

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application to Modify,)
in Accordance with Section 4929.08,)
Revised Code, the Exemption Granted to) Case No. 12-1842-GA-EXM
The East Ohio Gas Company d/b/a)
Dominion Energy Ohio.)**

**JOINT MEMORANDUM CONTRA
TO OPAE’S MOTION TO MODIFY THE 2013 ORDER
BY
THE RETAIL ENERGY SUPPLY ASSOCIATION
DIRECT ENERGY SERVICES, LLC
AND DIRECT ENERGY BUSINESS MARKETING LLC**

I. INTRODUCTION

The Retail Energy Supply Association¹ (“RESA”), and Direct Energy Services, LLC and Direct Energy Business Marketing, LLC (collectively, “Direct Energy”) submit this joint memorandum contra to Ohio Partners for Affordable Energy’s motion to modify the Commission’s June 9, 2013 Opinion and Order (the “2013 Order”) in this proceeding. OPAE asks the Commission to modify the 2013 Order to stop the random assignment of choice-eligible nonresidential customers to suppliers at the suppliers’ monthly variable rates. The 2013 Order, however, did not implement the random assignment of choice-eligible nonresidential customers to suppliers at the suppliers’ monthly variable rates. Instead, the 2013 Order focused solely on the discontinuation of standard choice offer (“SCO”) service as an option for choice-eligible nonresidential customers. It was five years earlier, on June 18, 2008, in Case No. 07-1224-GA-

¹ The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

EXM (the “2008 Order”) that the Commission approved and implemented the assignment mechanism for choice-eligible nonresidential customers.² Given that timing, as well as OP&E’s failure to demonstrate that it is a “person adversely affected” or that the Commission findings are no longer valid, OP&E’s motion is procedurally improper under R.C. 4929.08 and Ohio Admin. Code Rule 4901:1-19-11. The motion should be denied.³

To the extent that OP&E desires to modify the existing tariff, OP&E should be required to make such a filing in a separate proceeding that provides appropriate procedural mechanisms to protect the interests of all parties.

II. ARGUMENT

A. The 2008 Order, not the 2013 Order, addressed the assignment of nonresidential customers to the monthly variable rate.

OP&E cannot seek to modify the nonresidential monthly variable rate (“MVR”) assignment in this proceeding because that assignment of choice-eligible nonresidential customers to a supplier’s posted MVR was not part of the 2013 Order. That aspect of the exemption granted to The East Ohio Gas Company d/b/a Dominion Energy Ohio (“DEO”) was the subject of the Commission’s 2008 Order. At page 14 of the 2008 Order, the Commission summarized the April 10, 2008 stipulation provision regarding the assignment of certain customers to a supplier at the supplier’s posted MVR:

² See 2008 Order at page 14 summarizing the establishment of the monthly variable rate for Choice-eligible customers.

³ RESA and Direct Energy requested additional time (until March 30, 2018) to file this memorandum contra to OP&E’s motion. That request was not opposed. RESA and Direct Energy file this joint memorandum contra in accordance with that request.

- (iii) **Choice-eligible customers whose energy choice or opt-out governmental aggregation contract expires without renewal may enroll with an energy choice supplier, participate in an opt-out governmental aggregation program, or elect to be assigned to an energy choice supplier at the price established in the SCO auction. If they do not do so, after their second SSO bill, they will be assigned to an energy choice supplier at the supplier's posted monthly variable rate under the terms of the SCO service in DEO's tariff.**

The Commission approved the stipulation in 2008 without modification. DEO submitted tariff sheets in compliance with the Commission's approval, and the MVR assignment mechanism has been in place since then.⁴

OPAE incorrectly implies that the nonresidential MVR assignment was a consequence of the 2013 Order. For example, OPAE states in its motion:⁵

After the Commission eliminated the SCO option for non-residential customers, non-residential customers no longer had a price established through a competitive auction. Choice-eligible non-residential customers who had not chosen to enter into a bilateral contract with a supplier or to be served through a governmental aggregation were assigned a supplier by Dominion through the MVR process....

Additionally, OPAE relies heavily on a motion filed by the Office of the Ohio Consumers' Counsel ("OCC") on March 9, 2018, in this proceeding. The OCC motion, however,

⁴ The Commission approved an application by DEO in Case No. 10-2469-EL-ATA to limit the MVR price a supplier can charge to that posted on the Apples-to-Apples chart. *See In re Application of The East Ohio Gas Company d/b/a/ Dominion East Ohio to File Revised Tariffs Concerning its Monthly Variable Rate Commodity Service and Standard Choice Offer Commodity Service*, Finding and Order dated November 22, 2010.

⁵ OPAE Motion at 6.

mischaracterizes the history of the MVR⁶ and should not be relied upon in consideration of OPAE's motion. Looking past OPAE's misleading statements and reviewing the history of the MVR assignment, it is evident that OPAE is asking the Commission to modify the 2008 Order.

B. OPAE's motion is not properly filed in this docket because OPAE is trying to modify the 2008 Order.

Because there can be no dispute that the 2008 Order implemented the random assignment of choice-eligible nonresidential customers to suppliers and the supplier's MVRs, OPAE's motion in this proceeding (regarding the 2013 Order) is improper. The MVR assignment of nonresidential customers was in place well before the 12-1842-GA-EXM proceeding began, and has continued. The actual issue in the 12-1842 proceeding that resulted in the 2013 Order was the modification of the 2008 Order to allow DEO to discontinue SCO service to nonresidential customers.⁷ The exemption modification approved in the 2013 Order had nothing to do with the MVR assignment mechanism approved in the 2008 Order.

