

**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
REPLY TO THE JOINT MEMORANDUM CONTRA THE
MOTION TO RE-ESTABLISH THE STANDARD CHOICE OFFER
FOR NON-RESIDENTIAL CUSTOMERS**

Ohio Partners for Affordable Energy (“OPAE”) filed a motion before the Public Utilities Commission of Ohio (“Commission”) to modify the January 9, 2013 Opinion and Order (“2013 Order”) in this docket, which was opened on June 15, 2012 when Dominion East Ohio Gas Company (“Dominion”) and the Ohio Gas Marketers Group filed a Joint Motion to Modify the Commission’s June 18, 2008 Opinion and Order in Case No. 07-1224-GA-EXM (“2008 Order”) to allow Dominion, beginning April 2013, to discontinue the availability of standard choice offer (“SCO”) service to choice-eligible non-residential customers. The Commission granted the Joint Motion in its 2013 Order.

On March 9, 2018, the Office of the Ohio Consumers’ Counsel (“OCC”) filed a motion to protect residential consumers by re-establishing the SCO as the default service for all residential customers and eliminating the assignment of Monthly Variable Rates (“MVRs”) to residential customers. On March 12, 2018, OPAE moved the Commission to modify the 2013 Order to re-establish the SCO as the default service for all Dominion’s non-residential customers.

The Retail Energy Supply Association and Direct Energy Services, LLC (“Suppliers”) filed a joint memorandum contra OPAE’s motion. First, the Suppliers argue that OPAE cannot seek to modify the “MVR assignment” in this proceeding because the MVR assignment process was not part of the 2013 Order. This argument shows only that the Suppliers have an extremely narrow view of OPAE’s motion. OPAE is not moving merely to modify the MVR assignment order. OPAE’s motion goes directly to the 2013 Order issued in this docket, that non-residential customers will no longer have access to the SCO. OPAE has moved to re-establish the SCO for non-residential customers.

Second, the Suppliers argue that OPAE has failed to demonstrate that its members are adversely affected by the 2013 Order and that the Commission’s findings in the 2013 Order are no longer valid. OPAE’s motion to intervene on behalf of non-residential customers has already been granted. The demonstration that OPAE’s members are adversely affected and that the Commission’s 2013 findings are no longer valid is set forth in OPAE’s motion. The motion states that some MVRs result in price gouging. For the period of November 10 – December 12, 2017, Dominion’s SCO was \$2.752 per MCF while the various MVRs ranged from \$3.15 to \$8.49 per MCF. For the period between December 13, 2017 and January 13, 2018, the SCO was \$3.074 per MCF while the available MVRs were between \$3.15 and \$6.99 per MCF. The Commission’s 2013 Order stated that the SCO harmed customers by hindering the development of the fully-competitive market. OPAE Memorandum in Support of Motion to Modify at 3-4, 9. These findings from the 2013 Order that customers

are harmed by the SCO and the SCO hinders the development of fully-competitive markets are no longer valid. The SCO is a competitive option that benefits customers and the public interest by using an auction process to keep natural gas prices at market levels.

In addition, if the Commission needs further demonstration that its findings in the 2013 Order are no longer valid, the Commission may order further process. Ohio Revised Code (“R.C.”) 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. The statute states that the exemption order may be modified 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.” R. C. 4929.08(A). If the Commission needs further demonstration to make its determination, the Commission may ask for it.

As for whether or not the motions must be filed in a new separate docket, this Suppliers argument ignores the fact that the Commission and the Ohio Supreme Court have found that the outcome of **this** proceeding, the denial of SCO service to non-residential and some residential customers, is subject to rigorous Commission review. OPAE appealed the Commission’s 2013 Order to the Supreme Court. *In re Application to Modify, in accordance with R.C. 4929.08, the Exemption Granted to E. Ohio Gas Co.*, 144 Ohio St.3d 265, 2015-Ohio-3627. While the Court affirmed the Commission’s 2013 Order, it did so explicitly relying on the Commission’s stated willingness to re-establish the SCO

if the Commission later determined that Dominion's exit from the merchant function was unjust or unreasonable for any customer class. In affirming the 2013 Order, the Court relied on the Commission's rationale that discontinuation of the SCO for "this small subset of customers" would allow the Commission to study the effects of the exit from the merchant function, while still protecting customers. The Court expected the Commission to continue to monitor the effects of Dominion's exit from the merchant function for non-residential customers and carefully analyze the data. *Id.* at ¶ 34.

The Commission must now monitor the effects of the exit on non-residential and residential customers and analyze the data in this docket. As OCC's and OPAE's motions show, in a period when the SCO was \$2.752 per MCF, the various MVRs ranged from \$3.15 to \$8.49 per MCF. OCC Memorandum in Support of Motion at 7-8; OPAE Motion at 4, 9. This is price gouging that denies customers the benefits of competitive markets as demonstrated by the market-based SCO price. The Commission must now re-visit its findings in the 2013 Order to determine if the findings are no longer valid and the abrogation of the 2013 Order is in the public interest. The MVR as the default service denies customers access to the SCO, which is set through a competitively bid auction and has resulted in substantially lower prices than the non-market based MVRs.

With the notable exception that the findings of the 2013 Order must be reviewed so that the filing of the motions in this docket is appropriate, the route being followed by OPAE and OCC in their motions to modify is essentially the same as that followed by Dominion and the Suppliers in their June 15, 2012 motion to

modify the 2008 Order in Case No. 07-1224-GA-EXM. Dominion and the Suppliers filed their motion alleging that the findings of the 2008 Order were no longer valid.

The Commission set the matter for hearing to make its determination.

Wherefore, the Commission should grant OPAE's and OCC's motions to modify the 2013 Exemption Order and act to re-establish the availability of the SCO to non-residential and residential customers in Dominion's service area. If the Commission finds that further process is needed for the Commission to make its determination, the Commission should set these motions for hearing. The Suppliers' arguments fail in all respects so that the Commission should grant OPAE's and OCC's motions or, in the alternative, set the motions for hearing.

Respectfully submitted,

s/s Colleen Mooney

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SERVICE LIST

A copy of the foregoing Reply to the Memorandum Contra the Motion to Re-establish the SCO for Non-residential Customers and Memorandum in Support will be served by the Commission's Docketing Division electronically upon persons who electronically subscribe to this case on this 6th day of April 2018.

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Summary: Reply to Joint Memorandum Contra electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy