

**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
POST-HEARING BRIEF**

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I. Introduction

Ohio Partners for Affordable Energy ("OPAE") respectfully submits to the Public Utilities Commission of Ohio ("Commission") this post-hearing brief in the above-captioned docket, which is a joint motion ("Joint Motion") of The East Ohio Gas Company d/b/a Dominion East Ohio ("Dominion") and the Ohio Gas Marketers Group ("Marketers") to modify the June 18, 2008 Opinion and Order in Case No. 07-1224-GA-EXM ("2008 Exemption Order"). The Joint Motion filed on June 15, 2012 requests a modification of the Commission's 2008 Exemption Order in order to allow Dominion, beginning in April 2013, to discontinue the availability of standard choice offer ("SCO") service to choice-eligible non-residential customers. Joint Motion at 1.

II. Legal Argument for Dismissal of the Joint Motion

A. The Joint Motion should be dismissed because it violates Ohio statutes.

1. The Joint Motion should be dismissed because it violates Revised Code Section 4929.08(A).

a. The Joint Motion relies on findings that the Commission did not make in the 2008 Exemption Order.

Ohio Revised Code Section 4929.08(A) provides that the Commission may modify any order granting an exemption upon its own motion or upon the motion of any person adversely affected by such exemption **but only under certain conditions**. For the purposes of this case, the statute requires that the exemption order may be modified only if the “Commission determines that the findings upon which the order was based are no longer valid and that the abrogation or modification is in the public interest.” Ohio Revised Code Section 4929.08(A).

The Joint Motion in the instant case does not comply with Ohio Revised Code Section 4929.08(A), simply because **the Commission never made the findings in the 2008 Exemption Order that the Joint Motion claims the Commission made**. The Joint Motion falsely claims that “certain findings upon which the Exemption Order was based are no longer valid” but points to no Commission findings in the 2008 Exemption Order. Joint Motion at 3-4. Every reference made in the Joint Motion is merely to Dominion’s initial application in Case No. 07-1224-GA-EXM. The Joint Motion makes no reference to any now-invalid Commission findings because there are no Commission findings in the 2008 Exemption Order that could possibly be invalid today.

The Joint Motion cites the Commission's Opinion and Order at 6, but this part of the Opinion and Order is only a description of Dominion's initial application. Dominion's application is not a Commission finding. The full sentences on Page 6 of the Opinion and Order in Case No. 07-1224-GA-EXM, which merely quote the initial Dominion application, 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 initial application; the Commission is making no findings on Page 6. Thus, the Joint Motion attributes findings to the Commission that the Commission did not make. The Commission "findings" referred to in the Joint Motion are not the Commission's actual findings.

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. Again, DEO Exhibit 2 is a Dominion exhibit; it is not a Commission finding. This exhibit by Dominion referred to Dominion's "anticipation" that the 2010 SCO auction would be the "final SCO auction." Again, 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 addition, the Commission's actual findings in the 2008 Exemption Order are the opposite of what the Joint Motion contends. The 2008 Exemption Order approved a Stipulation and Recommendation filed on April 10, 2008. In describing the Stipulation, the Commission stated at 15 of the 2008 Exemption 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.

Exemption 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, March 31, 2011, another SCO service auction would be held for a subsequent annual period, and so thereafter. Dominion filed no separate application and did not obtain the needed 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 auctions after 2011; the Commission approved a Stipulation and Recommendation and issued an Opinion and Order that state the

opposite; i.e., that, absent the separate application and approval, SCO auctions “would be held for a subsequent annual period and so on thereafter.”

It is simply false to contend that the Commission's findings in Case No. 07-1224-GA-EXM are no longer valid simply because SCO auctions continue after 2011. The Commission held that the SCO auctions would continue until it decided otherwise based on review of a subsequently filed application. Dominion and the Marketers have no statutory basis to file their Joint Motion for a modification of the 2008 Exemption Order because there is no Commission finding in the 2008 Exemption Order that is now invalid.

In subsequent pleadings in this case, the Marketers tried again to locate a Commission finding in the 2008 Exemption Order that might somehow be invalid. Marketers' Memorandum Contra the Motion to Dismiss (July 13, 2012) at 4-5. The Marketers stated that the Commission found, at Page 20 of the 2008 Exemption Order, 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.” They state that the 2008 Exemption Order no longer represents a reasonable structure through which to further the potential benefit of market-based pricing by Dominion because the continued existence of SCO service for non-residential customers prevents “a fully competitive market from developing.”

Unfortunately for the Marketers, the Commission's finding that the 2008 Exemption Order would “further the potential benefits of market-based pricing of commodity sales by the company” is absolutely not the same as a Commission finding that the 2008 Exemption Order would lead to a “fully competitive market.”

This is a complete non sequitor. Nowhere in the 2008 Exemption Order did the Commission find that a “fully competitive market” would emerge or ought to emerge as a result of the 2008 Exemption Order. This is the Marketers’ fantasy, not the Commission’s findings.

In sum, the Joint Motion violates the requirements of Revised Code Section 4929.08(A) for requesting a modification to an exemption order. The statute requires that there be a prior Commission finding that is no longer valid. The Joint Motion is based on a false premise. The Joint Motion invents Commission findings and then claims that the faux findings are no longer valid. Because the Commission did not make the findings upon which the Joint Movants rely and the 2008 Exemption Order did not find what the Joint Movants claim it found, the criteria for requesting modification to an exemption order at Revised Code Section 4929.08(A) have not been met. Under the statute, the Commission may not modify the exemption order. Therefore the Joint Motion should be dismissed.

b. The Joint Motion does not describe how the Joint Movants are adversely affected by the Commission’s actual findings in the 2008 Exemption Order.

As stated above, Ohio Revised Code Section 4929.08(A) provides that the Commission may modify any order granting an exemption “upon its own motion or upon the motion of any person adversely affected....” The Commission has filed no motion, so we are left with the Joint Motion. Because the Joint Motion does not rely on any actual findings that the Commission made, Dominion and the Marketers cannot describe how they are adversely affected by the actual findings of the 2008 Exemption Order.

Neither Dominion nor the Marketers may file a motion for a modification pursuant to Ohio Revised Code Section 4929.08(A) because neither is adversely affected by the actual findings of the 2008 Exemption Order. It is not lawful for the Joint Movants to invent Commission findings and then claim that they are adversely affected by Commission findings that the Commission did not make.

c. The Joint Motion's request for modification of the 2008 Exemption Order is not in the public interest.

