

The OCC does not claim that the SSO will produce a lower price for gas; only that the amount Ohio will collect in tax would be less under the SSO auction.

The OGMG believes the OCC's October 26th comments are unprincipled and procedurally improper. The OGMG believe the OCC's comments are unprincipled because the October 26th comments reverses in part its support of the Stipulation position which includes in year three an SCO auction. The October 26th OCC Comments now request that the Commission change a key part of the Stipulation which OCC signed; a Stipulation that was otherwise signed or not opposed by all other parties. Thus, the effect of the OCC's October 26th comments is in essence to be in opposition to a Stipulation it signed. The OCC tries to explain away its change of position by noting the language of the Stipulation permits a signatory party to retain the right to file issues at the Commission for formal resolution "in the event that such issues are not satisfactorily resolved in the Exit Working Group" (See OCC Comments p. 3). As discussed below the basis of the OCC's request to amend the Stipulation is not due to either a change in the SCO auction or the occurrence of a superseding event since the Stipulation was signed. All multiparty stipulations are built on compromises. The parties to a stipulation accept the compromises that other parties made to fashion a Stipulation. In this instance, the OCC negotiated its best result, and having obtained those results is now attempting to take back the concessions others depended upon in entering the Stipulation. To do so is unprincipled absent an intervening event or development.

In addition to it being unprincipled for the OCC to now oppose in part a Stipulation it signed, the type of argument OCC raises in its comments must be rejected as being outside of the record. The OCC and all other parties in the matter at bar either signed the Stipulation or agreed not to oppose the Stipulation. Hence there was no factual hearing and the

factual record in the matter at bar consists solely of the facts presented in the Stipulation, which was accepted into the record. The OCC's October 26th Comments though are based on a calculation of after tax costs to residential consumers which presuppose facts which are not in the Stipulation or otherwise supportable outside of the record.

Chief among the assumed facts is the OCC's claim that a SSO auction will produce the same closing bid price per Mcf as an SCO auction. There is no basis in the record for this factual assumption. If a hearing had been held the members of the OGMG would all have testified that they would not price, assess risk or bid on load in the same manner under an SSO auction as they would for an SCO auction. They would also have pointed out that when Dominion East Ohio in February of 2009 conducted an SSO auction and an SCO auction on the same day, the SCO bidders offered \$1,449,000 more in cash premiums for the right to serve SCO load than they did for an SSO auction. (See the OCC Comments P. 2 fn 2.). Thus, even if the OCC is correct and the State of Ohio taxes customer more for an SSO service than SCO, that alone does not mean that SCO commodity service is more expensive pre or post taxes.

As noted above, the Stipulation did provide all parties the right to bring issues to the Commission as the details in the complex matter of conducting an SCO auction were worked out by the parties. However, the reason for the OCC's requested amendment to the Stipulation is not to oppose a new provision that was worked out and introduced after the Stipulation was signed, nor because of intervening events unknown at the time the Stipulation was signed. The arguments raised in the OCC October 26th comments which consist of comparing the sales tax rates to the gross receipts cost rates existed the day the Stipulation was signed. Both tax rates are the same today and are applied in the same manner as on the date the Stipulation was signed.

Further, the working group has not addressed or changed anything that relates to taxes, tax rates or tax accounting.

This brings us to the second reason the Commission should reject the OCC's Comments. The OCC is basically asking the Commission to amend utility regulatory policy in a case in order to reduce the amount of tax assessed that would otherwise be assessed by the State of Ohio. The General Assembly, not the Commission is the proper forum for discussing the equity of tax assessments. The main purpose of tax is to raise revenue and has nothing to do with what is the most efficient method of procuring gas. The General Assembly determined that the sales/use tax rates are appropriate for commodity sales, although in this filing the OCC is attempting to assert that the tax structure should impact the Commission's position. Frankly, it is beyond the scope of the enabling legislation for the OCC to attempt to legislate tax policy through the Commission. The SCO auctions properly treat all eligible consumers equally as it relates to tax structure, and in a manner that is consistent with the direction of the General Assembly. This is evidenced not only in that the General Assembly has created a sales tax for commodity sales, but also pronounced that it is the policy of the State of Ohio to "recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment;" and to "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." (ORC 4929.02(A)(6) & (7). The continued development of the competitive market needs parity in all aspects of the market and the SCO auctions enables that parity. The relative tax

burden paid by citizens or the classification or implementation of tax exemptions is a matter strictly for the General Assembly and the State Tax Commissioner.