The procedural impropriety of OPAE's motion is further supported by the language in R.C. 4929.08(A)(1) and Ohio Admin. Code Rule 4901:1-19-11(A). Both require that in order to modify an order, the Commission must determine "... that the findings upon which the order was based are no longer valid and that the abrogation or modification is in the public interest." Following those directives, OPAE must show that the findings upon which the 2008 Order was based are no longer valid in order to successfully invoke the Commission's jurisdiction under R.C. 4929.08(A). In other words, OPAE cannot point to unrelated findings in the 2013 Order as a basis to modify a component of the 2008 Order that was not modified in 2013. OPAE's motion should be denied because it has been filed in the wrong docket.

⁶ Through a separate memorandum contra filed this same day in this proceeding, RESA and Direct Energy detail the mischaracterizations in OCC's motion and will not repeat them here.

⁷ See June 15, 2012 Joint Motion to Modify Order Granting Exemption at page 1, Case No. 12-1842-GA-EXM.

OPAE also cannot unilaterally file in the 2008 proceeding because the 2008 Order was issued almost 10 years ago. R.C. 4929.08(A). At a minimum, any attempt by OPAE to unilaterally seek a modification to the existing exemption structure should be through a separate proceeding in which parties can intervene, procedural schedules are set and arguments heard.⁸ RESA and Direct Energy would also expect that OPAE would engage stakeholders (including DEO) prior to making a filing in a new docket to discuss its concerns over the existing MVR assignment.

C. OPAE fails to demonstrate that it (or its members) is an adversely affected party and that the Commission's previous findings are no longer valid.

Another reason exists to deny OPAE's motion. R.C. 4929.08(A) and Ohio Admin. Code Rule 4901:1-19-11(A) require that in order to modify an exemption order, several conditions must be met including:

- The Commission or an adversely affected party must file a motion.
- The findings upon which the order was based are no longer valid.

Following those directives, OPAE's motion must allege and show both of the above in order to successfully invoke the Commission's jurisdiction under R.C. 4929.08(A).

OPAE's motion, however, contains no information as to how it or its members are adversely affected by the nonresidential MVR assignment that it seeks to end. OPAE alleged in its motion to intervene filed June 28, 2012 in this docket that "OPAE is an Ohio corporation that includes as members non-profit organizations such as community action agencies located in the service area that will be affected by this matter. OPAE members are non-residential ratepayers of Dominion."⁹ OPAE's motion does not discuss or even contend that it or its non-profit

⁸⁸ To the extent OCC files a motion in a separate proceeding, RESA and Direct Energy reserve all arguments, both procedural and factual, that may be raised in response to such a motion.

⁹ OPAE Motion to Intervene at page 2, filed June 28, 2012, Case No. 12-1842-GA-EXM (footnote omitted). OPAE's website notes that it is a membership organization and its members are agencies that "provide essential

organization members have been assigned to a supplier at a MVR rate because they have neglected to select a supplier. OPAE has not made a showing that it has been adversely affected, nor has OPAE demonstrated that it has the authority to represent non-residential customers. For that reason alone, its motion should be denied.

OPAE also has failed to point to any specific findings by the Commission that are no longer valid, and only cites to OCC's motion for support. To the extent OPAE is relying on the OCC statements, OCC's motion incorrectly refers to the 2013 Order which did not involve the MVR assignment. OPAE cannot point to OCC's motion or unrelated findings in the 2013 Order as a basis to modify a component of the 2008 Order that was not modified in 2013. The mischaracterizations also provide no demonstration that the Commission's 2008 findings are no longer valid. The remaining claims in OPAE's motion are merely a description of the MVR and SCO and Ohio's natural gas policy. This information does not demonstrate how the Commission's 2008 findings are no longer valid. These omissions in OPAE's motion are another reason why the Commission should deny OPAE's motion, and demonstrate that OPAE's motion is nothing more than an insufficient "me too" pleading not warranting further review.

III. CONCLUSION

The MVR assignment for nonresidential customers was part of the April 10, 2008 stipulation which the Commission approved in the 2008 Order. Now, more than 10 years later, OPAE seeks to modify that order but in a proceeding that was unrelated to the 2008 Order. OPAE's motion is neither proper in this proceeding nor in the 2008 Order proceeding.

energy services, including bill payment assistance, weatherization and energy efficiency, and housing services." See <http://www.ohiopartners.org/index.php?page=about-ohio-partners-for-affordable-energy>.

Additionally, OPAE's motion is deficient because it fails to include the fundamental information necessary to invoke the Commission's review. OPAE's motion should be denied.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket card who have electronically subscribed to this case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served upon the persons below via electronic mail this 30th day of March, 2018.

/s/ Gretchen L. Petrucci

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Summary: Memorandum - Joint Memorandum Contra to OP&E's Motion to Modify the 2013 Order electronically filed by Mrs. Gretchen L. Petrucci on behalf of Retail Energy Supply Association and Direct Energy Services LLC and Direct Energy Business Marketing LLC