Revised Code 4929.08(A) also requires that the modification to the exemption order be in the public interest. The Joint Motion merely states that modification to the 2008 Exemption Order is in the public interest. Joint Motion at 4. It cannot be in the public interest for the Commission to disregard Ohio statutes and the Commission's own findings in the 2008 Exemption Order to approve a Joint Motion based on false premises. It cannot be in the public interest for the Commission to deliberately ignore its own findings to advance the interests of the Joint Movants, a utility company and two marketer groups, by modifying the 2008 Exemption Order without reference to any actual findings in the 2008 Exemption Order and without the support of any Ohio consumer group representing customers affected by the Joint Motion.

2. The Joint Motion should be dismissed because it violates the state's energy policy set forth at Revised Code Section 4929.02(A).

The Joint Motion states that the requested 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”. Joint Motion at 4. The Joint Motion also states that there is “nothing inconsistent with requiring” a customer to choose a marketer. Id. According to the Joint Motion, 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.

A review of state policy as articulated by Revised Code Section 4929.02(A) clearly states the preference of the General Assembly to promote all types of competition in order to: “[p]romote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods”. Revised Code Section 4929.02(A)(1). The method selected to achieve this is to: “[p]romote 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”. Revised Code Section 4929.02(A)(2). The state has a policy of promoting a diversity of natural gas supplies and suppliers. Revised Code 4929.02(A)(3). State policy also refers to encouraging innovation and market access for cost-effective supply- and demand-side natural gas services and goods. Revised Code Section 4929.02(A)(4). State policy promotes 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”. Revised Code Section 4929.02(A)(7).

The Joint Motion violates the state’s energy policy by limiting competition and reducing supply options available to customers. The Joint Motion refers to (and misinterprets) only one small aspect of the state’s energy policy while ignoring all the other policies that the Commission must consider. No attention is paid to the entirety of the state’s energy policy, and yet the Joint Motion falsely claims that it conforms to the state’s energy policy.

3. The Joint Motion should be dismissed because it violates Ohio Administrative Code Rule 4901:1-19-12 and ignores the Commission’s process for the adoption of administrative rules.

a. The Joint Motion violates Ohio Administrative Code Rule 4901:1-19-12.

Ohio Administrative Code Rule 4901:1-19-12 sets forth the filing requirements for a modification of an exemption order. The rule states:

Abrogation or modification of an order granting an exemption.

(A) A complainant shall provide at a minimum the following information with its application to modify or abrogate an order granting an exemption.

(1) A detailed description of the exact nature of the violation.

(a) Which portion(s) of the separation plan the applicant has failed to comply with and how the applicant has failed to comply.

(b) Which portion(s) of the code of conduct the applicant has failed to comply with and how the applicant has failed to comply.

(c) How the complainant has been adversely affected by such exemption.

- (d) Which findings of the order granting the exemption are no longer valid and why.
 - (e) How the modification or abrogation of the order granting the exemption is in the public interest.
 - (2) Supporting documentation for the complainant's allegation.
 - (3) The form of remedy requested.
- (B) Such complaint shall be designated by the commission's docketing division using the acronym CSS.
- (C) The docketing division of the commission shall serve the complaint upon the parties of record for the original exemption case which is the subject of the motion to modify or abrogate.
- (D) The commission shall order such procedures as it deems necessary, consistent with these rules, in its consideration for modifying or abrogating an order granting an exemption.

Ohio Administrative Code Rule 4901:1-19-12.

Thus, the Commission has an administrative code rule setting the process for modifications to exemption orders. Ohio Administrative Code Rule 4901:1-19-12.

But, from a mere glance at the Joint Motion, one would never know that there is an administrative code, let alone a rule for filings to modify exemption orders. The Joint Motion completely disregards the Commission's rule. The Joint Motion provides no information upon which it bases its complaint that the findings of the 2008 Exemption Order are no longer valid. The Joint Motion is not even a complaint. There is no detail about the findings of the Commission that are no longer valid, about how the complainants are adversely affected by the actual Commission findings, about the public interest, about the code of conduct, about the corporate separation plan, or any of the other information that the rule requires. The rule is simply ignored.

b. The Joint Motion ignores the Commission's process for the adoption of administrative rules.

At this time, the Commission has no administrative rules for natural gas public utilities seeking to exit the merchant function, essentially the same situation that the Joint Motion seeks for non-residential customers. The Commission is currently considering extensive new administrative rules for applications by natural gas utilities to exit the merchant function. *In the Matter of the Commission's Review of the Alternative Rate Plan and Exemption Rules Contained in Chapter 4901:1-19 of the Ohio Administrative Code*, Case No. 11-5590-GA-ORD.

The Joint Motion seeks an exit of the merchant function by Dominion under which non-residential customers would be required to purchase natural gas directly from a marketer; if the customers do not choose a marketer, Dominion will choose one for them. Dominion will cease to provide SCO service to non-residential customers. This circumstance is the definition of "exit the merchant function" at Proposed Rule 4901:1-19-02(N). Extensive comments have been made by all interested parties on the proposed rules, and the Staff of the Commission has made its recommendations. The recommendations include filing requirements for utilities seeking to exit the merchant function. Proposed Rule 4901:1-19-05. See *In the Matter of the Commission's Review of the Alternative Rate Plan and Exemption Rules Contained in Chapter 4901:1-19 of the Ohio Administrative Code*, Case No. 11-5590-GA-ORD, Staff Recommendations and Summary of Comments, Attachment A to the July 2, 2012 Entry. At this point, the recommended rules have not been adopted.

The Joint Motion disregards the effort to adopt administrative rules and set a process for an application by a public utility to exit the merchant function. Not only does the Joint Motion disregard all existing statutory and procedural requirements for a complaint for modification of an exemption order, it also seeks to avoid all pending procedural requirements for an application to exit the merchant function. The rush to complete this case in favor of Dominion and the Marketers is clearly intended to avoid Dominion having to comply with any administrative code rules for exiting the merchant function. This is unlawful, unfair to those who commented on the proposed rules, inefficient, and a waste of time.

