

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The East )  
 Ohio Gas Company d/b/a Dominion East )  
 Ohio for Approval of a General Exemption ) Case No. 07-1224-GA-EXM  
 of Certain Natural Gas Commodity Sales )  
 Services or Ancillary Services. )

OPINION AND ORDER

The Public Utilities Commission of Ohio (Commission), considering the application, the testimony, and other evidence presented in this matter, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Jones Day, by Mark A. Whitt and Andrew J. Campbell, P.O. Box 165017, Columbus, Ohio 43216, on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio.

Sheryl Creed Maxfield, First Assistant Attorney General, by Duane W. Luckey, Section Chief, and Anne L. Hammerstein and Stephen A. Reilly, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, 9<sup>th</sup> Floor, Columbus, Ohio 43215, on behalf of the staff of the Public Utilities Commission of Ohio.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Joseph P. Serio, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential customers of The East Ohio Gas Company d/b/a Dominion East Ohio.

McNess, Wallace & Nurick LLC, by Samuel C. Randazzo and Daniel J. Neilsen, 21 East State Street, 17<sup>th</sup> Floor, Columbus, Ohio 43215, on behalf of Industrial Energy Users-Ohio.

David C. Rinebolt, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45839, on behalf of Ohio Partners for Affordable Energy.

Bobby Singh, 300 West Wilson Bridge Road, Suite 350, Worthington, Ohio 43085, on behalf of Integrys Energy Services, Inc.

Vorys, Sater, Seymour & Pease LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216, on behalf of the Ohio

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Gas Marketers Group, comprised of Interstate Gas Supply, Inc.; Direct Energy Services, LLC; Hess Corporation; Commerce Energy of Ohio; SouthStar Energy Services LLC; and Vectren Retail LLC d/b/a Vectren Source.

Bell & Royer Co., LPA, by Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215, on behalf of Dominion Retail, Inc., and MXenergy, Inc.

Bricker & Eckler, LLP, by Thomas J. O'Brien and Glenn Krassen, 100 South Third Street, Columbus, Ohio 43215, on behalf of the Northeast Ohio Public Energy Council.

Craig G. Goodman, 3333 K Street NW, Suite 110, Washington, D.C. 20007, on behalf of the National Energy Marketers Association.

### OPINION:

#### I. BACKGROUND

The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

On April 8, 2005, DEO filed an application requesting an exemption pursuant to Section 4929.04, Revised Code, and seeking approval of phase one of its plan to exit the merchant function. *In the Matter of the Application of The East Ohio Gas Company dba Dominion East Ohio for Approval of a Plan to Restructure Its Commodity Service Function*, Case No. 05-474-GA-ATA (05-474). By opinion and order issued May 26, 2006, in 05-474, the Commission approved DEO's application, as modified by the stipulation filed in the case, to undertake phase one of its proposal to test alternative, market-based pricing of commodity sales.

On December 28, 2007, DEO filed an application, pursuant to Section 4929.04, Revised Code, for approval of phase two of its plan to exit the merchant function and requesting a general exemption of certain natural gas commodity sales services or ancillary services contained in Chapters 4905, 4909, 4933, and 4935, Revised Code.

By entry issued January 30, 2008, the Commission determined that DEO's application complied with the filing requirements of Rule 4901:1-19-04, Ohio Administrative Code (O.A.C.), and concluded that the application filed by DEO on December 28, 2007, should be accepted as of the filing date. Subsequently, on February 6, 2008, the attorney examiner established the procedural schedule in this matter, including the due date for the filing of comments, the deadline for the filing of motions to intervene,

and the times and locations for the local and evidentiary hearings. No one filed comments in this matter. By entry issued March 26, 2008, the attorney examiner, *inter alia*, granted the motions to intervene filed by the office of the Ohio Consumers' Counsel (OCC); Ohio Partners for Affordable Energy (OPAE); Integrys Energy Services, Inc. (Integrys); Ohio Gas Marketers Group (Gas Marketers) (comprised of Interstate Gas Supply, Inc.; Direct Energy Services, LLC; Hess Corporation; Commerce Energy of Ohio; SouthStar Energy Services LLC; and Vectren Retail LLC d/b/a Vectren Source); MXEnergy, Inc. (MXEnergy); National Energy Marketers Association (NEM); Northeast Ohio Public Energy Council (NOPEC); Dominion Retail, Inc. (Dominion Retail); and Industrial Energy Users-Ohio (IEU-Ohio).

A technical conference was held in this matter on February 12, 2008, at the offices of the Commission. By entry issued February 6, 2008, DEO was directed to publish notice of the hearings in this case in each county in which it provides service. On April 16, 2008, DEO filed the requisite proofs of publication (Late-filed DEO Ex. 16).

Local hearings were held on April 1, 2008, in Youngstown, Ohio, and on April 3, 2008, in Cleveland and Canton, Ohio. There was one public witness who testified in Youngstown, Ohio, four public witnesses in Cleveland, Ohio, and one public witness in Canton, Ohio. Each of the public witnesses testifying expressed opposition to this application. The evidentiary hearing was held on April 7 and 10, 2008. At the hearing on April 10, 2008, DEO submitted a stipulation and recommendation (stipulation), which was filed in this docket on April 10, 2008 (Joint Ex. 1). The stipulation was executed by DEO, staff, and all of the intervenors, with the exception of IEU-Ohio and OPAE.<sup>1</sup> By letter filed in this docket on April 22, 2008, OPAE stated that it had agreed not to oppose the stipulation. At the hearing held on April 10, 2008, staff presented testimony in support of the stipulation. No party testified against, or otherwise objected to, the stipulation.

