

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application to)
Modify, in Accordance with Section)
4929.08, Revised Code, the Exemption) Case No. 11-6076-GA-EXM
Granted to The East Ohio Gas Company)
d/b/a Dominion East Ohio in Case No.)
07-1224-GA-EXM.)

OPINION AND ORDER

The Commission, considering the above-entitled application, the testimony, the applicable law, the proposed stipulation, and other evidence of record, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Whitt Sturtevant LLP, by Mark A. Whitt and Melissa L. Thompson, PNC Plaza, 20th Floor, 155 East Broad Street, Columbus, Ohio 43215, on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio.

Colleen L. Mooney, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio 45839, on behalf of Ohio Partners for Affordable Energy.

Mike DeWine, Ohio Attorney General, by Stephen A. Reilly and Devin D. Parram, Assistant Attorneys General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

Vorys, Sater, Seymour & Pease LLP, by Howard M. Petricoff, Stephen M. Howard, and Lija Kaleps-Clark, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216, on behalf of Ohio Gas Marketers Group.

Bruce J. Weston, Interim Ohio Consumers' Counsel, by Joseph P. Serio, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility consumers of The East Ohio Gas Company d/b/a Dominion East Ohio.

OPINION:I. HISTORY OF THE PROCEEDING:

The applicant, The East Ohio Gas Company d/b/a Dominion East Ohio (DEO), is a natural gas company as defined by Section 4905.03(A)(5), Revised Code, and a public utility as defined by Section 4905.02, Revised Code.

On June 18, 2008, in *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 07-1224-GA-EXM (07-1224), the Commission approved a stipulation which continued an exemption and authorized DEO to proceed with the second phase of its plan to exit the merchant function. Specifically, in 07-1224, DEO was authorized to conduct two auctions to supply commodity service to its customers: a standard service offer (SSO) auction to provide commodity service to customers that are not eligible to participate in energy choice programs or who are percentage of income payment plan customers; and a standard choice offer (SCO) auction to supply its remaining sales customers who are eligible to shop for natural gas service but have chosen not to do so.

On December 28, 2011, a joint motion to modify the order issued in 07-1224, pursuant to Section 4929.08, Revised Code, was filed by DEO, Staff, and the Ohio Gas Marketers Group (Marketers). A stipulation signed by Staff, DEO, and the Marketers was also filed on December 28, 2011.

By entry issued January 9, 2012, an evidentiary hearing was scheduled to commence in this matter on January 30, 2012. The January 9, 2012, entry also directed DEO to publish notice of the motion to combine its wholesale and retail auctions into a single auction and the hearing in a newspaper of general circulation in each county of the company's service area.

On January 24, 2012, DEO filed proof of publication of the public notice (DEO Ex. 2). The January 30, 2012, hearing was held as scheduled. Motions to intervene filed by Ohio Partners for Affordable Energy (OPAE), Ohio Consumers' Counsel (OCC), and the Marketers were granted at the January 30, 2012, hearing. No members of the public were present. At the hearing, Staff witness Stephen Puican (Staff Ex. 1) and DEO witness Jeffry Murphy (DEO Ex. 1) testified in support of the stipulation. OCC and OPAE each indicated, at the hearing, that they did not oppose the stipulation.

II. SUMMARY OF THE APPLICATION:

In its application, DEO explains that the expected benefit of holding separate SCO and SSO auctions has not been realized in DEO's two most recent auctions. Specifically, DEO states that it had believed that a separate SCO auction would yield additional benefits by extracting the premium that suppliers place on obtaining a retail customer with whom they can establish a contractual relationship, and believed that the significant benefits of avoided customer acquisition costs would be reflected in the SCO auction results. DEO explains that this benefit occurred in the first SCO auction conducted in 2009. However, since the 2009 auction, the SCO and SSO auctions have resulted in the same priced adjustment without any additional premium being extracted. Accordingly, DEO asserts that there is no benefit from conducting separate auctions. Moreover, since implementing its SCO program, DEO explains that other local distribution companies (LDCs) have used a single auction to procure their entire commodity load. (DEO Ex. 3 at 1-4.)

DEO also explains that combining the auctions benefits ratepayers because it eases the administrative burden of holding two auctions, leading to lower auction costs. Moreover, because the tranches to be served by the winning bidders contain more diverse customer groups, the risk to suppliers of customers moving between SSO and SCO classes is reduced, which would result in more aggressive bidding. Finally, DEO opines that an additional layer of oversight of suppliers and an increase in the assurance of their capabilities occurs with a single auction because all residential load is served by competitive retail natural gas service (CRNGS) providers. (DEO Ex. 3. at 4-5.)

III. SUMMARY OF THE STIPULATION:

As noted previously, a stipulation signed by DEO, Staff, and the Marketers, was filed in the docket on December 28, 2011. Pursuant to the stipulation, the stipulating parties agree, *inter alia*, that, effective with the auction to be conducted in the first quarter of 2012, and each auction thereafter, the SSO auction shall be combined with the SCO auction. A single auction will determine the SSO and SCO retail price adjustment. Suppliers participating in the combined auction must be certified by the Commission to provide CRNGS pursuant to Section 4929.20, Revised Code, have an energy choice pooling agreement with DEO, and meet all other requirements established for the auction process. (Jt. Ex. 1 at 2.)

