

affirmatively elect SCO service within a specified period in order to receive service at the SCO price. Failure to make this election would result in the customer being assigned, on a rotating basis, to CRNGS providers participating in the program, with service to be priced at the posted monthly variable rate (“MVR”) of the provider to which the customer is assigned.

Several years later, the Commission, by its January 9, 2013 opinion and order in Case No. 12-1842-GA-EXM, authorized a modification to the DEO exit plan proposed by DEO and the Ohio Gas Marketers Group (“OGMG”), adopting a stipulation submitted by DEO, OGMG, and the Office of the Ohio Consumers’ Counsel (“OCC”).³ The approved stipulation made no change to the SCO and MVR provisions of the plan relating to residential service, but eliminated the SCO option for non-residential customers, which meant that a choice-eligible non-residential customer that did not contract with a CRNGS provider or become a member of an opt-out governmental aggregation would be assigned automatically to the next-up CRNGS provider and would be served at that provider’s posted MVR.

On March 9, 2018, OCC filed a motion in this docket pursuant to Rule 4901:1-19-11, Ohio Administrative Code (“OAC”), requesting that the Commission modify the DEO plan by eliminating the MVR mechanism for residential customers and reestablishing the SCO as the default commodity service for residential customers that do not enroll with a CRNGS provider or become a member of an opt-out governmental aggregation upon the expiration of their supplier contract. The OCC motion was followed by a related motion filed March 12, 2018 by Ohio Partners for Affordable Energy (“OPAE”) requesting that the MVR be eliminated for non-residential customers and that the SCO be reestablished as the default commodity service for

³ See *In the Matter of the Application to Modify, in Accordance with Section 4929.08, Revised Code, the Exemption Granted to The East Ohio Gas Company d/b/a Dominion East Ohio in Case No. 07-1224-GA-EXM*, Case No. 12-1842-GA-EXM (Opinion and Order dated January 9, 2013).

non-residential customers not under contact with a CRNGS provider or members of a governmental aggregation.

Dominion Energy Solutions, Inc. ("DES") is a Commission-certified CRNGS provider authorized to offer competitive retail natural gas service to customers within the area served by DEO. As such, DES has a real and substantial interest in this proceeding, and may be adversely affected by the ultimate disposition of the issues raised by the OCC and OPAE motions. Accordingly, DES hereby moves to intervene pursuant to R.C. 4903.221 and Rule 4901-1-11, Ohio Administrative Code ("OAC").

As more fully discussed in the accompanying memorandum, DES is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect its interests. Further, DES's interest in this proceeding is not represented by any existing party, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues involved without unduly delaying the proceedings or unjustly prejudicing any existing party.

WHEREFORE, DES respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted,



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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application to Modify, in :
Accordance with R.C. 4929.08, the :
Exemption Granted to the East Ohio Gas : Case No. 12-1842-GA-EXM
Company d/b/a Dominion Energy Ohio in :
Case No. 07-1224-GA-EXM. :

MEMORANDUM IN SUPPORT
OF
MOTION TO INTERVENE
OF
DOMINION ENERGY SOLUTIONS, INC.

R.C. 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding.” As a CRNGS provider on DEO’s system, and as a participating supplier in the DEO MVR program, there can be no question that DES may be adversely affected by the modifications to the DEO exit plan sought by OCC and OPAE through their respective motions. Moreover, not only does DES satisfy the underlying statutory test, but it also satisfies the standards governing intervention set forth in the Commission’s rules.

Rule 4901-1-11(A), OAC, provides, in pertinent part, as follows:

(A) Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his ability to protect that interest, unless the person's interest is adequately represented by existing parties.

As a CRNGS provider and a participant in the DEO MVR program, DES plainly has a real and substantial interest in a proceeding that could impact a market in which it competes. Although DES, under its former name, Dominion Retail, Inc., was an intervenor in Case No. 07-1224-GA-EXM and was a signatory to the stipulation that resolved that case, DES did not intervene in Case No. 12-1842-GA-EXM.⁴ Thus, assuming that the parties of record in this case continue to remain parties for purposes of the recent OCC and OPAE motions, the only parties in this docket at this juncture are DEO, OGMG, OCC, OPAE, and the Retail Energy Supply Association (“RESA”), none of which adequately represents DES’s interests.⁵ On the other hand, if the Commission deems that new motions to intervene are required in connection with the OCC and OPAE motions, because none of the pending motions to intervene in this proceeding have been granted, by definition, no existing parties adequately represent DES’s interest.