## II. GOVERNING STATUTES

Section 4929.04, Revised Code, authorizes the Commission, upon the application of a natural gas company such as DEO, to exempt any commodity sales service or ancillary service from all provisions of Chapter 4905, Revised Code (with the exception of Section 4905.10, Revised Code); all provisions of Chapter 4909, Revised Code; all provisions of Chapter 4935, Revised Code (with the exception of Sections 4935.01 and 4935.03, Revised Code); Sections 4933.08, 4933.09, 4933.11, 4933.123, 4933.17, 4933.28, and 4933.32, Revised Code; and from any rule or order issued under those chapters or sections.

Section 4929.04, Revised Code, delineates the standards for the Commission's review, as well as the regulatory policy that we are to follow in determining whether to

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<sup>1</sup> By letter filed April 11, 2008, MXEnergy stated that it supports the stipulation and requested that it be added as a signatory party.

approve applications under that section. Section 4929.04(A), Revised Code, provides that we shall approve the exemption upon a finding, after hearing, that an applicant is in substantial compliance with the policy of this state specified in Section 4929.02, Revised Code, and that either (1) it is subject to effective competition with respect to the commodity sales service or ancillary service, or (2) customers of the commodity sales service or ancillary service have reasonably available alternatives.

Section 4929.04(B), Revised Code, provides that, in determining if the conditions in subsections (1) or (2) exist, the Commission shall consider, among other issues:

- (1) The number and size of alternative providers of the commodity sales service or ancillary service.
- (2) The extent to which the commodity service or ancillary service is available from alternative providers in the relevant market.
- (3) The ability of alternative producers to make functionally equivalent or substitute services readily available at competitive prices, terms, and conditions.
- (4) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

Section 4929.02, Revised Code, sets forth the state policies to be considered, as follows:

- (1) Promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods.
- (2) Promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs.
- (3) Promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers.
- (4) Encourage innovation and market access for cost effective supply- and demand-side natural gas services and goods.
- (5) Encourage cost effective and efficient access to information regarding the operation of the distribution systems of natural

gas companies in order to promote effective customer choice of natural gas services and goods.

- (6) Recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment.
- (7) Promote 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.
- (8) Promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods.
- (9) Ensure that the risks and rewards of a natural gas company's offering of non-jurisdictional and exempt services and goods do not affect the rates, prices, terms, or conditions of nonexempt, regulated services and goods of a natural gas company and do not affect the financial capability of a natural gas company to comply with the policy of this state specified in this section.
- (10) Facilitate the state's competitiveness in the global economy.
- (11) Facilitate additional choices for the supply of natural gas for residential consumers, including aggregation.

### III. SUMMARY OF THE APPLICATION

#### A. General

DEO provides natural gas service to approximately 1.2 million residential customers in the state of Ohio, all of whom will be affected by this application because the application provides for a more competitive market for natural gas commodity service, according to DEO (DEO Ex. 1). DEO maintains that, as of November 2007, two-thirds of DEO's customers (820,572) receive service under either DEO's energy choice program or through governmental aggregation (DEO Ex. 15, Murphy at 4 and 9). In addition, DEO states that it presently has 41 suppliers offering commodity service to its traditional transportation market and 17 suppliers participating in its energy choice program (*Id.* at 8).

In the application in this case, DEO is requesting Commission approval of the second phase of the company's plan to exit the merchant function. DEO explains that phase 2 will be a pilot program and will represent an intermediate step between phase 1 and DEO's ultimate exit of the merchant function (DEO Ex. 15, Murphy at 3). According to DEO, the objectives of the phase 2 pilot are similar to the objectives stated for phase 1 in 05-474. First, DEO explains that both phases are intended to foster a competitive market in which customers can make informed choices among expanded alternative suppliers, while ensuring reliable commodity service by the suppliers. Second, DEO avers that both phases were designed to address, without disrupting the competitive marketplace, the commodity service needs for those customers that cannot or will not choose among the available alternatives. In addition, DEO offers that phase 2 is also intended to facilitate the process of choice-eligible customers establishing a contractual relationship with a competitive retail natural gas service (CRNGS) provider prior to the time DEO ceases providing commodity service to such customers (DEO Ex. 2 at 3). However, DEO notes that, under phase 2, DEO will continue to take title to the gas and resell it (DEO Ex. 15, Murphy at 3).

