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. 07-1224-GA-EXM.	**)** **)** **)**	**Case No. 12-1842-GA-EXM**

POST-HEARING REPLY BRIEF OF THE EAST OHIO GAS COMPANY D/B/A DOMINION EAST OHIO

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I. INTRODUCTION

In this proceeding, the Commission must consider whether to approve the next step in the incremental process begun in 2005 to explore the exit of the merchant function for The East Ohio Gas Company d/b/a Dominion East Ohio ("DEO"). As DEO explained in its initial brief in this case, that process has so far met nothing but success, as the competitive market has proved itself able to drive down the price of supplying the natural gas commodity, with no sacrifice in the reliability or adequacy of service. Indeed, somewhat ironically, the only opposition to furthering the development of the competitive market is rooted entirely in the great successes it has achieved.

Four other parties filed initial briefs: the Ohio Gas Marketers Group ("OGMG"), the Office of the Ohio Consumers' Counsel ("OCC"), Ohio Partners for Affordable Energy ("OPAE"), and the Commission's Staff. In this reply brief, DEO will respond first and primarily to OPAE, followed by a brief response to OCC and Staff. As has been fully explained in both sets of briefs, and as supported by Staff, OGMG, and OCC, there are no legal or procedural impediments to considering the joint motion, and there is no sound reason to deny it. Therefore, the Commission should grant the joint motion and adopt the stipulation and recommendation as filed.

II. REPLY TO OPAE

In its initial brief, OPAE presents two groups of arguments. The first set alleges that the joint motion is procedurally and legally defective and cannot be granted. The second set argues that the joint motion, even if it is properly before the Commission, should not be granted.

The Commission should reject OPAE's position. OPAE raises no legal or procedural issue of any substance. The joint motion was permissibly filed, and it meets all applicable legal

standards. Moreover, OPAE has had ample notice and opportunity to present its own evidence, to challenge the evidence of others, and to make its views known. On the merits, OPAE's opposition to the joint motion is based either on unsupported assertions or base opposition to Ohio's policy to promote competition. Neither provides a permissible basis for denying the motion.

DEO will address OPAE's legal and procedural arguments first.

A. OPAE has offered no grounds for dismissing this case without reaching the merits.

The first section of OPAE's merit brief is devoted to arguing that the joint motion should be dismissed. (*See* OPAE Br. at 2–12.) It is not clear how or whether OPAE distinguishes between dismissing the joint motion or denying it on the merits. But however its request is styled, OPAE has offered no reason to do anything but grant the joint motion.

OPAE does not fail for lack of theories; by DEO's count, OPAE presents at least seven separate arguments for dismissal. But as the following discussion shows, what OPAE has in quantity, it lacks in quality. Many of its arguments are conclusory and lack any citation to legal authority or record evidence, and none provides any sound reason to deny the motion.

1. Contrary to OPAE, the joint movants plainly *did* refer to findings in the Exemption Order that are no longer valid.

OPAE begins by attacking the joint movants' compliance with the requirement to show that certain findings on which the Exemption Order was based are no longer valid. R.C. 4929.08(A). Its first line of attack is to deny that the movants even *made* this showing. OPAE asserts, "The Joint Motion makes no reference to any now-invalid Commission findings . . . ." (OPAE Br. at 2; *see also id*. at 6 ("the Joint Motion does not rely on any actual findings that the Commission made").)

OPAE's assertions are plainly not true. The joint movants described the findings that are no longer valid, both in their motion and as elaborated in memoranda contra OPAE's motion to dismiss and in DEO witness Jeffrey Murphy's direct testimony. (*See, e.g.*, Joint Mot. to Modify at 3–4; DEO Memo. Contra OPAE Mot. to Dismiss at 4–5; Murphy Dir. at 5.) OPAE's assertions to the contrary are simply incorrect. Whether or not OPAE agrees that the cited findings are no longer valid, the moving parties clearly cited such findings.

2. OPAE has not negated the joint movants' showing that certain findings are no longer valid.

Indeed, despite asserting that the movants cited *no* findings, OPAE criticizes the cited findings. Leaving aside this self-contradiction, OPAE's critique lacks merit.

The first finding that DEO identified as no longer valid was the expectation that the March 2010 auction would "be the final auction and that, once [its] term expires, choice-eligible customers will be required to enter into a direct retail relationship with a supplier or aggregator to receive commodity service." Exemption Order at 8–9. OPAE dismisses these expectations, asserting that they "merely quote the initial Dominion application" and are "merely Dominion's testimony." (OPAE Br. at 3.) But these are not "merely" DEO's statements. In the decisive paragraphs of the Exemption Order, the Commission expressly relied on "[DEO's] application, the stipulation, and the testimony on record." *See* Exemption Order at 20. Thus, the Commission relied on these expectations, which OPAE simply ignores.

DEO also pointed out that in the Exemption Order, the Commission found "that phase 2 [*i.e.*, SCO service] represents a reasonable structure through which to further the potential benefits of market-based pricing of the commodity sales by the company." *Id*. As DEO has explained, there is reason to believe that this is no longer true—namely, that instead of "further[ing] the potential benefits of market-based pricing," SCO service may now be limiting

its development. OPAE's *only* response either misunderstands or mischaracterizes the movants' position. It argues that the Commission did not find that "the 2008 Exemption Order would lead to a 'fully competitive market.'" (OPAE Br. at 5–6.) DEO agrees. If DEO and OGMG believed that the Exemption Order had already provided full authority for an exit, they would not have moved for modification—they would have implemented an exit. It is precisely *because* the Exemption Order does not provide for a fully competitive market that this motion to modify was filed.[1]

The joint movants must only show that certain findings underlying the Exemption Order are no longer valid, not that it already provides what they seek. The joint movants have made this showing.

3. R.C. 4929.08(A) does not require an "adverse effect" showing, but even if it did, the joint movants made it.

OPAE's next argument is that DEO and OGMG failed to "describe how the Joint Movants are adversely affected by the Commission's actual findings in the 2008 Exemption Order." (OPAE Br. at 6.) There are numerous problems with this argument.

First, at two levels, OPAE misconstrues this language of the statute. R.C. 4929.08(A) authorizes the Commission to modify any exemption order "upon the motion of any person adversely affected by such exemption," after notice and hearing and if certain conditions are met. As a structural matter, this clause does not operate as a *limit* on the Commission. Rather, this is *authorizing* language, clarifying that the Commission's authority may be exercised on "its own"

[1] This also gives the lie to OPAE's remarkable insinuation that the joint movants are attempting to "perpetrat[e] [a] deceptive ploy" on the Commission. (*See, e.g.*, OPAE Br. at 14.) No one claims that DEO has moved or can move beyond SCO service without a Commission order. Before OPAE accuses DEO of attempting to "deceive" anyone, perhaps it should explain the service and public docketing of the motion and other pleadings; the advance invitations to OPAE and Staff to review the stipulation; DEO's timely responses to OPAE's discovery; the widely published newspaper notices; the public hearing; and any of the other myriad facts that render OPAE's accusation preposterous.

or in response to a motion by "any person adversely affected." The phrase "any person" does not suggest narrowness, and, logically, any party asking the Commission to modify an order must find it "adverse" in some regard. Confirming the point, the statute expressly sets forth two mandatory conditions, but an "adverse effect" finding is not one of them. *See* R.C. 4929.08(A)(1) & (2). In short, this language authorizes action; it does not limit the Commission.

This is not OPAE's only misinterpretation. OPAE also asserts that a movant must show that it "is adversely affected *by the actual findings* of [an] Exemption Order." (OPAE Br. at 7 (emphasis added).) But this causal connection—that the "adverse effect" must *arise from* findings—is an invention of OPAE's. The statute does not state or imply this, and it is not clear how a "finding," in and of itself, could adversely affect anyone. That curiosity need not be resolved, because, under any interpretation, R.C. 4929.08 does not require this showing.