The Commission should dismiss the Joint Motion and require that a proper lawful filing be made under Ohio Revised Code Section 4929.08(A) and Administrative Code Rule 4901:1-19-12 or require that Dominion await the adoption of the new rules for natural gas utilities to exit the merchant function.

B. Conclusion to the Legal Argument for Dismissal of the Joint Motion

In sum, the Joint Motion violates Ohio law. The Joint Motion does not cite an actual Commission finding in the 2008 Exemption Order that is now invalid because no such Commission finding exists. The Joint Motion does not describe how the Joint Movants are adversely affected by a Commission finding that was never made. Ohio Revised Code Section 4929.08(A). The Joint Motion ignores the requirements of Ohio Administrative Code Rule 4901:1-19-12. The Joint Motion seeks to avoid the Commission's pending administrative rules for applications to exit the merchant function.

These are not issues of facts; these are issues of law. The Joint Movants, in requesting a modification to an exemption order, have failed to meet the statutory and administrative requirements of Revised Code Section 4929.08(A) and Ohio Administrative Code Rule 4901:1-19-12. There is nothing in the 2008 Exemption Order that can lawfully be modified as a result of the Joint Motion. Therefore, the Joint Motion should be dismissed.

II. The evidentiary argument for the denial of the Joint Motion

A. The evidence of record demonstrates that the Joint Motion should be denied because the Joint Motion is a ploy to rewrite the Commission's 2008 Exemption Order as requiring an exit of the merchant function.

It is also obvious from the clear reading of the 2008 Exemption Order that Dominion is to file a separate application seeking Commission approval to move 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., to exit the merchant function. Under the 2008 Exemption Order, if Dominion had not obtained 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 would be held for a subsequent annual period, and so on thereafter. 2008 Exemption Order at 15.

Dominion made no application to move to this full choice commodity service; instead Dominion and the Marketers filed the Joint Motion to modify the 2008 Exemption Order. They claim in the Joint Motion that the findings of the 2008

Exemption Order are no longer valid because full choice commodity service has not been achieved under the 2008 Exemption Order. However, the 2008 Exemption Order did not order that “full choice commodity service” be achieved under the 2008 Exemption Order.

The evidence of record demonstrates why Dominion and the Marketers are perpetrating this deceptive ploy. Dominion’s Memorandum Contra the Motion to Dismiss included an Attachment A, which, at Page 3 of 4, were e-mails sent by Dominion to “stakeholders.” Dominion states in its April 21, 2012 e-mail to the “stakeholders” that it wants to identify alternatives for the future direction of Dominion’s Energy Choice program and SCO structure, but that the “stakeholder group should be mindful of Staff’s comment that there is a high hurdle to obtaining Commission approval of a full merchant function exit at this time. If we are to make any changes, those changes will need to continue the methodical process that has served us well in the past and place customer needs at the forefront.”

Heeding its own advice, rather than file a separate application for “full choice commodity service” as the 2008 Exemption Order requires, Dominion filed the Joint Motion with the Marketers to modify the 2008 Exemption Order so that non-residential customers would be subject to full choice commodity service (i.e., denied SCO service). We are supposed to pretend that the 2008 Exemption Order is invalid because an exit of the merchant function has not been achieved. This ploy does not change the actual findings of the Commission in the 2008

Exemption Order that a separate application for a full exit of the merchant function is required.

Dominion's witness Jeffrey A. Murphy attempted to turn the 2008 Exemption Order into an order that is invalid because an exit of the merchant function for non-residential customers has not been achieved. Mr. Murphy complained that the 2008 Exemption Order no longer represents a reasonable structure through which to further the benefits of market-based pricing because the SCO still exists. There will not be a "fully competitive market" until the SCO is eliminated. Tr. I at 80. In a football analogy, Mr. Murphy testified that the SSO got Dominion across mid field and that the SCO got Dominion into the red zone, but "we don't get over the goal line until the SCO goes away." Tr. I at 45. He stated: "we don't get over the goal line and truly exit the merchant function until that last vestige of default service goes away." Tr. I at 45, 64. For Mr. Murphy, a "fully competitive market" is one without SCO service. However, the 2008 Exemption Order does not support Mr. Murphy's position that a "fully competitive market" would emerge as a result of the 2008 Exemption Order. The 2008 Exemption Order is not magically invalid because Dominion and the Marketers have not scored a touchdown.

The Marketers' witness Ringenbach, who works for the marketer Direct Energy, testified that the Joint Motion intends to bring about an exit of the merchant function for Dominion's non-residential customers. In her testimony, she states that the Joint Motion will be the completion of an exit of the merchant function for non-residential customers by removing them from retail auctions and

requiring competitive suppliers to fulfill completely the default commodity role. OGMG Ex. 2 at 3. Tr. I at 161. The Marketers seek the exit of the merchant function for non-residential customers by filing the Joint Motion to modify the 2008 Exemption Order. Ms. Ringenbach explains why.

Ms. Ringenbach stated that in June 2008, gas suppliers were “told by the chairman of the Commission at that time, “You will never get an exit on the gas side.” Tr. I at 170. According to Ms. Ringenbach, that led to a lot of suppliers leaving the state because the business was not growing. Tr. I at 170. Marketers reduced their presence in Ohio because they did not think that an exit was going to come. Tr. I at 172.

But now, according to Ms. Ringenbach, things are “very different” because Dominion and Columbia are “entering into negotiations that would include an exit from the merchant function.” Tr. I at 170. “This gives certainty to suppliers to make an investment here and keep growing this market.” Tr. I at 170. Ms. Ringenbach testified that Direct Energy’s CEO “came here and talked to people and he got in the car with me and said: “You’re going to open an office and you’re going to staff it here because I believe in Ohio.” Tr. I at 173. Now instead of Ohio being “dead”, “Ohio is where it’s at.” Ms. Ringenbach testified that this will be the first approval by a Commission to say “We’re willing to let it go and see what happens. That’s what this settlement is.” Tr. I at 173. Direct Energy is also an upstream producer “so deciding if we want to, you know, buy wells or invest in Utica or if we want to do something in New York or pay a premium with

Marcellus, right, the difference is going to be in that market where we hold the largest amount of customers”. Tr. I at 175.

But the Marketers don’t want to feel that “the rug’s going to be pulled out from underneath them again.” Tr. I at 172. If the Joint Motion is granted and the state of Ohio forces Ohio non-residential customers to take commodity service directly from Direct, Ohio will be “where it’s at.” If the Joint Motion is denied, Direct Energy and other marketers will close down offices or not make additional investments in Ohio.