B. Differences Between Phase 1 and Phase 2

DEO explains that its phase 1 pilot program, approved in 05-474, began in October 2006. Through phase 1, DEO eliminated its existing gas cost recovery (GCR) mechanism and implemented, in its place, a new standard service offer (SSO) gas cost rate. In phase 1, DEO secured wholesale supplies of natural gas through a descending clock auction in which six SSO suppliers won the right to provide natural gas supplies to customers who were not participating in a choice program, at the closing New York Mercantile Exchange (NYMEX) natural gas futures settlement price for the prompt month, plus a retail price adjustment of \$1.44 per thousand cubic feet (mcf). These six bidders provided twelve tranches of supply that formed the pool of gas supplies needed to serve both percentage of income payment plan (PIPP) and non-PIPP customers. In phase 1, the customers' bills showed DEO as the commodity service provider. According to DEO, throughout phase 1, customers eligible to participate in the energy choice program<sup>2</sup> could do so at any time by enrolling with an individual supplier or by participating in a governmental aggregation program. In phase 1, those customers that did not participate in energy choice received commodity service at a price that varies each month in accordance with the results of the Commission-approved SSO auction (DEO Ex. 2 at 3-4). DEO believes that phase 1 successfully assisted in the development of a market-based price and an auction price that was below the historic GCR benchmarks, increased the number of customers receiving service under energy choice or an aggregation program, increased the number of suppliers

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<sup>2</sup> DEO explains that, in order to receive service under a choice rate schedule, a customer must have no past due amounts of thirty days or more or must not have broken more than one payment plan during the preceding 12 months (DEO Ex. 2 at 4).

competing in the market, and attracted a large number of participants to the stakeholder process (DEO Ex. 15, Murphy at 4).

Under phase 2, DEO explains that customers who do not participate in the energy choice program will continue to receive commodity service at a price that varies each month in accordance with the results of a Commission-approved auction. According to DEO, about one quarter of DEO's remaining sales customers (customers that do not receive service under energy choice or through aggregation) are either not eligible to participate in the energy choice program or are PIPP customers. During phase 2, these customers will still be provided with the commodity, which will be acquired through an auction at the SSO price approved by the Commission. DEO states that, under phase 2, these customers will see no change in the way their supplies are purchased or in the appearance of their bills. DEO goes on to explain that about three-quarters of DEO's remaining sales customers are eligible to participate in energy choice but have elected not to do so. During phase 2, these customers will receive their commodity from a specific supplier selected via an auction at the standard choice offer (SCO) price approved by the Commission. For these customers, DEO will purchase the supply from the SCO suppliers for resale to the customers and the supplier will be identified on the customers' bills (DEO Ex. 2 at 4).

### C. Auction Process

DEO explains that it convened a stakeholder group, as required by the Commission's order in 05-474, to discuss the various aspects of phases 1 and 2. This stakeholder group established objectives for any auction that might be conducted. The objectives addressed customer perspectives, market structure perspectives, operational perspectives, and auction structure perspectives (DEO Ex. 2 at 5-6).

DEO states that the phase 1 pilot program commenced in October 2006 and terminates August 31, 2008. Therefore, DEO proposes to begin phase 2 and offer SCO service with tariffs effective the first billing cycle in September 2008. DEO proposes to conduct an initial auction for phase 2 by July 25, 2008. SSO and SCO services will be provided pursuant to this initial auction from September 1, 2008, to March 31, 2010 (DEO Ex. 2 at 5). DEO states that it will seek the Commission's approval of the results of the auctions in phase 2 before making awards and executing the related purchase and sales agreements with suppliers (DEO Ex. 15, Murphy at 14).

For the initial auction in phase 2, DEO intends to hold two separate auctions (the SSO auction and the SCO auction) over the course of one or two days. The SSO auction will utilize a descending clock format and will be used to acquire wholesale natural gas supplies for PIPP, choice-ineligible, and certain other customers. In the SSO auction, DEO states that the suppliers will compete for the right to serve a portion of aggregate customer

load rather than specific customers. The estimated annual load for these customers, 14.7 billion cubic feet (Bcf), will be divided into three tranches and no one supplier will be allowed to acquire more than one tranche. DEO notes that, because the SSO auction will be conducted for wholesale supplies and customers will not be assigned, the results of the SSO auction will serve as the proxy for the value of wholesale commodity service over the September 1, 2008, to March 31, 2010, period (DEO Ex. 2 at 6 and 8).

DEO further explains that, for the SCO auction, suppliers will compete for the right to service the load of tranches which are comprised of randomly assigned groups of customers and are designed to yield similar weather-normalized annual volumes in the aggregate. There will be nine tranches of choice-eligible customers in the SCO auction. Each tranche will be comprised of approximately 3.8 Bcf of annualized load for 30,000 residential and 2,600 non-residential customers. The SCO auction will begin under a descending clock format. The bidders in the SCO auction must be certified CRNGS providers. The bidders may bid on multiple tranches up to a three-tranche limit. DEO goes on to state that a single supplier can be awarded bids in both the SSO auction and the SCO auction (DEO Ex. 2 at 6-7).

DEO further explains that the SCO auction will use the results of the SSO wholesale supply auction as the floor price. If the SCO auction concludes at a price above the SSO wholesale auction result, the SCO auction will terminate in accordance with pre-established end-of-auction rules. However, if the going price in the SCO retail auction falls to the SSO wholesale auction price and the market remains over-subscribed,<sup>3</sup> the SCO auction will transition into another format, namely an ascending auction format. In the ascending auction format, DEO states that the suppliers will bid for the right to serve tranches of customers at the price established in the SSO wholesale supply auction. The winning suppliers in the ascending auction will make a one-time payment to DEO based on the results of the auction and DEO will return those funds to the customers by crediting amounts that would otherwise be recovered through the Transportation Migration Rider - Part B. Even though DEO will purchase and resell the SCO supplies, DEO expects that the bidding in the SCO auction will reflect the incremental value and that the winning bidders will receive the benefit of serving specific customers to whom they can market other offers and services (DEO Ex. 2 at 7).