Finally, even if an independent "adverse effect" showing were required, it has been shown. The Joint Movants, each one an active participant in the state's natural gas markets and each one directly affected if retail competition fails to thrive, explained in detail that the current system is hindering the development of full retail competition. (*See* Joint Mot. at 4–5.) Moreover, OPAE has already *conceded* an adverse effect in this case. In its original motion to dismiss, OPAE admitted that granting the Joint Motion will further "[t]he interest of marketers" to serve "more customers" than under the existing order. (OPAE Memo. in Support of Mot. to Dismiss at 7–8.) This plainly acknowledges that a moving party is adversely affected by the current order, which even under OPAE's misconstrual of R.C. 4929.08(A) is sufficient to allow the motion to proceed.

4. OPAE's argument that modification is not in the public interest is insubstantial.

Next in the lineup, OPAE argues that the joint motion is not in the public interest. (OPAE Br. at 7.) This short section of its brief is not so much an argument as a rhetorical flourish. OPAE asserts that the motion "merely states that modification to the 2008 Exemption Order is in the public interest." (OPAE Br. at 7.) Again, this is simply a false statement. As even a cursory review will show, the motion does not "merely state" this conclusion but *explains* how granting the motion will satisfy state policy. (*See* Jt. Mot. to Modify at 4–5.) Because OPAE denies the existence of the movants' argument, it provides no meaningful response.

In this vein, OPAE also argues that "[i]t cannot be in the public interest for the Commission to deliberately ignore its own findings" to grant modification. (OPAE Br. at 7.) But OPAE does not even attempt to show that the premise of this argument—that the Commission will "deliberately ignore its own findings"—has occurred or will occur. So this is another conclusory argument that should be summarily rejected. *See, e.g.*, *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶ 57 ("Conclusory assertions . . . fall well short of demonstrating reversible error").

5. OPAE's state-policy argument for dismissal is also conclusory.

Continuing, OPAE then presents a state-policy argument for dismissal, which consists of reciting five provisions of state policy and then asserting that the joint motion "violates the state's energy policy by limiting competition and reducing supply options available to customers." (OPAE Br. at 9.)

Yet again, this is a conclusory, undeveloped argument, and it should be rejected on that basis. *See, e.g.*, *In re Columbus S. Power Co.*, 128 Ohio St.3d 512, ¶ 57. OPAE neither explains nor cites evidence showing how the joint motion would limit competition or reduce supply

options. And as DEO explained in detail in its initial brief, the evidence shows the opposite: there is good reason to believe that granting the joint motion will encourage competition. (*See* DEO Br. at 7–9.)

6. OPAE has not explained how it is prejudiced by any alleged non-compliance with the Commission's rules.

Nearing the end of its arguments that the joint motion is procedurally and legally flawed, OPAE asserts that the joint motion does not comply with Ohio Adm. Code 4901:1-19-12. (OPAE Br. at 9–10.) Given that OPAE never presented a clear and direct challenge to the joint motion on this basis until after the hearing, there is considerable question as to its timeliness.[2] These waiver issues need not be resolved, however, because OPAE has offered no explanation of how it has been harmed by any alleged non-compliance with the rules. *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 121 Ohio St.3d 362, 2009-Ohio-604, ¶ 12 ("this court will not reverse a commission order absent a showing by the appellant that it has been or will be harmed or prejudiced by the order").

Here, as with all of its procedural arguments, OPAE has offered no explanation of what opportunity it would have had under a different procedural vehicle that it was denied here. OPAE has received notice; the opportunity to present its own evidence and to challenge the evidence of others; and a platform to make its views known. Indeed, the "failings" that OPAE points out only highlight the lack of any harm. DEO will concede that the joint motion is not styled as a complaint or captioned with the CSS code. (OPAE Br. at 10.) But how does that affect OPAE in any way? Likewise, the joint motion does not contain "detail . . . about the code

[2] OPAE did not mention this issue in either its motion to dismiss or its comments on the joint motion. OPAE obliquely mentioned the theory in an odd place (its memorandum contra several motions to intervene, *see* pp. 3–6), but it never asked the Commission to dismiss the case on this basis. Therefore, DEO believes that the Commission could and should find the argument waived.

of conduct, [and] about the corporate separation plan." (*Id*.) What do DEO's code of conduct and corporate separation plan have to do with this case? And what "detail" is OPAE suggesting should have been provided? On these points, OPAE has nothing to say.