The problem with the approach chosen by Dominion and the Marketers to request a modification to the 2008 Exemption Order to achieve an exit of the merchant function is that there is a law in Ohio setting forth the criteria for a modification of an exemption order. There is nothing in the 2008 Exemption Order that is invalid because an exit of the merchant function has not been achieved. By avoiding a separate application to exit the merchant function for non-residential customers and filing a motion to modify the 2008 Exemption Order, Dominion and the Marketers believe that they have taken the easier route to an exit. This strategy is an unlawful ploy. The Commission has no authority to violate or disregard Ohio law for modifications of exemption orders.

B. The evidence of record demonstrates that the Joint Motion should be denied because it is inconsistent with the policy of the state of Ohio set forth at Ohio Revised Code Section 4929.02, Revised Code.

1. The state's energy policy promotes effective competition, reasonable prices, choices, and innovation.

The state of Ohio's energy policy as articulated at Revised Code Section 4929.02 states the preference of the General Assembly to promote all types of competition. The state seeks to "[p]romote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods". Revised Code Section 4929.02(A)(1). The state seeks to "[p]romote 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". Revised Code Section 4929.02(A)(2). The state has a policy of promoting a diversity of natural gas supplies and suppliers. Revised Code 4929.02(A)(3). State policy also refers to encouraging innovation and market access for cost-effective supply- and demand-side natural gas services and goods. Revised Code Section 4929.02(A)(4). State policy also promotes "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". Revised Code Section 4929.02(A)(7).

2. The evidence of record demonstrates that there is already effective competition in Dominion's service area in compliance with the state's energy policy.

The state's policy speaks to "effective competition." Revised Code Section 4929.02(A)(7). Dominion witness Murphy testified that Phase 1 of Dominion's plan replaced the regulated gas cost recovery ("GCR") mechanism with the standard service offer ("SSO") option based on the month-end settlement prices for natural gas futures contracts traded on the New York Mercantile Exchange ("NYMEX.") Tr. I at 24. Case No. 05-474-GA-ATA. Using a NYMEX-based price enabled the SSO's underlying commodity price to reflect current market pricing. Tr. I at 26-27. To replace the GCR, Dominion secured the natural gas commodity using an auction in which suppliers bid for the right to provide natural gas supplies to Dominion. The SSO auction is competitive and market forces are used to establish the price of the commodity at the auction. Tr. I at 28.

Dominion also affirmed that the 2008 Exemption Order established effective competition in Dominion's service area. In his testimony in Case No. 07-1224-GA-EXM, Dominion's witness Murphy testified that suppliers would be able to establish relationships with customers without incurring customer acquisition costs, such as sales and marketing expense. In the competitive market that includes the SCO, the savings in customer acquisition costs would be reflected in the suppliers' bids and thus passed on to customers. Testimony of Jeffrey A. Murphy, Case No. 07-1224-GA-EXM at 4. He also testified that the promotion of

direct contractual relationships between customers and suppliers would accrue regardless of the auction result. Id. at 6.

Mr. Murphy also testified in Case No. 07-1224-GA-EXM that Dominion had already achieved effective commodity sales service competition, and: “If DEO’s natural gas commodity market is not competitive, it is difficult to imagine one that is.” Testimony of Jeffrey A. Murphy, Case No. 07-1224-GA-EXM at 10.

In this case, Mr. Murphy acknowledged that the entire natural gas commodity in Dominion’s service area is already provided by competitive retail natural gas suppliers (“CRNGS”). Tr. I at 45. Mr. Murphy testified that there are about 30 natural gas suppliers in Dominion’s service area. Tr. I at 33. Mr. Murphy testified that there are a large number of suppliers competing in the market. Tr. I at 33. He also testified that there are several times the number of marketers participating in the SCO auction than would be awarded bids. Tr. I at 33. In addition to the auction, suppliers are also free to offer bilateral contracts directly to customers, to post a market variable rate (“MVR”) on the Commission’s Apples to Apples chart, or to negotiate to supply government aggregations.

The elimination of the SCO auction might act to restrict the number of marketers providing service in Dominion’s service territory. The SCO auction allows marketers to acquire customers without incurring any customer acquisition costs. Tr. I at 32. Moreover, Dominion uses the auction process to solicit marketers. Mr. Murphy explained: “After each auction the company distributes information to all of its Energy Choice suppliers asking whether they would like to be included in the rotating assignment to standard choice offer customers as well

as MVR customers. Tr. I at 20. The list of suppliers is updated after each auction is conducted. Tr. I at 21. Through this process, the marketers pick up customers. Suppliers who win bids in the auction are automatically included in the list after the auction results are known. At that point, other suppliers are also asked if they want to be included on Dominion's list. Tr. I at 22.

In short, Dominion acknowledges that the SCO auction produces a competitive market-based price and attracts numerous suppliers bidding to obtain customers. Any Ohio-certified supplier may bid into the SCO auction; and, if the supplier's bid wins a tranche, the supplier acquires customers with no acquisition cost. Suppliers are also free to offer bilateral contracts of various terms and conditions, to negotiate with government aggregators to supply their needs, or to participate in the MVR process. In the words of Mr. Murphy, if that is not competition, it is difficult to imagine what is.

3. The evidence of record demonstrates that the SCO is a competitive option that provides many benefits to consumers, such as lower market prices, transparent market pricing, low transaction costs, and a benchmark for consumers to compare a market price determined by a competitive auction with other offers whose pricing is not transparent or market based.

The state seeks to promote the availability to consumers of reasonably priced natural gas. Revised Code Section 4929.02(A)(1). The state also seeks to provide consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs. Revised Code Section 4929.02(A)(2). The state also has a policy of promoting a diversity of natural gas supplies and suppliers. Revised Code 4929.02(A)(3). State policy also refers to innovative approaches to providing cost-effective natural gas supply options and services.

Revised Code Section 4929.02(A)(4). State policy requires that there be effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation. The evidence of record demonstrates that the SCO not only meets but also enhances these policies of the state of Ohio.