Subsequent to the initial service period in phase 2, which is from September 1, 2008, to March 31, 2010, DEO explains that it will conduct a similar auction for the SSO and SCO services to be provided from April 1, 2010, to March 31, 2011. DEO expects that this latter auction will be the final auction and that, once this term expires, choice-eligible customers will be required to enter into a direct retail relationship with a supplier or aggregator to

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<sup>3</sup> DEO explains that it will consider the market over-subscribed when suppliers have indicated a willingness to serve more than the nine tranches required to serve the entire SCO market at that price (DEO Ex. 2 at 7).



receive commodity service. DEO further explains that it will continue to conduct SSO auctions after phase 2 to secure wholesale supply to serve PIPP and choice-ineligible customers (DEO Ex. 2 at 5).

D. Capacity and Operational Issues

As in phase 1, in phase 2, DEO states that it will assign on-system storage rights to the suppliers awarded tranches in both the SSO and the SCO auctions. Since the cost of DEO's storage function will continue to be included in the base transportation rates, DEO points out that there will be no incremental cost to the suppliers for the storage rights. DEO proposes that it will continue to retain only that portion of on-system and contract storage needed to provide operational balancing (DEO Ex. 2 at 10).

With regard to capacity, DEO expounds that, due to the small volumes needed for DEO's isolated markets in Woodsfield and Powhatan Point, Ohio, DEO will release the associated capacity only to SSO providers and will require them to nominate volumes to those delivery points based on targets provided by DEO. Furthermore, in order to ensure adequate deliveries to DEO's Ashtabula, Ohio, market areas, DEO will require energy choice, SSO, and SCO suppliers to accept a release of the associated capacity needed to serve that area on a pro rata basis and all of these suppliers will be obligated to nominate volumes through those pipelines based on targets provided by DEO. As for the capacity for DEO's other areas, DEO explains that, at the inception of phase 2, such capacity will be made available to energy choice, SSO, and SCO suppliers on a pro rata basis. According to DEO, the pro rata calculations will be performed separately for its east Ohio and west Ohio systems because they are served by different upstream pipelines. SSO suppliers will be required to accept pro rata releases and will be required to demonstrate that they have sufficient comparable capacity to provide one hundred percent of design day customer requirements. However, energy choice and SCO suppliers will have the option of accepting the capacity (DEO Ex. 2 at 10).

E. Cost Recovery

DEO intends that the Transportation Migration Rider - Part B be utilized to recover the costs for phase 2. According to DEO, the Transportation Migration Rider - Part B was originally approved by the Commission in *In the Matter of the Application of The East Ohio Gas Company for Authority to Implement Two New Transportation Services, for Approval of a New Pooling Agreement, and for Approval of a Revised Transportation Migration Rider*, Case No 96-1019-GA-ATA, in order to recover costs associated with DEO's energy choice program (DEO Ex 15, Friscic at 2). Subsequently, DEO avers that, in 05-474, the Commission approved the Transportation Migration Rider - Part B to be the tracker designed to recover the costs for phase 1 of DEO's exit from the merchant function. DEO proposes to keep the cost recovery procedures approved in phase 1 intact and continue this rider in

phase 2 in order to recover all operational balancing costs, as well as other costs formerly handled through the GCR mechanism. According to DEO, the rate, which will be updated on a quarterly basis, will reflect:

- (1) All costs associated with maintaining operational balancing inventories, including contract storage, the withdrawal season firm transportation needed to support firm withdrawals, the injection season firm transportation needed to support firm injections, and carrying cost on the inventory previously recovered through the GCR;
- (2) The cost of purchased gas, net of storage activity, incurred by DEO as a result of the operational balancing requirements, as well as any differences between the actual unaccounted-for gas level and the volume provided through the fuel retention charged to transportation customers;
- (3) The net effect of any receipts of disbursements associated with cash-outs, on-system or contract storage inventory that may be required to address operational issues or tariff requirements;
- (4) The crediting of contract storage costs from Transportation Migration Rider - Part A and Volume Banking Service charges that are billed to non-energy choice transportation customers, as well as migration-related charges included in seasonal storage service rates;
- (5) Any difference between the amount billed for provider of last resort (POLR) service and the actual cost incurred for the volumes purchased or withdrawn from storage; and
- (6) Associated excise tax.

(DEO Ex. 2 at 11). DEO clarifies that the Transportation Migration Rider - Part B for phase 2 does not include a component for unrecovered gas costs because DEO removed the unrecovered gas cost credit from the rider in March 2007 due to the fact that the over-recovery of prior gas costs had been fully passed back to customers at that point (DEO Ex. 15, Friscic at 4). DEO goes on to explain that the accounting of the costs included in the rate and the Transportation Migration Rider - Part B recoveries will be reviewed as part of an annual financial audit that will be docketed in this case (DEO Ex. 2 at 11).

