

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
COMMENTS**

I. Introduction

Ohio Partners for Affordable Energy ("OPAE") hereby respectfully submits to the Public Utilities Commission of Ohio ("Commission") comments regarding the joint motion of The East Ohio Gas Company d/b/a Dominion East Ohio ("Dominion") and the Ohio Gas Marketers Group ("Gas Marketers") to modify the Commission's June 18, 2008 Opinion and Order in Case No. 07-1224-GA-EXM. Filed on June 15, 2012, the joint motion seeks a modification to the Commission's Opinion and Order in order to allow Dominion, beginning in April 2013, to discontinue the availability of standard choice offer ("SCO") service to non-residential customers. Joint Motion at 1. Attached to the joint motion is a "joint exhibit," which is a stipulation and recommendation that asks the Commission to issue an order modifying its June 18, 2008 Opinion and Order in Case No. 07-1224-GA-EXM so that, effective April 2013, non-residential customers no longer have the option to receive SCO service. Instead, if a non-residential customer has not selected a competitive retail supplier, Dominion will assign the customer to a competitive retail supplier and cease providing natural gas service. Joint Exhibit 1 at 2.

On June 28, 2012, OPAE filed a motion to intervene in this docket and a motion to dismiss. OPAE's intervention was granted by the attorney examiner's

July 27, 2012 Entry, which also called for comments to be filed on the joint motion by August 30, 2012. OPAE's June 28, 2012 motion to dismiss and July 19, 2012 reply to the memoranda contra of Dominion and the Gas Marketers continue to express OPAE's position with regard to the joint motion. OPAE herein renews its motion to dismiss this docket and files these comments in accordance with the examiner's Entry.

II. The Joint Motion should be dismissed.

The Commission should dismiss the joint motion to modify the Commission's June 18, 2008 Opinion and Order in Case No. 07-1224-GA-EXM. The reasons for dismissal are set forth below.

A. The joint motion is not authorized by Revised Code Section 4929.08(A).

Ohio Revised Code Section 4929.08(A) provides that the Commission may modify an order granting an exemption only if, inter alia, the Commission determines that the findings upon which the order was based are no longer valid. The joint motion claims that "certain findings upon which the Exemption Order was based are no longer valid" but cites no such Commission findings. Joint Motion at 3-4. Every reference made in the joint motion is simply to the Commission's introductory discussion of the application and exhibits filed by Dominion in Case No. 07-1224-GA-EXM. For example, the joint motion cites the Commission's Opinion and Order at 6, but this part of the Opinion and Order is only an introductory description of Dominion's application for exemption. The full

sentences on Page 6 of the Opinion and Order in Case No. 07-1224-GA-EXM read as follows:

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 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).

In these sentences cited in the joint motion, the Commission is merely describing Dominion's application and exhibits. The Commission is making no findings on Page 6.

The joint motion also cites "DEO Exhibit 2 at 5" to support its belief that the Commission's "findings" are no longer valid. Joint Motion at 3. This exhibit by Dominion apparently referred to Dominion's "anticipation" that the 2010 SCO auction would be the "final SCO auction." This is merely Dominion's testimony; it is not a finding of the Commission. The Commission made no finding that the 2010 SCO auction would be the final auction.

In fact, the Commission's findings in the June 18, 2008 Opinion and Order are the opposite. The Opinion and Order approved a Stipulation and Recommendation filed on April 10, 2008. In describing the Stipulation, the Commission stated, at 15 of the June 18, 2008 Opinion and Order:

- (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 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.

Opinion and Order, at 15. The Commission approved the Stipulation and Recommendation in Case No.07-1224-GA-EXM, not Dominion's application or exhibits. The Commission's discussion of the Stipulation and Recommendation states that if Dominion did not obtain Commission approval to move to a full choice commodity service upon the expiration of the second term of the SCO service, which was March 31, 2011, another SCO service auction will be held for a subsequent annual period, and so thereafter. Dominion did not obtain such approval by March 31, 2011; therefore the SCO service auctions continue. Contrary to the joint motion, the Commission did not find that there would be no SCO service after 2011; the Commission approved a Stipulation and Recommendation and issued an Opinion and Order that state the opposite.

It is simply false to contend that the Commission's findings in Case No. 07-1224-GA-EXM are no longer valid because SCO auctions might possibly end in 2011. Dominion and the Gas Marketers have no statutory basis to file their joint

motion for a modification of the exemption order because there is simply no Commission finding in the exemption order that is now invalid.

Ohio Revised Code Section 4929.08(A) also provides that the Commission may modify any order granting an exemption “upon its own motion or upon the motion of any person adversely affected....” Neither Dominion nor the Gas Marketers is eligible to file a motion for a modification pursuant to Ohio Revised Code Section 4929.08(A) because neither is adversely affected by the order granting the exemption. The primary reason for this is, of course, that the Commission did not make the findings that Dominion and the Gas Marketers cite. It is obvious that no one can be adversely affected by Commission findings that were never made.

In addition, Dominion is a public utility pursuant to Revised Code Section 4905.03(A)(5). Dominion, as a public utility, is not adversely affected by the continued SCO service. All of Dominion’s customers are currently served by marketers through direct bilateral contracts, governmental aggregation, or the SCO auction. Dominion’s level of compensation does not change whether customers are served in the current manner or solely through bilateral contracts.

Likewise, the Gas Marketers are not adversely affected by the continued SCO service except to the extent that a marketer cannot convince customers to take its service directly, generally at a higher price than provided by the SCO. Such failure is irrelevant and should be of no concern to the Commission. The Commission is charged with fostering competition that produces fair and reasonable prices. The elimination of the SCO service will limit competition,

increase prices customers pay, and maximize marketers' profits. The Commission should not eliminate competitive options such as the SCO and force customers into higher-priced bilateral contracts, which minimize competition and maximize the marketers' profits.

And there should be no mistake that there is already a fully competitive market in Ohio for gas commodity service. In reality, all prices currently paid by all customers are set by a competitive process. When marketers complain that the continued existence of SCO service prevents a "fully competitive market" from developing, they are defining a "fully competitive market" as one that restricts competition to purchasing natural gas directly from a marketer or through a governmental aggregation. The Gas Marketers seek to exclude from the competitive market the SCO service, which uses a competitive auction to set the price. With the SCO, the current market is far more robust than the market that the Gas Marketers are seeking in which customers are forced to take service directly from a marketer or aggregator instead of having the option to take the SCO service. The Commission has fostered competition by providing for the SCO service.

In sum, the joint motion violates the statute for requesting a modification to an exemption order. The statute requires that there be a prior Commission finding that is no longer valid and that adversely affects those seeking a modification. Here, the joint motion invents Commission findings and then claims that the faux findings are no longer valid. Obviously, no one is adversely affected by Commission findings that were not made. The criteria for requesting

modification to the exemption order at Revised Code Section 4929.08(A) have not been met; therefore, the joint motion should be dismissed.

B. The joint motion does not comport with the state of Ohio's energy policy set forth at Revised Code Section 4929.02.

The joint motion also states that modification to the June 18, 2008 Opinion and Order is in the public interest. Joint Motion at 4. The joint motion states that modification satisfies the state's energy policy at Revised Code Section 4929.02(A)(7), which instructs the Commission 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." The joint motion states that there is "nothing inconsistent with requiring" a customer to choose a marketer. Id. Dominion and the Gas Marketers state that no one is forced to buy gas commodity service, but if a customer wants to buy gas commodity, he will be required to choose a marketer and will have no SCO commodity service available.

Customers who have not chosen a marketer clearly do not want to choose a marketer. The state's energy policy is to achieve effective competition, not to force customers to choose a marketer and certainly not to allow Dominion to choose a marketer for them. The promotion of competition requires an SCO option that gives customers a price for gas commodity set by the competitive market and also

the choice not to choose a marketer. Taking away that choice serves no one but the marketers.

The interest of marketers is clear; they want to force everyone that uses natural gas to be their customers and they want to make more money by not having their prices compared to lower prices produced by other approaches to competition. The state of Ohio's energy policy is not so limited or blind that it excludes the needs and desires of customers to make their own choices and to obtain competitive, fair, and reasonable prices. There should be no mistake: the requested modification to eliminate the SCO service takes away a competitive choice that customers currently have. It reduces competitive options. It is not consistent with the policy of the state of Ohio.

A review of state policy as articulated by Revised Code Section 4929.02 clearly states the preference of the General Assembly to promote all types of competition in order to: "Promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods". R.C. 4929.02(A)(1). The method selected to achieve this is to: "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". R.C. 4929.02(A)(2). State policy requires that there be 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". R.C. 4929.02(A)(7).