In short, OPAE's procedural hair-splitting bears on no substantial issue in this case.

7. OPAE's last procedural argument is unsupported by any citation to legal authority and is facially implausible.

OPAE's last procedural argument is that 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." (OPAE Br. at 12.) OPAE is referring to the ongoing rulemaking in Case No. 11-5590-GA-ORD, and apparently OPAE's view is that utilities must cease any business or regulatory activity that might be relevant to or covered by any ongoing rulemaking.

Not surprisingly, OPAE cites no legal authority in support of this theory. This lack of legal support is a sufficient reason to reject the argument. *See In re Columbus S. Power Co.*, 129 Ohio St.3d 271, 2011-Ohio-2638, ¶ 14 (failure to "even cite a single legal authority in [support of a position], much less present an argument that a legal authority applies on these facts and was violated . . . alone is grounds to reject [the] claim"). Another reason is that it is implausible. The Commission is constantly reviewing some set of rules or another. If each review required an absolute halt in the covered activities, it would essentially end the ability of utilities to do business in Ohio. The existence of a rulemaking docket is no reason to dismiss the joint motion.

* * *

In sum, none of OPAE's procedural arguments bear on any issue of substance in this case. The Commission may lawfully and fairly rule on the joint motion, and the motion should stand or fall on its substantive merits. All of OPAE's legal and procedural arguments should be rejected.

B. On the merits, the Commission should grant the joint motion.

OPAE has identified no legal impediment to considering the joint motion, and on the merits, the Commission should grant it. DEO has already set forth the reasons for doing so in its initial brief, and there is no need to repeat that discussion here. While OPAE's brief is lengthy, its position on the merits may be fairly boiled down to three points:

(*1*) SCO service is beneficial.

(*2*) Eliminating SCO service will turn out badly.

(*3*) SCO service should never be eliminated.

DEO will respond to each of these points in turn.

1. DEO agrees that SCO service has provided numerous benefits.

First, much of OPAE's brief aims to establish a point that DEO can agree with: SCO service incorporates competitive forces to price commodity service, and it has provided benefits to customers. That is certainly true, and SCO service, like SSO service, has been vastly favorable to the gas-cost-recovery pricing regime that came before it. That is precisely why DEO proposed SSO and SCO service in the first place. DEO and OPAE are in agreement on this point. But their paths depart on its application.

2. OPAE has not shown that the elimination of SCO service will harm competition or customers.

OPAE's next major point is that eliminating SCO service will result in harm, both to competitive markets and to customers. But it has not shown that this is so. Indeed, several critical points undergirding OPAE's position lack evidentiary support.

a. No evidence shows that removal of SCO service will harm competition.

First, OPAE repeatedly asserts that "[t]he promotion of competition requires an SCO option." (OPAE Br. at 28; *see also, e.g.*, *id*. at 37 ("Competitive markets are greatly enhanced by

the existence of SCO service"); *id*. ("Competitive markets are thwarted by the elimination of SCO service . . . ."); *id*. ("The elimination of the SCO service will limit competition, increase prices consumers pay, and maximize marketers' profits").)

This is not what the record showed—no witness explained that competition would weaken without SCO service. Certainly OPAE provides no citation or description of such evidence. As DEO discussed in detail in its initial brief, the contrary appears true, as SCO service may be hindering the further development and efficient operation of the competitive market. (*See* DEO Br. at 5–9.) In the only place that OPAE's witness addressed the impact of SCO service on the competitive market, she testified that SCO service may be preventing further *decreases* in prices. (Harper Dir. at 14–15.)