OPAE witness Stacia Harper described the competitive options now available to non-residential customers in Dominion's service area. First, there are price offers from CRNGS, who offer customers direct bilateral contracts with variable or fixed rates, short or long terms, and various other features. OPAE Ex. 1 at 9. Second, customers may join a government aggregation, with CRNGS supplying the natural gas sold to aggregation customers and with a bidding or auction process establishing the competitive price. The third competitive option is the SCO. In the SCO, the price is established through an auction held by the natural gas utility where the winning bidders receive the same price. Fourth, is the market variable rate (MVR) where Dominion maintains a list of CRNGS who choose to post an MVR. The MVR is unique to each CRNGS, is set by each CRNGS, and has a price that is not determined by an auction. Id. at 11.

Dominion's Murphy testified that he does not know how the suppliers' MVRs are set. Only individual suppliers know how their MVR is set. Tr. I at 16. While the MVR is capped at the lowest competitive monthly variable rate offer that the supplier has posted on the Apples to Apples chart, it is the suppliers that set their MVR price. Tr. I at 17.

The auction used to set the third competitive option, the SCO, is a competitive auction. At the close of Dominion's 2011 SCO auction, Chairman Todd A. Snitchler stated, "The auction process has again yielded positive results for Dominion East Ohio customers . . . [t]he market continues to provide a competitive commodity price for natural gas." See:

<http://www.puco.ohio.gov/puco/index.cfm/media-room/media-releases/puco-approves-results-of-dominion-natural-gas-supply-auctions/>.

In this case, Dominion and the Marketers seek to eliminate the SCO option for all non-residential customers so that a price established through a competitive auction will no longer be available to those customers. Choice-eligible customers who have not chosen to enter into a bilateral contract with a CRNGS or to be served through a governmental aggregation will be forced into the fourth option, i.e., they will be assigned a CRNGS by Dominion through the MVR process at a variable rate determined by the CRNGS participating in the MVR process. This change would result in roughly 20% of all non-residential customers losing their current choice, the competitively determined SCO. OPAE Ex. 1 at 12.

Bilateral contracts are no substitute for the SCO with its price determined by a competitive auction and its terms and conditions transparent. Bilateral contracts vary greatly as to terms and conditions, and there may be early termination fees as high as \$150. OPAE Ex. 1 at 12. The terms of bilateral contracts are not generally known to the public or transparent in any way. *Id.* In addition, some marketers may offer bilateral contracts at prices that are not on the Apples to Apples chart. *Tr. I* at 157. The only way a customer would know about such an

offer is to call an individual marketer or visit an individual marketer's website to obtain the information. Tr. I at 157.

Bilateral contract prices are also higher than the SCO when compared over a twelve-month period to a 12-month average SCO price. Exhibit SH-4. Bilateral contracts simply cost more. Customers pay a premium for a fixed price contract over a variable price contract because there is more risk to marketers when offering a fixed price. The variable price offers from marketers almost always exceed the price offered through the SCO, in part because of the customer acquisition costs associated with marketer offers. Tr. I at 143. Moreover, the SCO option, set by a competitive bid process, is generally lower priced than the marketers' MVRs. Ms. Harper testified that while there is occasionally an MVR price that is at or below the SCO price, the vast majority of MVR prices posted on the Commission's Apples to Apples chart are higher, often much higher, than the SCO price. OPAE Ex. 1 at 14; Exhibit SH-3. MVR prices are higher because they are not set by competitive forces.

The SCO provides a benchmark for natural gas prices, and, if there is an SCO, there is an incentive for suppliers to try to come close to the SCO price in order to win customers. Tr. I at 143. While retail suppliers have ample opportunity to create innovative contracts to attract customers and meet or beat the SCO price, the SCO provides a benchmark that keeps the suppliers honest. Tr. I at 143.

In addition, the SCO price, unlike bilateral contract prices and MVRs, is transparent. Currently, it is the NYMEX close plus 60 cents, the adder

determined at the auction. Tr. I at 132-133. A customer can easily know and understand the SCO price; however, a customer has no way to know how the MVR price is set. Tr. I at 157. The MVR is not always NYMEX priced, nor is any adder known. Tr. I at 157. The MVR is anything a marketer wants it to be, and there is no insight into how an MVR is set. Tr. I at 133. If the Joint Motion is granted, after Dominion assigns a non-residential customer to a marketer's MVR, the customer will not know his price until he gets his first bill. Tr. I at 158.

Given the lack of transparency and the higher cost of bilateral contracts and the MVR, it is not surprising that customers leave bilateral contracts with suppliers to take the SCO service option. Tr. I at 37. OPAE Ex. 4. Customers leave bilateral contracts for the SCO even though customers must make the step to call Dominion to return to SCO service. In short, customers are willing buyers of the SCO service. Tr. I at 38.

In the 2009 to 2010 period, approximately 241,000 SCO customers were included in the auction. At the present, there are approximately 170,000 SCO customers. Of these, there are approximately 14,000 non-residential customers on the SCO service who will lose the SCO option if the Joint Motion is granted. Tr. I at 39. Mr. Murphy testified that many of the customers who were SCO customers at the outset of the SCO have simply remained SCO customers through the entire time. Tr. I at 38. Clearly, the SCO service is a choice that customers make, including non-residential customers that the Marketers refer to as sophisticated. Tr. I at 39.

In addition to the SCO auction spurring price competition, the SCO eliminates the CRNGS's customer acquisition costs, which is a significant barrier to entry into the competitive natural gas market of new CRNGS. Id. at 15. The SCO is comparable to a government aggregation where CRNGS are able to acquire customers without incurring significant acquisition costs. Customers without access to a government aggregation are able to obtain a similar competitive option through the SCO. Without the transparent SCO price set by an auction, there is a reduction in the efficiency of the competitive market. OPAE Ex. 1 at 15.

In spite of all these beneficial features of the SCO, CRNGS are able to compete with the SCO option. Some CRNGS prices are lower than the SCO. Tr. I at 157. In addition, bilateral contracts may serve some customers' needs by offering various terms and conditions, such as long-term contracts or fixed-price contracts. OPAE Ex. 1 at 17. The Marketers' witness Ringenbach testified that some customers prefer a fixed price, which is not always the lowest price. Tr. I at 156.

