

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.)

**REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

On June 15, 2012, the East Ohio Gas Company d/b/a Dominion East Ohio (“Dominion” or “Utility”), the Ohio Gas Marketer Group (“OGMG”),¹ and the Office of the Ohio Consumers’ Counsel (“OCC”) entered a Stipulation and Recommendation (“Stipulation” or “Settlement”). The Settlement concerns one of the most significant consumer issues in natural gas regulation today—whether customers will continue to have the option of purchasing their natural gas through the Utility. In this regard, the Settlement allows Dominion the flexibility to apply to the PUCO for authority to exit from its merchant function for non-residential customers in the Utility’s service territory, and the Settlement also requires Dominion to continue providing residential customers with the option to purchase their natural gas through Dominion for at least four years.²

² Stipulation and Recommendation at 3 (June 15, 2012) (“DEO agrees that it shall not file a request for Commission approval to exit the merchant function for Residential Customers prior to April 1, 2015. DEO further agrees that, in the event it subsequently files such a request, it shall propose a transition that includes an additional one-year SSO/SCO auction that gives Residential Customers the option to receive SCO service for the year over which the auction results are approved.”)

On June 15, 2012, Dominion and OGMG jointly moved the Commission to Modify Order Granting Exemption. This motion means that Dominion and OGMG seek to remove the option for commercial (non-residential) customers to purchase their natural gas from the Utility. OCC did not sign the Joint Motion. In fact, Dominion and OGMG were respectful in noting, with regard to OCC, that: “[w]hile OCC supports approval of the Stipulation, the Joint Movants would make clear that the legal position set forth in the attached Memorandum in Support is theirs only. Joint Movants do not represent that OCC holds this position, or that OCC should be bound in any future proceeding.”³

On July 27, 2012, the Attorney Examiner established a procedural schedule that contemplated Comments be filed on August 30, 2012 and Reply Comments on July 13, 2012. On August 30, 2012, Ohio Partners for Affordable Energy (“OPAE”) and the Commission’s Staff filed Comments. Although the OCC did not file Comments, on August 30, 2012, OCC did file a letter reserving the right to file Reply Comments. OCC herein replies to the Comments filed on August 30, 2012.

II. REPLY COMMENTS

In its Comments, OPAE purports to state OCC’s position in this proceeding. Unlike how Dominion and OGMG were careful to avoid any mischaracterization of OCC’s position, OPAE boldly claims that OCC is willing to “subject non-residential customers to marketers ... and to higher rates:”

³ Joint Motion at 2 (June 15, 2012).

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.**⁴

OPAE's claim is incorrect and mischaracterizes OCC's position. The fact is that OCC did not present the PUCO with a position on whether the PUCO should or should not continue to require Dominion to make available to non-residential customers the option of purchasing natural gas through Dominion. The Stipulation is very clear on this point and states: "OCC does not take a position on an exit of the merchant function for DEO's Non-Residential Customers."⁵

The Stipulation that OCC signed requires that Dominion continue to provide residential customers the option of purchasing their natural gas through Dominion until such time as Dominion files an application to exit the merchant function for residential customers. (Dominion is not required to ever file such an application, but it cannot file such an application sooner than April 1, 2015.)⁶ OPAE mistakenly seems to conclude that the absence of these terms for non-residential customers means that OCC is taking a position for non-residential customers that is opposite its position for residential consumers. No. OCC is not taking a position regarding non-residential customers, as is plainly stated in the footnote in the Settlement.

In reality, OPAE cannot point to any stated position of OCC in this case (or in any PUCO case for that matter) where the OCC supported a complete exit of the merchant function by a Local Distribution Company for any customers, including non-residential

⁴ OPAE Comments at 10 (August 30, 2012). (Emphasis added).

⁵ Stipulation and Recommendation at 2 (June 15, 2012).

⁶ Stipulation and Recommendation at 4 (June 15, 2012).

customers. OCC's stated position has been that customers should have the maximum type of options available to help customers get the lowest price possible for natural gas.

Finally, OCC supports the point raised by the PUCO Staff in its Comments that relate to residential customers and to non-residential customers. The Staff Comments state: "Staff also recommends that any Order approving Dominion's proposed exit also clarify that nothing precludes the Commission from re-establishing the SCO or other pricing mechanism if it determines that Dominion's exit is unjust or unreasonable for non-residential or residential customers."⁷

The PUCO Staff's Comment is important because an exit from the merchant function is an Exemption case where, under R.C. 4929.04, the utility may ask the Commission for exemption, in part, from regulation under R.C. 4905.⁸ If granted, the utility could be exempt *inter alia*, from the general supervisory powers of the Commission.⁹ Therefore, the Commission should not grant an exit from the merchant function without specifically retaining jurisdiction in the event the PUCO determines the exit to be unjust or unreasonable for Dominion's customers.

⁷ Staff Comments at 3 (August 30, 2012).

⁸ See 4905.04, 4905.05 and 4905.06 Commission's General Supervisory Powers.

⁹ R.C. 4929.04 (A).

Respectfully submitted,

BRUCE J. WESTON
CONSUMERS' COUNSEL

/s/ Larry S. Sauer

Larry S. Sauer, Counsel of Record

Joseph P. Serio

Assistant Consumers' Counsel

Office of the Ohio Consumers' Counsel

10 West Broad Street, 18th Floor

Columbus, Ohio 43215

(614) 466-1312 (Sauer)

(614) 466-9565 (Serio)

sauer@occ.state.oh.us

serio@occ.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a copy of these *Reply Comments* have been served on the persons stated below via electronic service this 13th day of September, 2012.

/s/ Larry S. Sauer

Larry S. Sauer
Assistant Consumers' Counsel

PARTIES OF RECORD

Mark A. Whitt
Andrew J. Campbell
Whitt Sturtevant LLP
PNC Plaza, Suite 2020
155 East Broad Street
Columbus, Ohio 43215
whitt@whitt-sturtevant.com
campbell@whitt-sturtevant.com

Stephen A. Reilly
Devin D. Parram
Assistant Attorneys General
Public Utilities Section
Public Utilities Commission of Ohio
180 East Broad Street 6th Floor
Columbus, Ohio 43215
stephen.reilly@puc.state.oh.us
devin.parram@puc.state.oh.us

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com
smhoward@vorys.com

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45840
Cmooney2@columbus.rr.com

Joseph M. Clark
Direct Energy Services LLC and
Direct Energy Business LLC
6641 North High Street, Suite 200
Worthington, Ohio 43085
Joseph.clark@directenergy.com

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Summary: Comments Reply Comments by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Sauer, Larry S.