

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Motion to Modify )  
the Exemption Granted to the East ) Case No. 18-1419-GA-EXM  
Ohio Gas Company d/b/a Dominion )  
Energy Ohio. )

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**JOINT STIPULATION AND RECOMMENDATION**

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Ohio Administrative Code (“Ohio Adm. Code”) Rule 4901-1-30 provides that any two or more parties to a proceeding may enter into a written stipulation covering some or all of the issues presented in the proceeding. The purpose of this document is to set forth the understanding and agreement of the Office of the Ohio Consumers’ Counsel (“OCC”), Ohio Partners for Affordable Energy (“OPAE”), the Staff of the Public Utilities Commission of Ohio (“Staff”),<sup>1</sup> Retail Energy Supply Association (“RESA”), Direct Energy Business Marketing, LLC, Direct Energy Services, LLC (collectively, “Direct”), Interstate Gas Supply, Inc. (“IGS”), Dominion Energy Solutions, Inc. (“DES”), and The East Ohio Gas Company d/b/a Dominion Energy Ohio (“Dominion”) (collectively, the “Signatory Parties”), and to recommend that the Public Utilities Commission of Ohio (“Commission”) approve and adopt the Joint Stipulation and Recommendation (“Stipulation”), resolving all of the issues in this proceeding.

The Signatory Parties agree that this Stipulation, which shall be designated as Joint Exhibit 1.0, is supported by adequate data and information; represents a just and reasonable resolution of the issues raised in this proceeding; violates no regulatory principle or precedent; as

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<sup>1</sup> Pursuant to Ohio Adm. Code 4901-1-1-(C) and 4901-1-30, Staff is deemed a party for purposes of entering into this Stipulation.

a package, benefits customers and the public interest; and is the product of serious bargaining among knowledgeable and capable parties with diverse interests. While the Stipulation is not binding on the Commission, the Signatory Parties submit that it is entitled to careful consideration by the Commission.

### **Recitals**

WHEREAS, on May 26, 2006, in Case No. 05-474-GA-ATA, the Commission approved phase one of Dominion's plan to exit the merchant function. The Commission stated, "The objective of Phase 1 [was] to change the way [Dominion] procure[d] and price[d] its natural gas commodity service by changing from the current [gas cost recovery] mechanism to a competitively bid mechanism (the [Standard Service Offer] SSO)."<sup>2</sup> Subsequently, on June 18, 2008 in Case No. 07-1224-GA-EXM, the Commission approved a stipulation ("2008 Stipulation") to implement phase two of Dominion's plan to exit the merchant function with approval of the standard choice offer ("SCO") that was procured in the same manner as the SSO. The 2008 Stipulation further provided that customers whose Energy Choice or governmental aggregation contract expires without renewal and who did not enroll with a Competitive Retail Natural Gas Supplier ("Supplier"), could participate in a governmental aggregation program, elect to be assigned to a Supplier at the price of the established SCO auction, or be assigned to an Energy Choice Supplier at the Supplier's posted monthly variable rate under the standard terms and conditions for monthly variable rate commodity service ("MVR program");

WHEREAS, on January 9, 2013, in Case No. 12-1842-GA-EXM, the Commission

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<sup>2</sup> *In the Matter of the Application of The East Ohio Gas Co. d/b/a Dominion East Ohio for Approval of a Plan to Restructure its Commodity Service Function*, Case No. 05-474-GA-ATA, Opin. and Order (May 26, 2006) at 4.

approved a joint stipulation and recommendation regarding the MVR program for customers of Dominion;

WHEREAS, the January 9, 2013 Order eliminated the use of the SCO by non-residential customers and replaced the non-residential SCO default service with the MVR program, which randomly assigns customers to the MVR Supplier's monthly variable rate that is no greater than any of the MVR Supplier's monthly variable rates posted on the PUCO's Apples to Apples chart;

WHEREAS, the MVR program has been subject to a wide range of posted prices, some of which have been considerably above the competitive retail natural gas offers available to customers, and has been the subject of customer confusion and complaints;

WHEREAS, OCC filed motions asking the Commission to eliminate the MVR Program for residential customers and to reinstate the SCO as the default service offer for residential customers in Dominion's service territory and OP&AE filed a motion supporting the OCC pleading regarding residential customers and asking the Commission to eliminate the MVR Program for residential and non-residential customers and to reinstate the SCO as the default service offer for customers in Dominion's service territory; and

WHEREAS, the Signatory Parties acknowledge that certain findings upon which the January 9, 2013 Order was based are no longer valid and that a modification of that order is necessary and in the public interest.

