**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Joint Motion to Modify the December 2, 2009 Opinion and Order and the September 7, 2011 Second Opinion and Order in Case No. 08-1344-GA-EXM | ))))) | Case No. 12-2637-GA-EXM |

**JOINT MOTION TO MODIFY ORDERS**

**GRANTING EXEMPTION**

**AND MOTION FOR BIFURCATION OF THE CAPACITY**

**AND BALANCING ISSUES ON AN EXPEDITED BASIS**

By an Opinion and Order issued in Case No. 08-1344-GA-EXM (“the Exemption Proceeding”) on December 2, 2009 (“First Opinion and Order”), the Commission, pursuant to R.C. 4929.04, granted an exemption authorizing Columbia Gas of Ohio, Inc. (“Columbia”) to eliminate its gas cost recovery mechanism and replace it with an auction process. On September 7, 2011, the Commission issued a Second Opinion and Order in Case No. 08-1344-GA-EXM, further ruling upon issues associated with the First Opinion and Order (the two orders will be referred to collectively as the “Exemption Orders”).

By this Motion, Columbia, Staff, Ohio Gas Marketers Group[[1]](#footnote-1), Retail Energy Supply Association[[2]](#footnote-2) and Dominion Retail, Inc. (all of the foregoing referred to collectively as the "Joint Movants") respectfully request, pursuant to R.C. 4929.08(A) and the terms of the Commission’s First Opinion and Order, that the Commission modify the Exemption Orders, and thus the terms of the exemption, for a five-year period to begin after the initial term of the stipulation (“2009 Stipulation”) approved in Case No. 08-1344-GA-EXM.

In the 2009 Stipulation, the signatory parties reserved their rights to propose modifications to the exemption, and the Commission’s right to grant modifications to the exemption, to become effective after the Stipulation’s initial term. R.C. 4929.08(A) also authorizes the Commission to modify an order granting an exemption only after notice and a hearing. To facilitate the scheduling of such a hearing, the Joint Movants have filed, concurrently with this Motion, a Stipulation and Recommendation designated as Joint Exhibit 1.

The ongoing operation of Columbia’s CHOICE and Standard Choice Offer (“SCO”) programs will be affected by the Commission’s action with respect to the Stipulation and Recommendation. Under the Revised Program Outline that the Commission approved in the Second Opinion and Order, an SCO Auction for the next program year (April 1, 2013 through March 31, 2014) will be conducted on January 29, 2013. The supplier education meeting for potential SCO suppliers will be held on December 4, 2012. In order to ensure that Columbia will have sufficient time to prepare for that supplier education meeting, the Joint Movants respectfully request issuance of a final order on at least the capacity-, SCO-, and billing-related issues in the Stipulation and Recommendation by no later than November 30, 2012. The Joint Movants respectfully propose that the Commission bifurcate this proceeding to allow a determination on those issues first, with the remaining sections of the Stipulation and Recommendation (the sections relating to Columbia’s potential exit of the merchant function and Monthly Variable Rate Program) decided subsequently.

For the reasons discussed in this Motion and the attached Memorandum in Support, the Joint Movants request that the Commission modify the Exemption Orders as requested herein. The Joint Movants also request that the proceeding instituted by the Commission to review this Motion be bifurcated so that the capacity, balancing, SCO, and billing issues may be determined prior to the supplier education meeting for the next SCO auction. Pursuant to Rule 4901-1-12(C), Ohio Admin. Code, the Joint Movants respectfully request an expedited ruling on this Motion.

 Respectfully submitted,

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**MEMORANDUM IN SUPPORT**

**INTRODUCTION**

On January 30, 2009, as supplemented on March 26 and 31, 2009, Columbia filed an application pursuant to Section 4929.04, Revised Code, for approval of a general exemption of certain natural gas commodity sales services or ancillary services contained in Chapters 4905, 4909, and 4935, Revised Code. That application was docketed as Case No. 08-1344-GA-EXM. Much of the detail related to Columbia’s proposal was included in a Program Outline that was an attachment to the Application.

The parties to the case filed a Joint Stipulation and Recommendation on October 7, 2009 (“2009 Stipulation”). The Stipulation recommended approval of Columbia’s exemption from regulation and recommended approval of revisions to the Program Outline. Among other things, the Stipulation did the following:

* Eliminated Columbia’s gas cost recovery mechanism as of April 1, 2010, and replaced it with two annual Standard Service Offer (“SSO”) auctions, followed by annual Standard Choice Offer (“SCO”) auctions;
* Established an agreed upon level of Columbia’s peak day demand and peak day capacity portfolio, which levels would not be subject to audit through March 31, 2013.
* Established Columbia’s off-system sales/capacity release revenue sharing mechanism through March 31, 2013

By Opinion and Order dated December 2, 2009 (“First Opinion and Order”), the Commission approved the 2009 Stipulation, as well as the Program Outline.