Of course, to what extent the removal of SCO service enhances competition remains to be seen; indeed, that is the entire point of this proceeding. The salient point here is that the record provides no reason to think that removal of the SCO will limit or harm the operation of competitive markets.

b. No evidence shows that all or most SCO customers have affirmatively chosen to receive SCO service.

OPAE also attempts to show that SCO service is the affirmative choice of all customers who receive it. For example, OPAE repeatedly implies that *all* customers who receive SCO service are "customers that have chosen not to choose an individual marketer." (OPAE Br. at 27; *see also, e.g.*, *id*. at 23 (asserting that SCO service is "the current choice" of "roughly 20% of all non-residential customers," that is, all SCO customers); *id*. at 27 (asserting that "roughly 20% of Dominion non-residential customers"—that is, all SCO customers—"have chosen the SCO").) No evidence shows that all customers who receive SCO service have affirmatively chosen to receive it. Because SCO service is the default option, enrollment tells one nothing about what

choice, if any, a customer made. And OPAE witness Stacia Harper admitted that, to the extent she testified that SCO customers had affirmatively chosen SCO service, this was simply "an assumption that [she] made." (Tr. 141.)

To be fair, OPAE (which does not shy from inconsistent positions) elsewhere acknowledges that "it is *possible* that these non-residential customers have made a choice" to receive SCO service. (OPAE Br. at 29 (emphasis added).) DEO does not disagree with that. But no evidence suggests that all, or even a majority, of SCO customers have made an affirmative choice for SCO service.

c. No evidence shows that the elimination of SCO service will lead to higher prices.

OPAE also suggests that eliminating SCO service will result in "higher prices for customers." (OPAE Br. at 28.) OPAE's basis for this assertion is the fact that, over a single 12-month period, fixed-price bilateral contracts and some MVR offers were "higher than the SCO price." (*Id*.) There are several problems with OPAE's position.

First, comparing the SCO rate (which is a variable rate) with fixed-price offers is blatantly misleading. The entire point of a fixed-price offer is to pay a premium to avoid the risk of price fluctuations inherent in variable rates. (*See, e.g.*, Tr. 61 ("some customers may select a fixed-price product and may intentionally be willing to pay that high price to address some of the risks that they may see in a price that varies each and every month"). Only the *adder* is set in the SCO rate, so if the underlying commodity price spikes, the SCO rate provides no protection. In a fixed-price offer, the *total* price is fixed, regardless of the underlying market price for the commodity. Moreover, OPAE's only comparison between fixed-price offers and the SCO covers a single year. But such a small sample is hardly illuminating: it is not surprising that a fixed price might exceed a variable price over such a short run.

Likewise, OPAE's comparison with MVR prices is also incomplete and misleading. Again, OPAE's comparison relied *solely* on a single year of data and excluded other variable prices, and OPAE provided no explanation for these selections. (*See* Harper Dir., Ex. SH-3; Tr. 134–35.) That data showed that there were a variety of MVR offers, falling at, above, and below the SCO rate. The unexplained, small sample is not the only problem with OPAE's comparison. The record also shows that SCO service might cause market distortions and other structural problems. (*See, e.g.*, Tr. 66–67 (noting that SCO service may "inhibit . . . participation in the marketplace"; Harper Dir. at 14–15 (noting that SCO may act as a price floor).) So a simple comparison of contemporaneous SCO and MVR rates is not necessarily meaningful.

In all these pricing comparisons, OPAE loses sight of a more fundamental point. As Teresa Ringenbach testified, and as is undoubtedly the case, "Auctions have not brought low prices; it has been the competitive suppliers who have participated in those auctions who have brought lower prices." (Ringenbach Dir. at 7.) If a given supplier posts a high MVR, that gives customers incentive to find a better rate and marketers incentive to compete for those customers. To be sure, that protection is only as sure as the market is competitive. So the critical question is whether effective competition exists in DEO's service area. But on that point, all parties agree—in OPAE's own words, there is "effective competition in [DEO's] service area in compliance with the state's energy policy." (OPAE Br. at 19.)

