

In the Matter of the Joint Motion to )  
 Modify the June 18, 2008 Opinion and ) Case No 12-1842-GA-EXM  
 Order in Case No. 07-1224-GA-EXM. )

Pursuant to Rule 4901-1-12(B)(1) of the Ohio Administrative Code, the Ohio Gas Marketers Group<sup>1</sup> respectfully submits this Memorandum Contra to the June 28, 2012 filing of the Ohio Partners for Affordable Energy (“OPAE”).

The June 18, 2008 Opinion and Order in Case No. 07-1224-GA-EXM (“Exemption Order”) granted an exemption, pursuant to Section 4929.04, Revised Code, authorizing The East Ohio Gas Company d/b/a Dominion East Ohio (“DEO”) to implement Phase 2 of DEO’s plan to exit the merchant function.

On June 15, 2012, DEO and the Ohio Gas Marketer’s Group (“OGMG”) filed a joint motion requesting that the Commission modify the Exemption Order pursuant to Section 4929.08(A), Revised Code to allow DEO, beginning in April 2013, to discontinue the availability of Standard Choice Offer (“SCO”) service to Choice-eligible General Sales Service –

<sup>1</sup> The Ohio Gas Marketers Group includes Commerce Energy, Constellation NewEnergy, Inc. – Gas Division, Direct Energy Services, LLC, Hess Corporation, Integrys Energy, Inc., SouthStar Energy LLC, and Vectren Retail (d/b/a Vectren Source). The positions taken by the OGMG are consensus positions of the group and do not necessarily reflect the positions or beliefs of any individual member.

Non-Residential, Large Volume General Sales Service, Energy Choice Transportation Service – Non-Residential and Large Volume Energy Choice Transportation Service customers (collectively “Non-Residential Customers”). Both DEO and the OGMG propose that such Non-Residential Customers receive commodity service from the next available competitive retail natural gas (“CRNG”) supplier on a rotating list maintained by DEO pursuant to the CRNG Supplier’s then-applicable monthly variable rate (“MVR”).

On June 28, 2012, the Ohio Partners for Affordable Energy (“OPAE”) filed a motion seeking leave to intervene in this matter as well as a motion to dismiss the June 15, 2012 joint motion.

## **II. ARGUMENT**

### **A. Motion to Intervene**

**OPAE’s intervention must be limited to the interest of its members; it does not have authority to represent non members.**

In its motion to intervene, OPAE alleges that its members are non-residential rate payers of Dominion and, as such, it has a real and substantial interest in this matter. It goes on to state that its primary interest in this case is to protect the interest of all small commercial customers, in addition to OPAE members who will no longer have the option of SCO service if the joint motion is granted and whose rates will be negatively affected should the June 18, 2008 Opinion and Order be modified as proposed by the joint motion.

OPAE has neither statutory authority nor authority from the Ohio Attorney General to represent the interests of small commercial customers who are not among its members. The OGMG will accept at face value that OPAE’s members have authorized the positions that have been taken, but in the absence of any proffered authorization to represent the interests of small

commercial customers other than its own members, the Commission should limit OPAE's intervention to just protecting the interests of its members.

**B. Motion to Dismiss**

OPAЕ has offered four reasons in support of its motion to dismiss this case. The Commission should reject each of these grounds as they are without merit as described below.

**1. The joint motion is authorized by Section 4929.08(A), Revised Code.**

Section 4929.08(A), Revised Code provides in part:

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.

At page 4 of its pleading, OPAЕ argues that neither Dominion nor the marketers have demonstrated that it is adversely affected by the current alternative regulation plan as approved by the Commission. OPAЕ is wrong.

DEO and OGMG explained in their joint motion that despite the fact there has been an auction in 2010, 2011 and 2012, it has become clear that as long as SCO service remains an option, some customers – for any number of reasons – will not exercise their ability to choose a CRNG supplier.<sup>2</sup> DEO and OGMG go on to state that the continued existence of default SCO

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<sup>2</sup> See the June 15, 2002 Joint Motion, at 3-4.

service for non-residential customers prevents a fully-competitive market from developing. The consequences of a fully-competitive market need to be understood before there is any further movement toward a fully-competitive residential market.<sup>3</sup>

Thus, the continued existence of default SCO service for non-residential customers which was part of the Stipulation approved in Case No. 07-1224-GA-UNC, prevents a fully-competitive market from developing which is detrimental to the interests of all, including the members of the OGMG. The OGMG has made a showing that they are adversely affected by the existing Exemption Order; OPAE's argument must be rejected.