NOW, THEREFORE, the Signatory Parties stipulate, agree, and recommend that the Commission should promptly issue its decision in these proceedings accepting and adopting this Stipulation and relying upon its provisions as the basis for resolving all issues raised by parties in this proceeding.

## **Joint Recommendations of the Signatory Parties**

The Signatory Parties recommend that the Commission adopt without modification the following terms and conditions of the Stipulation to fully resolve these proceedings:

1. Dominion's SCO Commodity Service tariff shall be the default commodity service for Dominion's Choice-eligible residential customers ("residential customers") who have not selected and enrolled with an Energy Choice Supplier or do not participate in a governmental aggregation program, including but not limited to new residential customers<sup>3</sup> after up to two consecutive billing periods on the SSO and those residential customers returning to the SSO for up to two consecutive billing periods after termination of their Energy Choice contract or participation in a governmental aggregation program. Not later than 60 days after a Commission order approving the Stipulation without material modification, Dominion shall transfer to the SCO the residential customers currently assigned to an MVR Supplier. If the transfer of such customers is not implemented in conjunction with the SCO/SSO auction process, Dominion's transfer of the MVR-assigned residential customers to the SCO shall be in accordance with the current SCO assignment mechanism utilized by Dominion for assigning new residential customers to the SCO.
2. Dominion's SCO shall be the default commodity service for Dominion's Choice eligible non-residential customers whose annual consumption is less than or equal to 200 Mcf<sup>4</sup> ("small non-residential customers") and who have not selected and enrolled with an

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<sup>3</sup> New residential customers include customers (i) establishing service with Dominion for the first time, (ii) relocating within Dominion's service territory and whose Energy Choice or government aggregation is not portable, and (iii) restoring service more than ten days after being disconnected for non-payment.

<sup>4</sup> Annual consumption shall be based on the customer's usage in the prior calendar year, or if a calendar year of historical consumption information is not available for that customer, through an alternative mechanism.

Energy Choice Supplier or do not participate in a governmental aggregation program, including those non-residential customers returning to the SSO for up to two consecutive billing periods after termination of their Energy Choice contract or participation in a governmental aggregation program. Dominion's transfer to SCO service of small non-residential customers currently assigned to an MVR Supplier shall commence not later than 120 days after a Commission order approving the Stipulation without material modification. Dominion's transfer of the MVR-assigned small non-residential customers to the SCO shall be in accordance with the current SCO assignment mechanism utilized by Dominion for assigning new customers to the SCO. New small non-residential customers will receive at least one SSO bill and may select and enroll with an Energy Choice Supplier or participate in a governmental aggregation program. If they do not do so, such customers will, after their second SSO bill, be assigned to a participating SCO Energy Choice Supplier at the price established in the retail SCO auction under the standard terms and conditions of SCO Commodity Service included in Dominion's tariff. Customers that continue to qualify annually as small non-residential customers shall continue to default to the SCO Commodity Service unless they select and enroll with an Energy Choice Supplier or participate in a governmental aggregation.<sup>5</sup>

3. Dominion shall provide a notice to residential and small non-residential customers currently in the MVR program that they are being transferred to the SCO, that they have commodity service options, and that they may contact the PUCO, OCC (for residential customers), or Dominion for information about the transfer. Notices shall be provided by

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<sup>5</sup> As the statutory representative of residential customers, OCC does not represent non-residential customers and thus does not take a position with regard to paragraphs 2 and 4-11, but agrees not to oppose paragraphs 2 and 4-11 for purposes of this settlement.

Dominion beginning no later than thirty-one (31) days after an order approving this Stipulation without material modification and completed thereafter as soon as reasonably practicable and prior to the customer's transfer to the SCO. Such notice to residential and non-residential customers shall be provided to Signatory Parties for review and input before transmittal to customers.

4. The current Monthly Variable Rate Commodity Service tariff shall be replaced with the Monthly Retail Rate Commodity Service tariff, also known as the MRR program, which shall only be applicable to non-residential consumers whose annual consumption is greater than 200 Mcf.
5. The MRR program shall be the default commodity service for all non-residential Dominion consumers whose annual consumption is greater than 200 Mcf and less than or equal to 500 Mcf<sup>6</sup> ("medium non-residential customers"). Medium non-residential customers shall also have the option of receiving natural gas supply through the SCO, participating in an applicable governmental aggregation program, or selecting and enrolling with an Energy Choice Supplier. A medium non-residential customer that currently receives natural gas commodity service under the MVR program shall continue to receive natural gas commodity service through the MRR program until the customer elects to receive natural gas commodity service through the SCO, to participate in an applicable governmental aggregation program, or to select and enroll with an Energy Choice Supplier. New medium non-residential customers and medium non-residential customers returning to the SSO after termination of their Energy Choice contract or

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<sup>6</sup> Annual consumption shall be based on the customer's usage in the prior calendar year, or if a calendar year of historical consumption information is not available for that customer, through an alternative mechanism.

participation in a governmental aggregation program will receive at least one SSO bill, after which they may elect to receive natural gas supply through the SCO, to participate in an applicable governmental aggregation program, or to select and enroll with an Energy Choice Supplier. If they do not make one of the foregoing elections, such customers will, after their second SSO bill, be assigned to a Supplier participating in the MRR program. This paragraph shall be effective upon certification by Dominion that it has completed the necessary system changes for the assignment of medium non-residential customers.