IV. CONCLUSION:

Rule 4901-1-30, Ohio Administrative Code (O.A.C.), authorizes parties to Commission proceedings to enter into stipulations. 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 almost all of the 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, 1994); *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 547 (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.*).

DEO witness Murphy testified that the stipulation is a product of serious bargaining among knowledgeable parties. He further explains that the stipulation is the product of an open process in which all parties were represented by able, experienced counsel and technical experts, and represents the product of extensive

negotiations among parties and represents a comprehensive compromise of the issues raised by parties with diverse interests. Mr. Murphy explains that the parties exchanged numerous drafts, attended many telephone conferences and held in-person meetings where the issues addressed in the stipulation were discussed. (DEO Ex. 1 at 3.) Therefore, upon review of the terms of the stipulation, based on our three-prong standard of review, the Commission finds that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

With regard to the second criterion, Mr. Murphy asserts that the stipulation provides for a combined SSO/SCO auction which would recognize the consistent outcomes in each of the previously separate auctions, which have produced identical clearing prices in the past. Moreover, combining auctions will reduce the administrative burden of conducting those auctions and will promote greater efficiency in the regulatory process. Mr. Murphy also opines that a combined auction would provide suppliers with a more diverse customer base, which reduces risk and may lead to lower prices over time because by serving both pools of customers, marketers face less risk of attrition. Moreover, only CRNGS can participate in the single auction, which will decrease the risk of nonperformance compared to separate auctions where non-CRNGS suppliers are able to bid on the SSO portion of the load. Finally, Mr. Murphy explains that the single auction format is utilized by other LDCs and will provide for greater consistency within the industry. (DEO Ex. 1 at 34.) Upon review of the stipulation, we find that, as a package, it satisfies the second criterion as it benefits ratepayers by avoiding the cost of litigation and is in the public interest.

DEO witness Murphy also testified that the stipulation does not violate any important regulatory principle or practice and that the single auction format is utilized by other LDCs (DEO Ex. 1 at 4). The Commission finds that there is no evidence that the stipulation violates any important regulatory principle or practice and, therefore, the stipulation meets the third criterion.

Section 4929.08, Revised Code, as amplified in Rule 4901:1-19-12, O.A.C., provides that, upon motion, and after notice and hearing, the Commission may modify any order granting an exemption pursuant to Section 4929.04, Revised Code, if both of the following conditions apply: the findings upon which the order was based are no longer valid and the modification is in the public interest; and the modification is not made more than eight years after the effective date of the order, unless the LDC consents. Upon review of the record in this case, the Commission concludes that both criteria required by statute are met. Accordingly, we find that the stipulation entered into by the parties comports with the requirements of Section 4929.08, Revised Code, and Rule 4901:1-19-12, O.A.C., meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) DEO is natural gas company as defined by Section 4905.03(A)(5), Revised Code, and a public utility as defined by Section 4905.02, Revised Code.
- (2) On December 28, 2011, DEO filed a joint motion to modify the order issued in 07-1224, pursuant to Section 4929.08, Revised Code, was filed by DEO, Staff, and the Marketers.
- (3) On December 28, 2011, a stipulation was filed in this proceeding signed by DEO, Staff, and the Marketers.
- (4) By entry issued January 9, 2012, an evidentiary hearing was scheduled to commence on January 30, 2012, and DEO was directed to publish notice of its motion to combine the SSO and SCO auctions and the hearing in a newspaper of general circulation in each county of the company's service area.
- (5) DEO filed proof of publication on January 24, 2012.
- (6) Motions to intervene filed by OP&E, OCC, and the Marketers were granted at the hearing.
- (7) The January 30, 2012, hearing was held as scheduled. No members of the public were present.
- (8) At the January 30, 2012, hearing, OCC and OP&E each indicated that they did not oppose the stipulation.
- (9) Section 4929.08, Revised Code, and Rule 4901:1-19-12, O.A.C., provide that, upon motion, and after notice and hearing, the Commission may modify any order granting an exemption pursuant to Section 4929.04, Revised Code
- (10) The stipulation submitted by the signatory parties comports with Section 4929.08, Revised Code, and Rule 4901:1-19-12, O.A.C., meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

ORDER:

It is, therefore,

ORDERED, That the stipulation be adopted and approved. It is, further,


ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

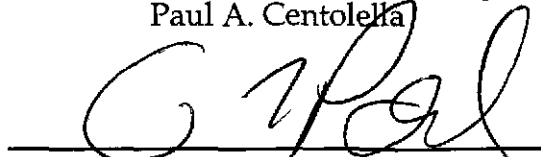
ORDERED, That a copy of this opinion and order be served on all parties of record.


THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella

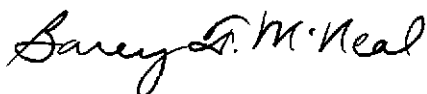

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