Pursuant to the terms of the 2009 Stipulation, on May 9, 2011, the Office of the Ohio Consumers’ Counsel (“OCC”) and Ohio Partners for Affordable Energy (“OPAE”) filed objections to the transition from an SSO auction to an SCO auction. After hearing, the Commission issued a Second Opinion and Order in Case No. 08-1344-GA-EXM on September 7, 2011, in which it reaffirmed Columbia’s transition to an SCO auction.

The most recent version of the Program Outline is that docketed on April 15, 2011, with a replacement page docketed on October 14, 2011, pursuant to the Commission’s Second Opinion and Order on September 7, 2011.

As noted above, several provisions of the 2009 Stipulation expire March 31, 2013. Significant among the provisions that expire March 31, 2013, are Columbia’s specified levels of peak day demand and peak day capacity portfolio exempt from audit. The ongoing operation of Columbia’s CHOICE and SCO programs is affected by Columbia’s levels of peak day demand and peak day capacity portfolio. Columbia also has interstate pipeline contracts that expire that same date – March 31, 2013.

Columbia’s stakeholder group has met during 2012 in order to discuss issues associated with the provisions of the 2009 Stipulation that expire March 31, 2013. Those discussions have resulted in the filing of the Joint Stipulation and Recommendation attached hereto as Joint Exhibit 1.

**ARGUMENT**

**A. The Commission Has Authority To Modify Its Orders Granting An Exemption**

The 2009 Stipulation, which the Commission’s First Opinion and Order approved in its entirety, allowed the Stipulation’s parties to seek, and the Commission to grant, modifications to the exemption’s terms for the period after the Stipulation’s initial term. On page 8 of the 2009 Stipulation, the signatory parties “reserve[d] the right to propose changes to the Agreement to become effective after the end of the initial term.” On the same page, the parties agreed that the provisions of the Stipulation would “continue [after the expiration of the initial term] until modified by the Commission.”

Ohio statute also authorizes the Commission to modify the terms of the exemption. The Exemption Orders were issued under R.C. 4929.04. The Commission has the authority to modify or abrogate the Exemption Orders under certain specified conditions. Specifically, R.C. 4929.08(A) provides:

The public utilities commission has jurisdiction over every natural gas company that has been granted an exemption or alternative rate regulation under section 4929.04 or 4929.05 of the Revised Code. As to any such company, the commission, upon its own motion or upon the motion of any person adversely affected by such exemption or alternative rate regulation authority, and after notice and hearing and subject to this division, may abrogate or modify any order granting such an exemption or authority only under both of the following conditions:

(1) 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;

(2) The abrogation or modification is not made more than eight years after the effective date of the order, unless the affected natural gas company consents.

Twice this year, the Commission has applied R.C. 4929.08 in granting motions to modify previous Commission orders granting exemptions. *See 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. 11-6076-GA-EXM, Opinion and Order, at 5 (Feb. 14, 2012); *In the Matter of the Application and Joint Stipulation and Recommendation of Vectren Energy Delivery of Ohio, Inc., for Approval of its Exemption Authority Granted in Case No. 07-1285-GA-EXM*, Case No. 12-483-GA-EXM, Opinion and Order, at 5 (May 16, 2012).

As discussed below, certain findings upon which the Exemption Orders were based are no longer valid. As a result, Columbia is adversely affected by the exemption as it currently stands, and modification of the Exemption Orders is in the public interest. The eight-year limitation in R.C. 4929.08(A)(2) does not apply, because Columbia consents to the modifications sought in this proceeding. Regardless, the First Opinion and Order was approved two and one half years ago, well under the eight-year limit imposed by R.C. 4929.08(A)(2). Therefore, under both the Commission’s First Opinion and Order and statute, the Commission has the authority to modify the Exemption Orders granting Columbia’s exemption.

**B. Pursuant To R.C. 4929.08(A), The Commission Should Modify The Exemption Order**

**1. Certain findings upon which the Exemption Order was based are no longer valid, adversely affecting Columbia**

The exemption from regulation granted Columbia in Case No. 08-1344-GA-EXM was the first such exemption for Columbia. In abandoning the GCR and implementing gas supply auctions, Columbia was initiating a new method of supplying gas to customers.

The auction process is now no longer new or novel, and there is no longer uncertainty about the auction process. Columbia has held three auctions, and the parties agree that the auctions have provided customer benefits. The Retail Price Adjustment in Columbia’s second and third auctions decreased from that in the first and second auctions respectively.