Roughly 80% of Dominion's non-residential customers are served by other competitive options than the SCO. The SCO is clearly not crowding out other competitive options. There is robust competition in natural gas service in Dominion's service area as Ohio law seeks to promote. Revised Code 4929.02(A)(3) states that it is the policy of the state to promote a diversity of natural gas supplies and suppliers by giving consumers effective choices over the selection of supplies and suppliers. Bilateral contracts, governmental

aggregation, and the SCO represent options that are consistent with the state's policy because they provide customers with diverse competitive options. The fact that roughly 20% of Dominion non-residential customers have chosen the SCO makes clear that SCO service is in demand and is a desired competitive option that does not crowd out other available competitive options .

The SCO conforms to the policy of the state of Ohio. The SCO promotes reasonable prices and provides customers with the price, terms, and conditions they desire, resulting in transactions 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 approximately 14,000 non-residential customers and 150,000 residential customers currently on the SCO are "willing" customers. Tr. I at 74-75. The SCO auction 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 consumers' access to 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 market price. The state's energy policy is not to force unwilling customers to choose a marketer and certainly not to allow a utility to choose a marketer for them. The promotion of competition requires an SCO option that gives consumers a price for natural gas commodity set by the competitive market and also the choice not to choose an individual marketer.

C. The evidence of record demonstrates that the Marketers' purpose in sponsoring the Joint Motion is to expand their customer base and to increase profits at the expense of consumers.

1. The Joint Movants interpret state policy as requiring less choice and higher prices for consumers.

For the Joint Movants, the state's energy policy is not about competition, open markets, transparent prices, or consumers' choices; it is about eliminating competitive options that benefit consumers and forcing consumers into pricing options under which customers will pay more. The Joint Movants narrowly interpret state policy to benefit only themselves.

In a move contrary to the state's policy to promote reasonable prices, Dominion and the Marketers advocate eliminating a competitive option that generally costs less than the alternatives. Ms. Ringenbach conceded that Direct's fixed price bilateral contract would be higher than the SCO price. Tr. I at 176. As she testified, customers are going to say "I don't like this." Tr. I at 176.

OCC witness Bruce M. Hayes testified that while Dominion and the Marketers attribute customers choosing the SCO to inertia, the reason could be the result of a conscious decision by customers not to participate in Dominion's choice program. OCC Ex. 2 at 15. According to Mr. Hayes, one reason that non-residential customers may be taking SCO service is because the SCO, except for

a few isolated supplier offers, has consistently been better—meaning a lower price—than the numerous comparable variable rate offers from marketers on the Apples to Apples chart. OCC Ex. 2 at 15. A simple reading of the Apples to Apples chart, the Commission’s primary consumer choice education tool, makes it clear what rate option is the lowest. Thus it is possible that these non-residential customers have made a choice, with that choice being to take the lower priced SCO option. In addition, with limited upward pressure on prices due to the abundance of natural gas and the reduced industrial load, these customers may not see the value in paying a premium for a fixed-rate contract to hedge against a risk of higher future prices that is not perceived as realistic or threatening. OCC Ex. 2 at 16.

In addition, Mr. Hayes pointed to Ms. Ringenbach’s testimony where she states that the only state where a natural gas company exited the merchant function is Georgia. OGMG Ex. 2 at 5; OCC Ex.2 at 23. In 1999, before Atlanta Gas and Light Company (“AGL”) exited the merchant function, residential customers of AGL were paying a price for natural gas at approximately the national average. Since the exit, between 2000 and 2011, AGL customers have been paying a price that has been consistently higher than the nation average. OCC Ex. 2 at 23.

2. The elimination of the SCO will be a nightmare for customers considering their natural gas choices.

To the question whether Dominion cares whether the elimination of the SCO will result in higher prices for its customers, Mr. Murphy stated that “Dominion

wants its customers to make informed decisions and some of those customers may make an informed decision that suggests that they would pursue a fixed-price product to get greater budget certainty. And some of those customers may well be on a fixed price that is above the standard choice offer or MVR price for a period of time, but that may be the type of product that that individual customer has selected in the marketplace having considered very many different offers.” He testified that the “customer may prefer paying a somewhat higher price in order to get the pricing certainty that they would seek perhaps working into their risk orientation or their monthly budget amount for that matter.” Tr. I at 47. Clearly, customers that review the Apples to Apples chart and choose to remain on the SCO because it is the lowest price would fall within Mr. Murphy’s desire for “customers to make an informed decision.” Id.

Dominion does not care if it assigns customers, who have taken no action at all, to a marketer who will charge a higher price than their current competitive choice. Tr. I at 57. Dominion claims that its concern is “customers making informed choices.” Tr. I at 57. Customers may make informed choices to be in a bilateral agreement, government aggregation, MVR, or, for now, in the SCO. Tr. I at 57. Dominion wants customers to pay the price that is based upon their “informed review” of the options available. In some cases, one price may be above another, but if the customer has made an “informed decision”, Dominion is satisfied that the market is functioning properly. Id. I at 57. Dominion understands that not all customers invest the same amount of energy in making those comparisons but Dominion’s desired end state is a customer base that is

“fully informed” about the options available to it and makes the decisions accordingly. Tr. I at 57.

And what does it take for customers to be “fully informed” to Dominion’s satisfaction? Basically, it will be a full time, 24-hour a day, every day job. Mr. Murphy testified that there are “hundreds of thousands” of bilateral contracts. Tr. I at 55. But Dominion believes that if SCO service is eliminated, customers will understand that they are subject to the process of being assigned by Dominion to a supplier and that the supplier’s price will not be a competitive auction price any longer. As a result, the customer should be incented to more carefully and thoroughly review the options available in the marketplace and come to his own determination of what type of bilateral agreement would suit him. Tr. I at 73.

How would the customer make this determination? With the elimination of the market-priced, auction-determined SCO, customers are forced to consider one supplier’s fixed or variable-priced contract but only in comparison to another supplier’s fixed or variable priced contract. There will be no SCO market-price to compare to the fixed or variable price contracts. There will be no benchmark, just other marketer prices. Tr. I at 177. This will force customers, if they want to compare the price offers of various suppliers, to check the 30 various websites and types of products offered to make an informed decision. And after that, the dilemma continues. A fixed price contract may look good if the natural gas market goes up above the fixed price and bad if the market goes down below the fixed price. Ms. Ringenbach testified: “Just as you would if you were purchasing a car, entering into a cell phone plan, going to the Giant Eagle to get

your Fuel Perks versus Kroger to get whatever crazy fuel program they have. Yeah, you're right, you as a consumer have to make an effort to make the best choice for you." Tr. I at 178.