In short, OPAE has not shown that granting the joint motion will harm competition or customers.

3. The Commission cannot share OPAE's opposition *in principle* to any exit of the merchant function.

This leads to OPAE's final point—and really, its only point. For all OPAE's attempts, this case is not about the law and the evidence; it is about policy. OPAE's message is not that an

exit is inappropriate *in these circumstances*, but that an exit is inappropriate *in principle*. OPAE has long made clear that it "will oppose any effort to exit the merchant function." (*See* DEO Memo. Contra OPAE Mot. to Dismiss, Att. A at 1.) And not one of OPAE's arguments raises any issue with whether the commodity markets behind DEO are competitive or otherwise ready for an end to regulated pricing. On the contrary, as noted, OPAE emphasizes that DEO's market *is* competitive. (*See, e.g.*, OPAE Br. at 21 (describing DEO's current commodity market and agreeing that "if that is not competition, it is difficult to imagine what is"); *id*. at 19 (there is "effective competition in [DEO's] service area in compliance with the state's energy policy").) So it is not surprising that OPAE identifies no specific shortcomings nor any measures to mitigate them. That is because OPAE's position is absolute: no further steps toward an exit should ever be taken. Period.

Whatever may be said for OPAE's position, it cannot be taken by the Commission. OPAE's policy position directly contradicts the state of Ohio's. The General Assembly has instructed the Commission to "[p]romote" and "[r]ecognize the continued emergence of" competitive markets, and it has left no doubt that this may include a complete exit of the merchant function. *See* R.C. 4929.02(A)(6)–(8); R.C. 4929.04(A) (exemption may include "the obligation under section 4905.22 of the Revised Code to provide . . . commodity sales service"). And the legislature has made explicit that the Commission must follow this policy. R.C. 4929.02(B). While the Commission must consider whether the appropriate showings have been made in this case, it cannot (like OPAE) refuse an exit simply because it *is* one.

C. In conclusion, OPAE has offered no reason to deny the joint motion.

Having said all this, DEO recognizes that it is proposing a significant step in this case—a cautious and measured step, but significant all the same. OPAE has been more than willing to play the doomsayer, asserting that "[t]he elimination of the SCO will be a nightmare for

customers." (OPAE Br. at 29.) The record does not support OPAE's view, but can there be any doubt that the Commission will take appropriate action if the joint motion *does* cause substantial problems for customers? Every party to this case—DEO and OGMG included—agrees that the Commission should pay close attention to the outcome of the joint motion. And every party—DEO and OGMG included—agrees that the Commission has authority to revisit these matters if they do not turn out well.

The Commission has heard it all before from OPAE:

- "The judgment of the company that elimination of the market distortion caused by unrecovered gas cost will somehow cause competition and innovation to blossom is not supported by any evidence in this record." (05-474 OPAE Post-Hrg. Br. at 6.)
- "[C]ustomers are being asked to give up guaranteed access to market-priced commodity service through the GCR mechanism" and will "see no reduction in price or enhancement of services." (*Id*. at 10.)
- "No evidence in the record supports the notion that this Application will produce in increase in the number of marketers." (*Id*. at 8.)
- "The Application will not result in lower prices for customers." (*Id*. at 7.)

This is OPAE, circa January 2006, regarding the initial move to auction-based pricing under the SSO. Each one of OPAE's assertions turned out wrong—and each one has been recycled in this case.

The joint motion presents the logical, incremental next step in DEO's exploration of exiting the merchant function. It has been specifically designed to maximize the opportunity for the Commission and other stakeholders to evaluate its effects. The Commission should approve the joint motion, and take the next step in a process that has resulted in so many benefits to customers.