With regard to the fuel retention rate, DEO states that this rate will be updated using DEO's existing methodology, prior to conducting the auction in phase 2. DEO proposes to put this updated rate into effect in September 2008 and to have it serve as the

standard fuel retention rate that DEO will charge to energy choice, traditional transportation service, SSO, and SCO commodity service providers. DEO notes that it will update the fuel retention rate annually and any change will be implemented each April 1<sup>st</sup> along with the Btu conversion factors applied to interstate deliveries and Ohio production. DEO proposes that the extent to which the fuel retention rate over- or under-collects the actual retention requirement should be reflected in DEO's monthly gas purchase and net storage activity. Further, DEO explains that it proposes to debit or credit the Transportation Migration Rider - Part B with the combined cost of any over- or under-collection of fuel retention and maintaining operational balancing inventories. Also, DEO states that any changes in the storage migration adjustment will be reflected in the annual update of the fuel retention rate (DEO Ex. 2 at 11-12).

Pursuant to the stipulation approved in 05-474, DEO explains that it agreed to fund consumer education and other program costs related to the implementation of phases 1 and 2, up to \$14 million. DEO notes that this program cost fee was discontinued in phase 1, once the \$14 million funding level was reached. Therefore, DEO submits that any consumer education or other program implementation costs over and above the \$14 million will be deferred for recovery in a future rate case. Finally, DEO states that any program-related expenditures will be reviewed as part of the annual financial audit that will be docketed in this case (DEO Ex. 2 at 12-13).

F. Provider of Last Resort

In its application, DEO offers that, as in phase 1, DEO will be the POLR during phase 2, in case of a default by an energy choice, SSO, or SCO supplier. If a supplier defaults, DEO says that it will obtain supplies, as needed, sequentially from the following sources: non-defaulting suppliers; storage assigned to the defaulting supplier, which will revert to DEO upon default; operational balancing capacity; and incremental purchases via the city gate. DEO represents that it will provide POLR service to a customer for the remainder of the billing month in which the default occurs and for one additional billing month thereafter and that the customer will continue to be billed the standard SSO or SCO rate, regardless of the supply source used to cover the delivery shortfalls created by the default. According to DEO, the customer will be free to select another supplier as soon as possible after the default occurs. If the customer does not select another supplier or does not have the enrollment submitted in time, the customer will be billed at the standard SSO rate. DEO further proposes that, in the event of a default by an SSO supplier, the tranche that the defaulting supplier previously served will be divided between the two remaining non-defaulting SSO suppliers. If one or both of the non-defaulting suppliers are unable or unwilling to accept the tranche of the defaulting supplier, then DEO states that it will offer the tranche to other suppliers or hold another auction to acquire the needed supplies (DEO Ex. 2 at 13-15).

G. Stakeholder Process

In its application, DEO commits to continue the stakeholder group process that was established in phase 1. DEO states that this process will permit the group to assess the performance of phase 2 and address consumer education and other issues that might arise during the phase 2 pilot. DEO notes that, while it is not obligated to implement the recommendation of the stakeholder group, it will nevertheless endeavor to achieve consensus amongst the group participants and will consider, in good faith, the recommendations of the group (DEO Ex. 2 at 16).

IV. SUMMARY OF THE STIPULATION

As mentioned earlier, at the hearing in this matter on April 10, 2008, DEO submitted a stipulation. The stipulation was executed by DEO, staff, and all of the intervenors, with the exception of IEU-Ohio and OPAE. By letter filed in this docket on April 22, 2008, OPAE stated that it has agreed not to oppose the stipulation. The stipulating parties agree, *inter alia*, that:

- (1) Certain documents should be admitted as exhibits, with the understanding that each exhibit should be amended in accordance with the stipulation. Those documents are: Joint Exhibit 2 attached to the stipulation, which is a matrix illustrating the commodity service options that will be available to customers; DEO Exhibit 1, which is the application filed on December 28, 2007; DEO Exhibits 2 through 6, which were attached to the application and labeled appendices A through E; DEO Exhibits 7 through 14, which were attached to the application and labeled appendices (C)(1) through (C)(8); and DEO Exhibit 15, which is the testimony of Jeffery Murphy and Vicki Friscic.
- (2) DEO will conduct an SSO auction utilizing a descending clock approach to secure natural gas supplies for a seven-month term from September 1, 2008, through March 31, 2009. It is the intent of this SSO auction to effectively extend DEO's phase 1 SSO period through March 31, 2009, with certain operational modifications detailed in the stipulation. Supplies procured in the auction will be used to meet the aggregate commodity service needs of mercantile and non-mercantile sales customers served under DEO's general sales service and large volume general sales rate schedules, including residential PIPP customers. Mercantile and non-mercantile customers served under other rate schedules will not be included in the

aggregate load to be auctioned and will continue to be served by their suppliers.