The Marketers' witness Parisi, from the supplier IGS, testified that if he owned a business, he would be concerned about all the different costs, and certainly energy would be one of them given its volatile nature. Tr. II at 224. IGS watches the market daily. Tr. II at 226. IGS is in the market daily, buying 365 days a year. IGS has a risk department that focuses on the forward market and tries to predict trends. Tr. II at 226. Consumers generally cannot commit this level of attention to the natural gas market and will confront a considerable challenge to determine the contract that is right for them. Mr. Parisi would not agree that lower prices are good for consumers because he believes that "what's good for consumers, frankly, is to be engaged in the market." Tr. II at 217.

Mr. Murphy was unconcerned if customers are paying a higher price if they select a fixed-price product and pay a high price to address risks that they may see in a price that varies every month. Tr. I at 61. Mr. Murphy also believes that higher prices will lead customers to shop, whereas lower prices may not. Tr. I at 61. He is unconcerned if high exit fees effectively prohibit consumers from correcting a mistake or if high prices for natural gas impede a business from staying in business or hiring more employees. Tr. 1 at 62.

It is clear that what benefits marketers does not always benefit consumers. The state's energy policy does not put the interests of marketers in higher prices and opaque contract offers ahead of the interests of consumers.

3. There is no evidence that the SCO is a “subsidized” product, but the evidence does show that auctions benefit marketers and consumers.

Both IGS’s Parisi and Direct’s Ringenbach claim that the SCO is a subsidized price. Tr. II at 221. Mr. Parisi stated that the cost of the SCO auctions is paid by everyone. He referred sympathetically to the time and resources that Dominion spends maintaining the SCO. He claimed that the costs are recovered through rates and paid by all Dominion customers.

However, Dominion witness Murphy testified that Dominion’s cost for the six auctions it has held to date has been \$577,000, a cumulative and miniscule total for all six auctions. Tr. I at 14-15. Not only that, the cost for the initial auctions, which involved the creation of the platform to conduct the auction, was more expensive than the later auctions, which have decreased in price. The later auctions have probably been less than \$50,000 each. Tr. I at 15; OCC Ex. 1. In addition to the miniscule cost of the auctions, there have been a total of approximately 800,000 customers in the SCO pool in the last four auctions. Tr. I at 35. The cost of the auctions hardly compares with the number of customers and marketers benefiting from them. The costs of the auctions are minimal.

Moreover, marketers are free to bid in the auction and take advantage of any subsidy it may provide. Through the auction, marketers get customers without having to incur any customer acquisition costs. In short, marketers themselves benefit from the auctions.

In addition, even if the SCO is eliminated, Dominion will still hold auctions, and those auctions will continue to supply marketers with customers. At this time, the retail SCO and wholesale SSO auctions are combined. They are combined because they yielded identical results. Case No. 11-6076-GA-EXM. Opinion and Order (February 12, 2012) at 3. Even if the SCO auction is eliminated, there will still be customers getting the SSO auction price. Those getting an auction-based price include new customers moving into the Dominion service territory; relocating customers who lack portability provisions in their bilateral contracts; disconnected customers re-establishing service; non-choice eligible customers; and Percentage of Income Payment Plan ("PIPP") customers. Tr. I at 18-19. These customers continue to receive the SSO based on a competitive auction held by Dominion and will continue to receive SSO service even if the Joint Motion is granted. Tr. I at 19.

The new customer will get the SSO price for up to two months if she is choice eligible and has not selected a supplier at the outset. Tr. I at 58. In those two months, she is expected to learn about the choice program and access the retail offers that are available to her. While she is learning about the marketplace, her gas commodity will be the SSO wholesale offer from Dominion with the commodity supply provided by the marketers who win tranches at the SSO auction. According to Mr. Murphy, because new customers may not be familiar with the marketplace, they are "housed under the SSO umbrella" for a brief period of time, a two-month period, to learn how the market works and what options are available. Tr. I at 59. Mr. Murphy testified that the two-month

window gives the customers time to “get up that learning curve and begin to make those informed judgments and assessments.” Tr. I at 60.

Spreading the cost of the auction among all customers makes sense because its costs are minimal and its benefits are great for both consumers and marketers. Marketers get customers without acquisition costs. Consumers get a market-based transparent price and protection from the profit-maximizing, opaque offers of marketers. Even if the Joint Motion is granted, some lucky customers will continue to be “housed under the SSO umbrella” and be able to obtain a price for commodity service based on a competitive auction price.

4. The current lack of growth in natural gas markets is not caused by the SCO service and cannot be remedied by the elimination of SCO service.

One of the complaints about the SCO voiced by Dominion and the Marketers is that few customers are now leaving SCO service. Mr. Murphy claimed that the SCO “is no longer a reasonable structure through which to further the potential benefits of market-based pricing of the commodity sales”, because customers are not switching to bilateral contracts. Tr. I at 80. Mr. Murphy believes that, at first, the auction spurred the competitive market and that the number of suppliers has grown, but “for the last two years that participation has been stable.” Tr. I at 68. It has reached a plateau. Id. There has been a leveling off in suppliers and in the number of SCO customers for the non-residential market. Tr. I at 68. Mr. Murphy testified that initially there were 22,000 non-residential customers on the SSO; that declined to 17,000 in the next auction, and in the last two auctions the number was around 14,000. Tr. I at 80.

Mr. Parisi testified that the SCO retail price adjustment, i.e., the adder which is added to the NYMEX end of month close, has generally trended down. Tr. II at 217. He also testified that the declining rates of the adder in the auction, "is primarily an effect of the declining market in total, but we still are in a very volatile market." Tr. II at 218. Commodity prices have been as high as \$16 in the last few years, dropped as low as \$4, and currently are trending slightly upward again. However, as OCC witness Hayes testified, there is limited upward pressure on natural gas prices due to the abundance of natural gas and the reduced industrial load. OCC Ex. 2 at 16.

The current economic and environmental conditions have contributed to less growth in sales, fewer customers, declining prices, and possibly lower profits for suppliers. However, to blame the current poor market conditions for suppliers on the existence of the SCO service is as false as the Joint Motion itself.