III. REPLY TO OCC

DEO does not have much to say in reply to OCC. If an exit for residential customers is ever proposed, DEO understands that OCC may not support it. While OCC apparently finds it necessary to foreshadow some of its arguments in the event that step is taken, it nonetheless clearly recommends approval of the stipulation. (*See, e.g.*, OCC Br. at 6 ("the Commission should find that the Stipulation passes the three-part test and adopt the Settlement in this case").)

Regarding the additional studies and provision of information proposed by OCC (*id*. at 6–15), DEO would note that such studies are *not* provided for in the stipulation. DEO and OCC specifically negotiated the information that should be provided, and the express purpose of that information was to "enable *OCC* to periodically analyze, at OCC's discretion, the impact of an exit from the merchant function." (Stip. at 4 (emphasis added).) It is inappropriate for OCC to secure concessions on a given point as part of a stipulation and then unilaterally ask the Commission to *expand* those concessions. DEO therefore expressly reserves the right to challenge both the necessity and particular provisions of any study that is ordered in response to OCC's recommendations.

Nevertheless, as discussed momentarily, DEO believes that Staff's recommendation for the provision of additional data and analysis is reasonable. Staff's recommendation, in conjunction with what has already been agreed to in the stipulation, provides more than enough data and opportunity for analysis. And because Staff did not sign the stipulation, its additional recommendations may be adopted without raising any questions about a party's compliance with its duties under the stipulation.

IV. REPLY TO STAFF

DEO does not oppose any of Staff's recommendations, but it would offer comments on Staff's recommendation regarding the provision of information to the Commission and its proposed notice timing.

A. The Commission should clarify that both DEO and marketers should provide appropriate information.

One of Staff's recommendation is that "*Dominion* should provide information to the Commission" regarding the results of the exit. (Staff Br. at 7 (emphasis added).) Later on the same page, Staff refers to "Dominion *and the Marketers*" reporting information regarding "the results of Dominion's exit for non-residential customers." (*Id*. (emphasis added).)

DEO's concern is simply that the Commission places the obligation to produce information on the proper parties. DEO reads Staff's recommendation to be that DEO and the marketers should *both* provide information, as appropriate, to the Commission. In the stipulation, DEO has already agreed to provide certain information, and Staff (based on the recommendation of OGMG witness Teresa Ringenbach) recommends the provision of additional information. DEO has no objections to this, but it would note that most of the categories of information mentioned by Staff would generally be in the possession of individual marketers and *not* DEO. DEO simply wants to ensure that it is not placed under an obligation to produce information either that it lacks or that could be provided much more economically by the marketers themselves.

B. Staff's proposed timing for consumer notice and education will only be possible if an order is issued promptly.

Staff also recommends that DEO "should implement a comprehensive consumer education program in advance of any exit." (Staff Br. at 4.) Specifically, it recommends that "[c]ustomers that will be affected by Dominion's exit should receive at least two notices prior to

the date the exit will become effective" and that "[t]he last notice should be sent at least 60 days prior to the date the exit becomes effective." (*Id*.) Further, Staff proposes that "Dominion meet with Staff within two weeks of the issuance of an Order to develop the appropriate educational materials" and that "within 60 days of the issuance of an Order, Dominion provide Staff with the proposed educational materials and a schedule that is consistent with the timelines recommended by Staff." (*Id*. at 5.)

DEO accepts Staff's recommendation to provide customer-education materials. But DEO would note that this requirement underscores the need for a prompt decision in this case. Pricing under the current SCO auction will end on March 31, 2013. That means that the *last* notice will need to be sent by January 30 or 31, 2013, which could place the first notice sometime in December—which begins in a little over a week. This notice timing is sure to present a challenge. If a prompt order is not issued, it could well become impossible.

V. CONCLUSION

For the foregoing reasons, DEO requests that the Commission grant the Joint Motion, approve the stipulation, and provide any authority necessary to implement its provisions.

Dated: November 21, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

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Summary: Brief Post-Hearing Reply Brief electronically filed by Mr. Andrew J Campbell on behalf of The East Ohio Gas Company d/b/a Dominion East Ohio