**2. The joint motion is based upon a finding contained in the Exemption Order that is no longer valid and that the abrogation or modification is in the public interest.**

Section 4929.08(A), Revised Code provides that the Commission may modify any order granting an exemption only if 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. OPAE challenges the joint motion on the basis that all of the citations offered in the joint motion are to DEO testimony or exhibits. OPAE argues that the Commission did not find that there would be no SCO service after 2011; it approved a stipulation and recommendation that states the opposite. Therefore, OPAE argues that any argument that the Commission's findings are no longer valid based on a "finding" that SCO auctions would end by 2011 is false. OPAE's argument is wrong.

At page 20 of its June 18, 2008 Opinion and Order, the Commission stated "[w]e 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."

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<sup>3</sup> Ibid., at 4.

The precise problem is that phase 2, as approved by the Commission in Case No. 07-1224-GA-EXM, no longer represents a reasonable structure through which to further the potential benefits of market-based pricing because the continued existence of default SCO service for non-residential customers prevents a fully competitive market from developing.<sup>4</sup> Thus, the criteria for modifying the Exemption Order in Section 4929.08(A), Revised Code has been met. The Commission may modify the exemption order and OP&E's ground to dismiss on the basis of a "false premise" should be rejected.

**3. The joint motion does comport with Ohio's energy policy as set forth in Section 4929.02(A)(7), Revised Code.**

One of the energy policies of this state that the Commission must consider in this case is set forth in Section 4929.02(A)(7), Revised Code which provides:

- (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.

OP&E argues that "the promotion of competition requires an SCO option that gives customers the choice not to choose a marketer." This is simply not true. Nowhere in the energy policy of this state is there a goal or objective that promotes the purchase of commodity sale service from utilities. No such goal or objective exists in the energy policy of this state. OP&E is correct in that customers do not have to buy natural gas service, but if they do, the Commission has an obligation to promote an expeditious transition 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. If the Commission can require end use customers to transport gas through the facilities of a Commission regulated or municipal

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<sup>4</sup> See the June 15, 2012 Joint Motion, at 4.

gas utility,<sup>5</sup> it can certainly require that customers purchase commodity gas service from a certificated competitive retail natural gas service provider. This ground must also be rejected.

**4. Joint Exhibit 1 attached to the Joint Motion of June 15, 2008 is valid and should be approved.**

At pages 8-9 of its memorandum in support, OPAE argues that the Commission should be concerned that no customer group affected by the Joint Motion has signed the Stipulation. It goes on to argue that because OCC represents residential customers and because this Joint Motion does not affect residential customers, OCC should not be considered a party of interest in this matter.

Although it has not yet exercised its right to do so, OCC has a statutory right to intervene. Whether the Stipulation is signed by two or three parties to a case, the fact that the Stipulation has been reduced to writing and is signed by two parties allows it to be considered by the Commission to review it in light of the evidence presented. There is no rule that prescribes the character of signatories to a stipulation. Many examples of stipulations that are signed by a utility company and the Staff but by no customer group exist; yet, such stipulations are subsequently approved. This ground must also be rejected.

**5. Merely disagreeing with alleged facts in the Joint Motion is not a basis to dismiss this case.**

OPAE disagrees with the statements made by the Joint Movants have been adversely affected by current Exemption order and that the findings upon which the June 18, 2008 Exemption Order was issued are no longer valid. Merely disagreeing with the alleged facts in the Joint Motion is not a sufficient basis to dismiss the case. Factual disagreements are resolved by hearings, which Section 4928.08, Revised Code provides for. Thus, the Commission should reject OPAE's argument and allow this case to proceed to hearing.

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<sup>5</sup> See the October 9, 1984 Order in Case No. 83-1076-GA-UNC.

### III. CONCLUSION

The Commission should require additional information from OPAGE with respect to the interest that it is representing in this case. The OGMG does not oppose the motion to intervene but for the foregoing reasons submits that the motion to dismiss filed by OPAGE should be denied.

Respectfully submitted,



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### CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served by electronic mail on the following persons this 13th day of July, 2012:

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Summary: Memorandum Ohio Gas Marketers Group Memorandum Contra June 28, 2012  
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by Mr. Stephen M Howard on behalf of Ohio Gas Marketers Group