- (3) On or before February 15, 2009, DEO will conduct the following two auctions to secure natural gas supplies for the one-year term from April 1, 2009, to March 31, 2010: a wholesale SSO auction for PIPP, choice-ineligible, and transitional customers and a retail SCO auction for choice-eligible SSO customers. The retail SCO auction will employ the structure described in DEO Exhibit 2 attached to the application, with the following changes in the nature of the SSO and SCO commodity service:
  - (a) SCO service will be provided as an energy choice commodity service rather than DEO-provided sales service and will be subject to applicable sales and use tax. DEO will file an application seeking Commission approval to amend its tariff to include terms and conditions that the signatory parties develop regarding how the SCO commodity service will be provided in conjunction with DEO's energy choice transportation service or large volume energy choice transportation service. As a result, DEO will withdraw its proposed designated supplier service and large volume designated supplier service rate schedules.
  - (b) As illustrated in Joint Exhibit 2, the following commodity service options will be available to customers after the initial movement of choice-eligible sales customers to SCO service through the retail SCO auction. These customers may receive SSO commodity service for up to two consecutive billing periods.
    - (i) New choice-eligible customers will receive at least one SSO bill, after which they may enroll with an energy choice supplier or participate in an opt-out governmental aggregation program. If they do not do so, after their

second SSO bill, they will be assigned to an energy choice supplier at the price established in the retail SCO auction.

- (ii) Choice-eligible customers whose opt-out governmental aggregation program is terminated may enroll with an energy choice supplier or participate in a subsequent opt-out governmental aggregation program. If they do not do so, after their second SSO bill, they will be assigned to an energy choice supplier at the price established in the retail SCO auction.
- (iii) Choice-eligible customers whose energy choice or opt-out governmental aggregation contract expires without renewal may enroll with an energy choice supplier, participate in an opt-out governmental aggregation program, or elect to be assigned to an energy choice supplier at the price established in the SCO auction. If they do not do so, after their second SSO bill, they will be assigned to an energy choice supplier at the supplier's posted monthly variable rate under the terms of the SCO service in DEO's tariff.

All choice-eligible, SSO, SCO, and monthly variable rate commodity service customers are eligible to be enrolled in opt-out governmental aggregation programs.

- (4) In February 2010, DEO will conduct another wholesale auction and retail SCO auction to secure supplies for the one-year term from April 1, 2010, to March 31, 2011, using the structure described in paragraphs (2) and (3) above for the initial SSO

and SCO auctions, respectively. SSO gas supplies will be procured on a wholesale basis for PIPP and other choice-ineligible customers. The February 2010 SCO retail auction will be for customers receiving SCO service and choice-eligible SSO customers. Other customers, including those assigned to an energy choice supplier at the supplier's monthly variable rate, will not be included in the SCO auction.

- (5) DEO must seek, through a separate application in the future, Commission approval before moving from the SCO commodity service market to a market in which choice-eligible customers will be required to enter into a direct retail relationship with a supplier or governmental aggregator to receive commodity service, i.e., full-choice commodity service market.
- (6) If DEO does not obtain Commission approval to move to a full-choice commodity service market upon the expiration of the second term of the SCO service, March 31, 2011, another SCO service auction will be held for a subsequent annual period, and so on thereafter.
- (7) DEO Exhibit 2, which contains the capacity and operational provisions, will be changed such that:
  - (a) From October 1, 2008, through April 30, 2010, DEO will, on a pilot basis, change the period over which it requires comparable capacity to be demonstrated pursuant to section 6.1 of its tariff, general terms and conditions of energy choice pooling service, from October through April to November through March. DEO reserves the right to revert to the October through April assessment period, after consultation with the staff and OCC.
  - (b) Sections 4.3 and 4.5 of the general terms and conditions in DEO's tariff will be revised to indicate that capacity released by DEO will be recallable upon a material decrease in a supplier's aggregate end user demand rather than energy choice market share. Any capacity recalled will be available to all SSO, SCO, and energy choice suppliers.

- (c) The standard fuel retention rate effective September 2008 will be 3.7 percent and will be reviewed as part of the annual audit of DEO's Transportation Mitigation Rider – Part B. This rate will serve as the standard system-wide fuel retention rate charged to energy choice, traditional transportation service, SSO, and SCO commodity service providers.
- (8) The stakeholders will meet regularly to evaluate the SSO and SCO service and discuss the process by which to achieve potential transition to a full-choice commodity service market.

(Joint Ex. 1 at 1-8).

#### V. CONSIDERATION OF THE STIPULATION AND GOVERNING STATUTES

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See, *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 2004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR *et al.* (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?



The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559 (1994) (citing *Consumers' Counsel, supra*, at 126). The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (*Id.*).

A. Serious Bargaining

At the hearing held on April 10, 2008, Steve Puican, Co-Chief of the Rates and Tariffs/Energy and Water Division in the Commission's Utilities Department, testified in support of the stipulation. Mr. Puican testified that the stipulation was the product of serious bargaining among capable and knowledgeable parties, stating that the participants have many decades of cumulative experience in utility matters. The witness submitted that the discussions involved a diverse group of participants, including staff, DEO, OCC, OPAE, NOPEC, and representatives of industrial, transportation customers (Tr. at 13).

The Commission notes that the signatory parties represent a wide diversity of interests including the utility, residential consumers, marketers, and industrial consumers, and the staff. Moreover, no party opposes the stipulation and no party has argued that the stipulation was not the result of serious bargaining. Further, we are aware that the signatory parties routinely participate in complex Commission proceedings and that counsel for the signatory parties have extensive experience practicing before the Commission in utility matters. On the basis of evidence before us, we find that the stipulation appears to be the product of serious bargaining among capable, knowledgeable parties.