Although DES does not believe this to be a close question, each of the specific considerations that the Commission, pursuant to Rule 4901-1-11(B), OAC, must take into account in applying the Rule 4901-1-11(A)(2), OAC, standard also fully supports granting DES’s motion to intervene. Rule 4901-1-11(B), OAC, provides as follows:

In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner case shall consider:

- (1) The nature and extent of the prospective intervenor’s interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.

⁴ There was no reason for DES to intervene in Case No. 12-1842-GA-EXM at the time because it had no issues with the modification to DEO plan proposed by the movants in that case.

⁵ DES is not a member of either OGMG or RESA, and, as the Commission well knows, has, on occasion, taken positions contrary to those taken by these supplier organizations. *See, e.g., In the Matter of the Commission's Review of its Rules for Competitive Retail Natural Gas Service Contained in Chapters 4901:1-27 through 4901:1-34 of the Ohio Administrative Code*, Case No. 12-1925-GA-ORD (Finding and Order dated December 18, 2013, as modified by Entry on Rehearing dated February 26, 2014), wherein DES, *aka* Dominion Retail, Inc., disagreed with certain recommendations presented by OGMG and RESA in their joint comments.

(3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.

(4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

(5) The extent to which the person's interest is represented by existing parties;

First, as previously explained, DES's interest in connection with the proposals contained in the OCC and OPAE motions is obviously direct and substantial. The OCC proposal would modify a Commission-approved stipulation to which DES was a signatory,⁶ while both the OCC and the OPAE proposals would adversely affect DES in its role as a CRNGS provider and as a participant in the DEO MVR program. Second, DES's position is that the modifications advocated by OCC and OPAE represent a step backwards from an orderly transition to DEO's complete exit from the merchant function, a position that relates directly to the merits of the case. Third, in view of the fact that no procedural schedule has been established, granting DES's motion to intervene will not unduly delay or prolong the proceeding. Fourth, DES has been a frequent participant in cases involving the establishment of competitive gas markets in Ohio and the numerous other states in which it does business. Thus, DES will bring substantial experience to bear on the issues raised by the OCC and OPAE motions. Finally, not only are there no

⁶ In this connection, DES would point out that it is far from clear why OCC filed its motion in Case No. 12-1842-GA-EXM, which had nothing to do with the residential MVR process. That process was established in Case No. 07-1224-GA-EXM, and was not changed by the Commission's order in Case No. 12-1842-GA-EXM, which dealt solely with the elimination of the SCO option for nonresidential customers. The only answer that suggests itself is that OCC is attempting to get around the provision of R.C. 4929.08 that limits the Commission's authority to abrogate or modify an exemption plan without the host gas distribution utility's consent to within eight years after the effective date of the order implementing the plan. In so stating, DES recognizes that this issue has been teed up by RESA and the Direct entities in their March 30, 2018 joint memorandum contra the OCC motion. However, DES raises this point here only to head off any attempt by OCC to prevent DES's participation in this proceeding on the theory that DES was not previously a party to Case No. 12-1842-GA-EXM and that, therefore, its motion to intervene is not timely. As far-fetched as this may seem, this is precisely what OCC argued in its March 30, 2018 memorandum contra Direct's pending motion to intervene. Again, DES had no reason to intervene in Case No. 12-1842-GA-EXM until now, when OCC decided to attempt to use this case as the vehicle to modify the residential MVR process approved in Case No. 07-1224-GA-EXM and when OPAE decided to attempt to undo the nonresidential MVR process previously approved in this docket.

existing parties that represent DES's interest, but it would be inconsistent with the Commission's stated policy "to encourage the broadest possible participation in its proceedings"⁷ to apply the Rule 4901-1-11(B)(5) standard in a manner that would favor certain CRNGS providers over others. Thus, granting DES intervenor status is consistent with all the considerations set out in Rule 4901-1-11(B), OAC.

WHEREFORE, DES respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted,



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⁷ See, e.g., *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR (Entry dated January 14, 1986, at 2).

Certificate of Service

I hereby certify that a copy of the foregoing has been served upon the following persons by electronic mail this 9th day of April 2018.


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