural gas related to carbon offsets outside of the Decarbon Ohio Program. And consumer confusion would be promoted by what will appear to be monopoly Dominion’s seal of approval. Such results are unfair to consumers in what should be a competitive market without intrusion by the monopoly utility.

Similarly, a participating marketer that is allowed to use the “Decarbon Ohio” trademark may be perceived by consumers to be more worthy, as the use of the state’s name in the trademark implies legitimacy in a participating marketer’s carbon offset product. This perceived legitimacy could enable participating marketers to sell carbon offset products that may not be as “green” as advertised or to take advantage of consumers by attaching too-high prices to a perceived Dominion-endorsed product.

OCC witness Tinkham testified that this is known as “greenwashing.”[[16]](#footnote-17) The Federal Trade Commission (“FTC”) has carbon offset rules to protect consumers from false carbon offset marketing.[[17]](#footnote-18) However, public utilities and energy marketers offering so-called green services through carbon offsets (such as in Dominion’s program) would likely claim that they are not specifically subject to the FTC’s carbon offset rules. Nothing in the Settlement protects consumers from potential greenwashing by marketers participating in Decarbon Ohio program. Indeed, the program can enable greenwashing, against the public interest. Accordingly, the Settlement should be rejected.

## The Settlement violates Ohio law and regulatory policy. The PUCO should reject Dominion’s, RESA’s, and the NRG marketers’ claims to the contrary.

Dominion, RESA, and the NRG marketers all argue that the Settlement is consistent with regulatory policy in Ohio.[[18]](#footnote-19) That is incorrect. The PUCO should reject the Settlement.

To protect consumers, natural gas marketers should compete on a level playing field. But that will not happen if the PUCO approves the Settlement. The Decarbon Ohio Program promotes participating marketers over non-participating marketers. The Settlement provides advertising benefits to marketers participating in the Decarbon Ohio Program but not to non-participating marketers.[[19]](#footnote-20) And that comes at the hand of monopoly Dominion that should not have such a role in Ohio’s competitive gas marketplace.

This result would violate R.C. 4905.35(A). This statute provides that “no public utility shall make or give any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage.”

Dominion and RESA argue that the Settlement serves state policies set forth in R.C. 4929.02(A).[[20]](#footnote-21) It doesn’t. The Settlement does not promote effective competition or more choices for consumers, because the program promotes participating marketers over non-participating marketers. That *prevents* effective competition in violation of R.C. 4929.02(A)(7). Thus, the Settlement is contrary to R.C. 4929.02(A)(3). This statute provides that it is the state policy to “promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers.”

Moreover, promoting marketers participating in the Decarbon Ohio Program over non-participating marketers would be contrary to Dominion’s standard of conduct in its tariff, as noted above.[[21]](#footnote-22) And in doing so, it would violate R.C. 4905.30 which requires utilities to abide by their filed and approved tariffs. Accordingly, the Settlement violates the third prong of the PUCO’s three-part settlement test. The PUCO should reject the Settlement.

# III. CONCLUSION

The Settlement’s Decarbon Ohio program is an intrusion by a monopoly utility (Dominion) into the competitive natural gas supply market that could ultimately harm consumers. And (as Dominion concedes) the program is unnecessary to provide consumers with competitive carbon offset products. Under Ohio’s structure for energy supply, the marketers – not Dominion – should be the ones to respond in the competitive market to consumers who want greener energy and carbon offsets. Dominion should not be allowed to promote some natural gas marketers over others.

The PUCO should protect consumers and reject the Settlement for the Decarbon Ohio Program. Carbon reduction is a good idea for the world. But Dominion’s Decarbon Ohio Program is unnecessary and a bad idea for Ohio consumers who rely on a competitive market. In Ohio, carbon offset programs should be, and are, provided through that competitive market.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of this Reply Brief was served on the persons stated below via electronic transmission, this 23rd day of August 2023.

 */s/ Angela D. O’Brien*

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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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1. Direct Energy Business LLC, Direct Energy Services LLC, Direct Energy Business Marketing LLC, Energy Plus Natural Gas LLC, Reliant Energy Northeast LLC, Stream Ohio Gas & Electric, LLC, and XOOM Energy Ohio, LLC (the “NRG marketers”), the Retail Energy Supply Association (“RESA”), and Dominion filed Initial Briefs in support of the Settlement. [↑](#footnote-ref-2)
2. Dominion Ex. 1.0 (Hochstetler Settlement Testimony), at 7-8. [↑](#footnote-ref-3)
3. The program was ended after OCC filed a motion to protect the affected consumers. *See In the Matter of the Motion to Modify the Exemption Granted to East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 18-1419-GA-EXM, Opinion and Order (Feb. 26, 2020). [↑](#footnote-ref-4)
4. *See* OCC Ex. 1.0 (Tinkham Direct). [↑](#footnote-ref-5)
5. Dominion Initial Brief, at 9-10; RESA Initial Brief, at 5-6; NRG Initial Brief, at 7-8. [↑](#footnote-ref-6)
6. Dominion Initial Brief, at 10. [↑](#footnote-ref-7)
7. *Id.* (Emphasis added.) [↑](#footnote-ref-8)
8. OCC Ex. 1.0 (Tinkham Direct) at 8. [↑](#footnote-ref-9)
9. Dominion Initial Brief, at 3, 4, 11, 14; RESA Initial Brief, at 9. [↑](#footnote-ref-10)
10. Dominion Ex. 1.0 (Hochstetler Settlement Testimony), at 9. [↑](#footnote-ref-11)
11. NRG Initial Brief, at 3. [↑](#footnote-ref-12)
12. RESA Initial Brief, at 8. [↑](#footnote-ref-13)
13. Joint Ex. 1.0 (Stipulation and Recommendation) (“Settlement”), at 5. [↑](#footnote-ref-14)
14. OCC 1.0 (Tinkham Direct) at 6. [↑](#footnote-ref-15)
15. *Id.* at 7 (quoting Dominion Tariff, Fourth Revised Sheet No. ECPS 47). [↑](#footnote-ref-16)
16. *Id.* at 9. [↑](#footnote-ref-17)
17. *See* 16 C.F.R. §260.5. [↑](#footnote-ref-18)
18. Dominion Initial Brief, at 13-15; RESA Initial Brief, at 7-9; NRG Initial Brief, at 11-13. [↑](#footnote-ref-19)
19. *Id.* at 12-13. [↑](#footnote-ref-20)
20. Dominion Initial Brief, at 14; RESA Initial Brief, at 7-8. [↑](#footnote-ref-21)
21. OCC Ex. 1.0 (Tinkham Direct), at 7 (quoting Dominion Tariff, Fourth Revised Sheet No. ECPS 47). [↑](#footnote-ref-22)