B. Benefit to Ratepayers and the Public Interest

Mr. Puican also stated that he believes the stipulation, as a whole, benefits DEO's ratepayers and the public interest, noting that the SSO process that has been in place for the last 18 months has provided benefits to customers. According to the witness, there is substantial evidence that the customers who are receiving the SSO service are paying a lower rate than they would be paying under a GCR. Mr. Puican offered that he believes that the move from a wholesale auction to a retail auction has the potential to provide even greater benefits and savings. For example, he believes that the auction participants will receive addition value in customers actually being allocated to suppliers through the auction, as opposed to being allocated as a generic load. Furthermore, Mr. Puican explained that the public interest is protected because the Commission retains the authority to reject an auction result if it believes that it is not in the public interest or that it will not benefit customers. (Tr. at 13-14).

We find that the settlement, as a package, benefits ratepayers and the public interest. Upon consideration of the application, as modified by the stipulation, and the testimony provided by Mr. Puican, the Commission believes that the public interest will be served by approval of the stipulation. The safeguards afforded the Commission, some of which were delineated by Mr. Puican in his testimony, provide us assurance that the public welfare will be protected.

C. Violation of Important Regulatory Principles or Practices

Mr. Puican advocated that the stipulation does not violate any important regulatory principle. Rather, he stated that the stipulation is really just a continuation and enhancement to DEO's existing SSO process and just moves it from wholesale to retail. Furthermore, the witness reiterates that, even with the new retail regime, the Commission retains the ability to revert to the GCR service any time the Commission believes that the auction procedures are no longer serving the public interest (Tr. at 14-15).

In its application, DEO avers that its proposal is in compliance with the state's natural gas policy contained in Section 4929.02, Revised Code. DEO notes that, in the order in 05-474 approving DEO's phase 1 to exit the merchant function, the Commission found that DEO's plan supported and fostered the policy goals specified in Section 4929.02, Revised Code. Further, DEO points out that the Ohio Supreme Court affirmed the Commission's order in 05-474. See *Ohio Partners for Affordable Energy v. Pub. Util. Comm.*, 115 Ohio St.3<sup>rd</sup> 208 (2007). According to DEO, nothing has materially changed in the current application requesting approval of phase 2 to exit the merchant function. DEO submits that this application preserves the features that justified approval of phase 1 and adds new elements that further advance the natural gas policy of the state of Ohio. DEO gives a number of bases for this conclusion. First, DEO maintains that the application ensures the availability of adequate and reliable natural gas service due to the fact that DEO will continue to act as the POLR should a supplier default. DEO will also require suppliers to show that they possess capacity comparable to DEO and suppliers will be required to adhere to the same reliability standards as DEO. In addition, DEO submits that the application supports the availability of reasonably priced gas. According to DEO, the provision of a market-based auction price prevents the confusion and market distortion that is created by the unrecovered gas cost portion of the GCR mechanism which hindered the development of the competitive market. Further, DEO expects that the suppliers and customers will benefit in phase 2 because the auction process will allow the suppliers to avoid the customer acquisition costs, thus further reducing customer costs (DEO Ex. 7).

DEO further submits that its proposal for phase 2 will expand consumer options, provide additional choices for the supply of natural gas for residential consumers, promote effective consumer choice of gas supplies, and provide consumer education in

accordance with Section 4929.02, Revised Code. DEO explains that, by continuing to enable consumers to make apples-to-apples comparisons, a level playing field will be maintained and marketers will have incentives to offer competitive prices, options, and value-added services. According to DEO, it is also expected that the transparency of having the supplier's name on the bill will facilitate the selection of suppliers by choice-eligible customers who have not yet entered the choice program. In addition, DEO explains that additional choices are available for residential customers because the proposal allows SCO customers to leave the SCO service without penalty at any time by enrolling with an individual supplier or in a governmental aggregation program. Finally, DEO provides that, under its proposal, there will be customer education concerning the impact of phase 2 on customers and that DEO will work with stakeholders concerning customer education and other issues to ensure that customers understand their options (DEO Ex. 7).

DEO offers that, in accordance with Section 4929.02, Revised Code, this proposal encourages innovation and market access for the supply- and demand-side natural gas goods and services. DEO explains that, by promoting market-based pricing and preventing price distortions, price-induced conservation will be facilitated and the demand for providers of conservation and energy efficiency services will be increased. In addition, DEO avers that its proposal invites flexible regulatory treatment and fosters transactions between willing buyers and willing sellers. DEO maintains that the application will continue to prevent subsidies that existed under the GCR. DEO submits that, because of customer migration into and out of the energy choice program, the GCR prevented the matching up of consumers who used gas, which gave rise to true-ups, with consumers who paid the true-ups. According to DEO, continued elimination of the GCR promotes competition and avoids these GCR-related subsidies. Finally, DEO posits that this proposal will not affect DEO's rates for regulated service or DEO's financial capabilities and that it will not hinder Ohio's competitiveness in the global economy (DEO Ex. 7).