A narrow set of private interests, the Marketers, seek to eliminate the SCO competitive option for customers. Those special interests already provide the natural gas commodity to all the customers in Dominion's service area through the process that handed customers over to them, but that apparently is not enough. Now, the Marketers want to be certain that they can set the price at which customers are served without regard to an actual market price benchmark to which customers can compare their offers. They do not want a transparent, competitive market. They want private control of prices, but this is not in the public interest. And it is not the Commission's role to secure their private profits

for them. The Commission has no responsibility to cater to private special interests at the expense of consumers and competitive market-based options.

6. The SCO service fits perfectly with the competitive market envisioned by the state's energy policy.

There are many competitive options available to customers in Dominion's service area. A customer can already get a fixed or variable price bilateral contract for a long or short term at a lower or higher price. A customer can be in a government aggregation. A customer may be on a marketer's MVR. Or the customer may be on the SCO option. The Joint Motion offers customers nothing new, no new competitive option that customers do not already have. The Joint Motion's only purpose is to take away a competitive option that customers now have. That option is the SCO, the transparently priced option determined by a competitive auction.

Competitive markets are greatly enhanced by the existence of SCO service. The elimination of SCO service is the elimination of a competitive choice available to customers. Competitive markets are thwarted by the elimination of SCO service; they are not enhanced by the elimination of competitive options.

The elimination of the SCO service will limit competition, increase prices consumers pay, and maximize marketers' profits. The Commission should not eliminate competitive options such as the SCO and force consumers into higher-priced bilateral contracts, which minimize competition and maximize the marketers' profits. The promotion of competition requires an SCO option that gives consumers a reasonable price for gas commodity set by the competitive

market and also gives consumers the choice not to choose a marketer. Taking away that choice serves no one but the marketers.

State policy is counter to the limited competition proposed by Dominion and the Marketers. Market-based pricing and diversity of supply options enhance compliance with the state energy policy in terms of the creation and maintenance of competitive markets.” Tr. I at 64. Given that the creation and maintenance of competitive markets is the state’s policy, the elimination of the SCO, a competitive option, does not advance the state’s energy policy.

Both Mr. Murphy from Dominion and Mr. Parisi from IGS view informed customers engaging in the market as the goal of state policy. Tr. I at 57 and TR. II at 217. Yet, customers that peruse the Apples to Apples chart and choose the lowest price – the SCO –are engaged in the market, so it is unclear how elimination of the SCO will cause an engagement that is not already occurring. As Mr. Murphy noted, Dominion has done no market research to determine whether or not SCO customers have shopped. Tr. I at 81. The only data submitted at hearing indicated that a number of customers served by bilateral contracts have returned to SCO service, a clear indication of shopping since it requires contacting DEO to return to the SCO service. OPAE Ex. 4. Tr. 1 at 37-38. The informed engagement that Dominion and the Marketers view as fundamental to Ohio’s natural gas policy is clearly occurring and the SCO is one of the competitive options that customers are choosing.

The interest of the Marketers is clear; they want Dominion to hand customers to them, to force everyone that uses natural gas to be their customers, and to make profits by not having their prices compared to prices produced by a transparent competitive process. 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.

IV. Conclusion

The Joint Motion to modify the June 18, 2008 Exemption Order should be dismissed as a matter of law. The criteria at Revised Code Section 4929.08(A) have not been met because no actual findings of the Commission in the June 18, 2008 Exemption Order have been cited in the Joint Motion to modify the order. The Commission simply did not make the findings in the 2008 Exemption Order that the Joint Motion claims the Commission made. Findings that were never made cannot magically become invalid and no party can be adversely affected by findings that were not made. It is not in the public interest for the Commission to ignore Ohio law or to deny its own findings. The Commission has no authority to violate or ignore Ohio law.

The requirements of Ohio Administrative Code Rule 4901:1-19-12, the Commission's rule for modifications to exemption orders, have been ignored. No

complaint has been filed regarding the 2008 Exemption Order, nor has any of the information required by the rule been submitted. Like the statute, the rule requires detailed information about the findings of the Commission in the June 18, 2008 Opinion and Order that are now invalid. The Joint Motion refers to no findings actually made by the Commission.

Therefore, because the statutory requirements of Revised Code Section 4929.08(A) and the administrative requirements of Rule 4901:1-19-12 have not been met, the Commission has no statutory authority to hear this case or to issue an order modifying the June 18, 2008 Opinion and Order granting the exemption. Revised Code Section 4929.08(A).

The Joint Motion also violates the policy of the state of Ohio. R. C. 4929.02(A). Eliminating SCO service and requiring non-residential customers to choose a marketer or have Dominion choose a marketer for them conflict with the policy of the state of Ohio. R. C. 4929.02(A). By eliminating the SCO service option, customers are deprived of the choice to take natural gas commodity service at a competitive market 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. Some customers who have not chosen a marketer do not want to choose a marketer; others are shopping and choosing the lowest price – the SCO. The Ohio General Assembly has not sanctioned raising prices for consumers by eliminating competitive market options.

If the Commission does not dismiss the Joint Motion as a matter of law, the Commission should deny the Joint Motion because the record evidence leads to

no other outcome. The evidence demonstrates that the Joint Motion is an unlawful attempt by Dominion and the Marketers to rewrite the Commission's 2008 Exemption Order as if it ordered an exit of the market function. In reality, the 2008 Exemption Order approved the SCO option and ordered that SCO auctions continue until Dominion files a separate application for an exit of the merchant function. Dominion determined that an application to exit the merchant function would be a far harder course than a motion to modify an exemption order, especially if no one paid attention to the legal requirements for a modification. Someone has paid attention, and the Commission cannot disregard Ohio law and its own orders as cavalierly as Dominion and the Marketers.

The evidence of record also demonstrates that the Joint Motion violates the policy of the state of Ohio. R. C. 4929.02(A). The state's policy is not a one-way street benefiting marketers and harming consumers. The requested modification to eliminate the SCO service will raise prices choice-eligible non-residential customers pay, force those consumers to confront opaque and highly volatile markets alone without any benchmark to guide them, and take away a competitive choice that customers currently opt for. The requested modification reduces competitive options. It is not consistent with the policy of the state of Ohio. The evidence demonstrates that the SCO conforms to the state's energy policy and must not be eliminated for non-residential customers.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post Hearing Brief was served electronically upon the persons identified below in this case on this 13th day of November 2012.

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