While there is now less uncertainty about the auction process, since the 2009 Stipulation was approved in December 2009, the introduction of Marcellus shale gas into the marketplace has created greater uncertainty about Columbia’s best use of interstate pipeline capacity. The introduction of Marcellus shale gas, and subsequently Utica shale gas, has created the potential for new gas supply opportunities in Ohio. How these opportunities will develop is unknown, but the opportunities could potentially impact Ohio utilities’ use of interstate pipeline capacity. It will likely take several years to fully assess the full impacts of shale gas on Ohio markets, and until all market participants can assess these impacts it makes sense not to make long-term interstate pipeline capacity contract decisions that could adversely impact Columbia’s ability to make the best use of all pipeline capacity available to it. Consequently, the factual assumptions underlying Columbia’s capacity contracts have changed since the Commission issued the Exemption Orders. Yet, the 2009 Stipulation approved by the Exemption Orders provides for a peak day capacity portfolio that is not geared to meet Columbia’s needs during the period after the Stipulation’s initial term.

Columbia has also begun to plan for a possible exiting of the merchant function. When the 2009 Stipulation was approved in December 2009, Columbia had not expressed a present intent to, and did not contemplate seeking to, exit the merchant function. Since then, the stakeholders believe such an exit may be warranted, if participation in Columbia’s CHOICE program were to meet sufficient levels. The Exemption Orders do not, however, authorize Columbia to exit the merchant function.

For these reasons, Columbia’s stakeholders believe that the Exemption Orders are adversely affecting Columbia, the findings underlying the Commission’s Exemption Orders are no longer valid, and modifications to those Orders should be granted.

**2. Certain modifications to the Exemption Order are in the public interest**

 The Joint Stipulation and Recommendation attached hereto as Joint Exhibit 1 would modify the details of Columbia’s exemption for a term that will commence on April 1, 2013, and continue until March 31, 2018. The stakeholders believe that there are likely benefits to be derived from continuing the current exemption agreement, with modifications. Such a continuation would permit Columbia to retain flexibility in a rapidly evolving marketplace. The exact terms under which the exemption should continue involve interrelationships among complicated issues, including uncertainty as to how best contract for interstate pipeline capacity in a changing marketplace. These terms, including revisions to the Program Outline, are set forth in the Joint Stipulation and Recommendation attached hereto as Joint Exhibit 1 and in the revised Program Outline, which will be filed in this docket in the near future.

It is in the public interest for the Commission to permit Columbia and its stakeholders to maintain flexibility, particularly with regard to interstate pipeline capacity, while the market for shale gas develops. The other substantive modifications to the Exemption Orders are also in the public interest. Modifying the Balancing Fee, which is currently charged to Suppliers (and factored into Suppliers’ charged rates), to instead charge it directly to customers would improve transparency in the way marketers’ rates are set. The proposed modifications would allow Columbia to upgrade its computer systems to allow for more varied and diverse marketing services. The proposed modifications would also allow new Columbia customers to enroll in the CHOICE program immediately, if they choose, and would enable Columbia to exit the merchant function entirely if certain levels of shopping are achieved. All of these modifications would further the state’s policies, as outlined in R.C. 4929.02, to “[e]ncourage innovation and market access for cost-effective supply- \* \* \* side natural gas services and goods[,]” “[r]ecognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment[,]” and “[p]romote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. of the Revised Code[.]” R.C. 4929.02(5), (6), and (7).

**CONCLUSION AND REQUEST FOR EXPEDITED RULING**

Accordingly, the Joint Movants respectfully request that the Commission modify the Exemption Orders to continue the exemptions granted in those orders, but with the modifications requested herein.

Due to the fact that the supplier education meeting for the next SCO auction will be held on or about December 4, 2012, the Joint Movants respectfully request an expedited ruling on this Joint Motion. For the same reason, the Joint Movants further request that the Commission bifurcate this proceeding, so as to allow for a determination on the time-sensitive capacity-related issues in the attached Joint Stipulation and Recommendation (as well as the other issues not related to Columbia’s potential exit of the merchant function and Monthly Variable Rate Program) in sufficient time for Columbia to incorporate the necessary revisions to the SCO Auction process into the materials and presentation for its supplier education meeting – ideally, by November 30, 2012. The Joint Movants respectfully suggest that expedited discovery (if necessary), followed by a hearing and oral argument (in lieu of briefs) on the non-exit-related provisions of this Joint Motion, may best allow for a timely ruling on those issues.

 Respectfully submitted,

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**JOINT EXHIBIT 1**

1. The Ohio Gas Marketers Group for purposes of this proceeding includes Constellation NewEnergy, Inc., Direct Energy Services, LLC, Direct Energy Business, LLC, Interstate Gas Supply, Inc., Integrys Energy, Inc., Just Energy Group, Inc. and SouthStar Energy LLC. [↑](#footnote-ref-1)
2. RESA’s members include Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. [↑](#footnote-ref-2)