DEO maintains that there is effective competition and that customers have reasonably available alternatives for commodity sales service in its service area in accordance with Section 4929.04, Revised Code. DEO emphasizes that there are 41 suppliers offering commodity service to DEO's traditional transportation market and 17 suppliers that are participating in DEO's energy choice program. According to DEO, these suppliers possess more than enough capacity to serve DEO's entire choice-eligible load. Furthermore, DEO submits that the commodity sales service provided by these suppliers is functionally equivalent to the service provided by DEO. It is DEO's contention that the number of suppliers competing for market share ensures that the offers must be made at competitive prices, terms, and conditions. DEO points to the Commission's apples-to-apples chart for DEO as evidence that there is a wide range of prices, terms, and

conditions available for commodity sales in DEO's service area (DEO Ex. 15, Murphy at 8-9).

The Commission finds that the stipulation does not violate any important regulatory principles or practices. As summarized above, DEO explains at length in its application how it believes this application meets the policy requirements established in Chapter 4929, Revised Code. Upon review of DEO's arguments, the Commission agrees that this application, as modified by the stipulation, complies with and supports the policy of the state of Ohio. Furthermore, the Commission notes that DEO has complied with all of the procedural requirements for this type of case and, in fact, no party has argued that DEO has violated any statutory or rule requirements.

### III. CONCLUSION

The Commission has reviewed the stipulation submitted in this case and has determined that it should be approved in its entirety. By virtue of that approval, DEO Exhibits 1 through 15, as well as Joint Exhibit 2, as they were identified in the stipulation, should be admitted into the record with the understanding that each such exhibit is amended in accordance with the stipulation.

Upon review of this application, the stipulation, and the testimony on record, it is the Commission's conclusion that DEO has met the burden of proof set forth in Section 4929.04, Revised Code. We further find that phase 2 represents a reasonable structure through which to further the potential benefits of market-based pricing of the commodity sales by the company. DEO is, therefore, authorized to proceed with phase 2. In granting this authority, the Commission reserves all authority to exercise oversight during the process, including the ability to order any studies or reviews of the company or plan as it deems appropriate. We also specifically reserve the right to reject an auction result and the ability to, at any time during phase 2, require that DEO return to the GCR rate in the event that we believe it is no longer in the best interest to continue the SSO or SCO services. Therefore, in accordance with Rule 4901:1-19-10(A), O.A.C., DEO shall file a notice of intent to implement phase 2, along with its proposed tariffs for Commission approval, within 30 days of this order, or 20 days of any decision on rehearing, whichever is later. The Commission recognizes that these tariffs will need to be updated once the auction has been completed.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) DEO is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the

jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

- (2) On December 28, 2007, DEO filed an application, pursuant to Section 4929.04, Revised Code, for approval of phase 2 of its plan to exit the merchant function and requesting a general exemption of certain natural gas commodity sales services or ancillary services contained in Chapters 4905, 4909, 4933, and 4935, Revised Code.
- (3) By entry issued January 30, 2008, the Commission determined that DEO's application complied with the filing requirements of Rule 4901:1-19-04, O.A.C., and concluded that the application filed by DEO on December 28, 2007, should be accepted as of the filing date.
- (4) Comments were due by February 11, 2008. No one filed comments in this matter.
- (5) Intervention was granted to the OCC, OP&A, Integrys, Gas Marketers, MXEnergy, NEM, NOPEC, Dominion Retail, and IEU-Ohio.
- (6) A technical conference was held on February 12, 2008.
- (7) Local hearings were held on April 1, 2008, in Youngstown, Ohio, and on April 3, 2008, in Cleveland and Canton, Ohio. There was one public witness who testified in Youngstown, Ohio, four public witnesses in Cleveland, Ohio, and one public witness in Canton, Ohio.
- (8) The evidentiary hearing was held on April 7, and 10, 2008.
- (9) At the April 10, 2008, hearing, DEO submitted a stipulation that was executed by DEO, staff, and all of the intervenors, with the exception of IEU-Ohio and OP&A. By letter filed in this docket on April 22, 2008, OP&A stated that it has agreed not to oppose the stipulation. No party testified against, or otherwise objected to, the stipulation.
- (10) The Commission finds that all of the components of the three-pronged test have been met. Therefore, the stipulation presented in this proceeding should be approved in its entirety. By virtue of that approval, DEO Exhibits 1 through 15, as well

as Joint Exhibit 2, as they were identified in the stipulation, should be admitted into the record with the understanding that each such exhibit is amended in accordance with the stipulation.

ORDER:

It is, therefore,

ORDERED, That the stipulation submitted in this proceeding be approved in its entirety. By virtue of that approval, DEO Exhibits 1 through 15, as well as Joint Exhibit 2, as amended by the stipulation, are admitted into the record. It is, further,

ORDERED, That DEO shall file a notice of intent to implement phase 2, along with its proposed tariffs, within 30 days of this order, or 20 days of any decision on rehearing, whichever is later. It is, further,

ORDERED, That a copy of this opinion and order be served upon each party of record and all other interested persons of record in these proceedings.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Alan R. Schriber, Chairman

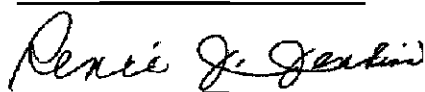
  
Paul A. Centolella

  
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**JUN 18 2008**  
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Valerie A. Lemmie

  
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Entered in the Journal

  
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Renee J. Jenkins  
Secretary