If the Commission is going to consider the after sales tax arguments, then it must be pointed out that the tax presentation made by the OCC in its Comments is both skewed and deceptive. The OCC fails to mention in its Comments that while some residential customers would have their after purchase tax obligation reduced if the gas supply for the default service is obtained in an SSO auction, it failed to state that charitable institutions, state and government entities and non-profit corporation are exempt from sales tax. Thus, if the OCC is successful in its request the after tax cost of standard service gas supply to homeless shelters, hospitals, places of worship and governmental agencies will be increased. If OCC is going to argue tax policy as a reason to reject the previously approved SCO auction in the name of residential customers, then it must at least acknowledge that the policy it is advocating will actual increase the tax burden to other standard service customers including indirectly residential customers. Similarly, the tax policy issue for selecting an auction is incomplete unless the tax consequences for commercial and industrial customers are considered as well as for certain residential customers. Many commercial and industrial standard service customers pay reduced or no sales tax on the purchase of natural gas if it is used in their business. Since some commercial and business customers buy default natural gas the OCC's simplistic calculations on page 6 of its comments do not present the true sales tax impact on all customers. If the OCC is going to argue tax policy and shifting tax burdens it must present the whole picture.

The OGMG raises the point that the SCO auction on a tax basis is more beneficial to some customers not as an endorsement of the SCO auction, but only to point out that an after sale tax assessment is far more complex than what is presented in the OCC's October 26th

Comments and has a broader impact on the community which the OCC has not disclosed let alone quantified. In sum, tax policy is a matter for the General Assembly and outside the Consumers' Counsel authority to advocate a position in a Commission proceeding.

In conclusion, the Comments presented by the OCC are procedurally improper, based on incorrect and unsubstantiated facts, beyond the scope of the OCC's enabling legislation, and should be rejected.

Respectfully submitted,



M. Howard Petricoff (0008287) (Trial Counsel)
Stephen M. Howard (0022421)
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P. O. Box 1008
Columbus, Ohio 43216-1008
Tel: (614) 464-5414
Fax: (614) 719-4904
E-Mail: mhpetricoff@vorys.com

Attorneys for the members of the Ohio Gas Marketers'
Group

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion to Intervene and Memorandum In Support was served upon all parties of record as listed below this 1st day of November, 2009 by U.S. mail, postage prepaid and a courtesy copy via e-mail.



M. Howard Petricoff

Steve Puican
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215
Steve.puican@puc.state.oh.us

Gretchen J. Hummel
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
ghummel@mwncmh.com

Bobby Singh
Integrays Energy Services Inc.
300 West Wilson Bridge Road, Suite 350
Worthington, Ohio 43085
bsingh@integraysenergy.com

David C. Rinebolt
Colleen L. Mooney
Ohio Partners For Affordable Energy
231 West Lima Street
Findlay, OH 45839-1793
drinebolt@aol.com
cmooney2@columbus.rr.com

Jonathan Airey
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
wjairey@vorys.com

Katie J. Tieken
Vectren Corporation
One Vectren Square
Evansville, IN 47708

Brent J. Berneking
Vectren Energy Delivery of Ohio, Inc.
One Vectren Square
Evansville, IN 47708

Christine J. Campbell
Vectren Energy Delivery of Ohio, Inc.
One Vectren Square
Evansville, IN 47708

Lisa McAlister
McNees, Wallace & Nurik
21 East State Street, 17th Floor
Columbus, OH 43215-4228

Barth E. Royer
Bell & Royer Co. LPA
33 South Grant Avenue
Columbus, OH 43215-3927

Thomas O'Brien
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215

Joseph Serio
Office of the Consumers Counsel
10 W. Broad Street, Suite 1800
Columbus, OH 43215

Larry R. Gearhardt
Ohio Farm Bureau Federation
280 N. High Street
P.O. Box 182383
Columbus, OH 43218-2383