State policy is counter to the limited competition proposed by Dominion and the Gas Marketers. The SCO meets the requirements of the statute to promote reasonable prices and clearly provides customers with the price, terms, and conditions they desire, resulting in a transaction between willing buyers and willing sellers. Many customers want the utility to handle the shopping for them. These are the customers that have chosen not to choose an individual marketer. The SCO auction process meets their needs by using competition to set a price that is, by and large, lower than anything available directly from marketers. Regulation is effectively minimized. The distribution company holds the SCO auction and the Commission certifies the results. This is not an onerous process.

The SCO is also an innovative approach to providing cost-effective natural gas services within the meaning of R.C. 4929.02(A)(4), which calls for the promotion of innovative supply options. To eliminate the SCO would eliminate market access for this innovative supply approach to competition, in contravention of R.C. 4929.02(A)(4). The SCO is not a vestige of traditional regulation; rather it is a manifestation of the Commission's promotion of innovative supply options in such a way that competition is harnessed to provide customers with the lowest competitive price. It is analogous to auctions held by electric distribution utilities to establish standard service offers, which compete with the offers of individual marketers.

C. No customer group affected by the joint motion has signed the attached Joint Exhibit 1, a stipulation and recommendation.

Attached to the joint motion is a stipulation and recommendation that recommends, at 1, that the Commission grant the joint motion. The joint motion only affects non-residential customers. The Office of the Ohio Consumers' Counsel ("OCC"), which signed the stipulation and recommendation, is only authorized to represent residential customers. The stipulation and recommendation only refers to residential customers to assure that they will not be affected by the desired modification of the June 18, 2008 Opinion and Order. OCC, in its attempt to protect residential customers from the bill increases that will result from a modification of the exemption order, is apparently willing to subject non-residential customers to marketers they do not want and to higher rates. While OCC has negotiated to protect residential customers from any impact of the modification, that does not render OCC a party of interest in a matter that only affects non-residential customers.

This leaves the stipulation and recommendation as an agreement between Dominion and the Gas Marketers, two entities that desire an identical outcome in this matter. Such a stipulation is not the product of serious bargaining because no bargaining took place. No customer group that is to be affected by the modification to the exemption order signed the stipulation.

III. Conclusion

The joint motion to modify the June 18, 2008 exemption order should be dismissed. The statutory requirements given at Revised Code Section 4929.08(A) have not been met. No actual findings of the Commission in the June 18, 2008 Opinion and Order have been cited in the joint motion. Whether findings the Commission did not make are valid or invalid is moot. In addition, the joint motion is made by persons who have not been adversely affected by the actual findings of the exemption order to any relevant extent. Therefore, the Commission has no statutory authority to issue an order modifying the June 18, 2008 Opinion and Order granting the exemption. R. C. 4929.08(A).

Requiring customers to choose a marketer conflicts with the policy of the state of Ohio. R. C. 4929.02(A). Such a requirement does not promote competition; by taking away the SCO service option, customers are deprived of the choice to take natural gas service at a competitive price determined through an auction, and they are deprived of the choice not to choose a marketer. Customers need the choice of the SCO service option. Customers who have not chosen a marketer do not want to choose a marketer. The Ohio General Assembly has not sanctioned raising prices for customers by limiting market options.

Finally, the stipulation attached to the joint motion is signed by no customer group that will be affected by the modification of the exemption order. The stipulation is an agreement among persons with identical interests. The stipulation is, therefore, not the product of serious bargaining and should be dismissed. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992).

Respectfully submitted,

/s/ Colleen L. Mooney

Colleen L. Mooney

Ohio Partners for Affordable Energy

231 West Lima Street

Findlay, OH 45840

Telephone: (419) 425-8860

FAX: (419) 425-8862

cmooney2@columbus.rr.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served electronically upon the persons identified below in this case on this 30th day of August 2012.

/s/Colleen L. Mooney
Colleen L. Mooney

SERVICE LIST

Devin D. Parram
Attorney General's Office
Public Utilities Commission Section
180 E. Broad Street, 9th Floor
Columbus, Ohio 43215-3793
Devin.parram@puc.state.oh.us

Mark Witt
Andrew J. Campbell
Whitt Sturtevant
155 East Broad Street
Columbus, Ohio 43215
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease
52 East Gay Street
Columbus, Ohio 43216
mhpetricoff@vorys.com
smhoward@vorys.com

Joseph P. Serio
Larry S. Sauer
Office of Ohio Consumers' Counsel
10 West Broad Street
Columbus, Ohio 43215
serio@occ.state.oh.us
sauer@occ.state.oh.us

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Summary: Comments electronically filed by Ms. Colleen L Mooney on behalf of Ohio Partners for Affordable Energy