6. The MRR program shall be the default service for non-residential customers whose estimated annual consumption is greater than 500 Mcf (“large non-residential customers”).<sup>7</sup> Large non-residential customers shall not be eligible to receive natural gas commodity service under the SCO; such customers shall also have the option of participating in an applicable governmental aggregation program (if eligible) or selecting and enrolling with an Energy Choice Supplier. New large non-residential customers and large non-residential customers returning to the SSO after termination of their Energy Choice contract or participation in a governmental aggregation program will receive at least one SSO bill, after which they may elect to participate in an applicable governmental aggregation program or to select and enroll with an Energy Choice Supplier. If they do not make one of the foregoing elections, such customers will, after their second SSO bill, be assigned to a Supplier participating in the MRR program. This

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<sup>7</sup> Annual consumption shall be based on the customer’s usage in the prior calendar year, or if a calendar year of historical consumption information is not available for that customer, through an alternative mechanism.

paragraph shall be effective upon certification by Dominion that it has completed the necessary system changes for the assignment of medium non-residential customers.

7. To participate in the MRR program for medium and large non-residential customers, an Energy Choice Supplier must meet the qualifications set forth in paragraph 8.
8. Dominion shall file new tariffs or modify existing tariffs to provide for Monthly Retail Rate Commodity Service, which shall include the following terms: (a) beginning one year from the date that an order approving the Stipulation without material modification, all Energy Choice Suppliers serving customers under the MRR program (“MRR Suppliers”) must have at least 100 non-MRR, non-SCO Energy Choice customers under contract for competitive retail natural gas service or must be serving at least 10,000 MCF of non-MRR, non-SCO Energy Choice annual load; (b) an MRR Supplier having assigned customers must serve its assigned customers each month until at least the end of the following March billing cycle subject to disqualification as described in division (d) of this paragraph; (c) the MRR Supplier must post on the Commission’s Energy Choice Ohio website<sup>8</sup> or its then-current equivalent a monthly variable rate offer each month during the period of its participation in the MRR program; (d) without limitation to other remedies that may be warranted as a result of non-MRR tariff violations, an MRR Supplier that fails to serve its existing customers at a price at or below the applicable monthly median price as established under paragraph 9 or notifies Dominion of its intent to no longer serve under the MRR program prior to the March billing cycle shall be disqualified from participating in the MRR program. The disqualification period shall begin with the month that the MRR Supplier notifies Dominion that it will not

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<sup>8</sup> Currently located at <http://www.energychoice.ohio.gov/ApplesToApples.aspx>.

provide natural gas commodity service to its existing MRR program customers at a price at or below the monthly median price and continue through the next March billing cycle and then an additional 12-month period;<sup>9</sup> (e) MRR Suppliers with a posted monthly variable rate equal to or below the monthly median MRR price shall be eligible to be assigned and provide supply to those assigned customers at the lower of the Supplier's lowest posted monthly variable rate price or the MRR price in the next service month as determined by DEO billing cycles; and (f) to avoid disqualification, an MRR Supplier that is not assigned customers for a service month because it did not offer a price equal to or below the monthly median MRR price must charge its previously assigned customers a rate that is no more than the monthly median MRR price.

9. The monthly median MRR price, to be determined each month from the lowest submitted monthly variable rate from each qualifying MRR Supplier, shall be disclosed on the PUCO's Apples to Apples website. The median monthly MRR price shall be calculated per the example attached as Exhibit A to this Stipulation, which is provided for example purposes only. In the event the median monthly MRR price is based on an even number of Suppliers, the average of the middle two prices shall constitute the median. Dominion shall provide each MRR Supplier's lowest posted monthly variable rate along with the median MRR price to all MRR Suppliers and Staff each month.
10. The tariff described in paragraph 8 shall require Dominion to reassign, once every 12 months, each MRR customer who has been assigned to the same MRR Supplier for the 12 prior consecutive months. The identification of customers shall take place annually

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<sup>9</sup> For example, if an MRR Supplier was disqualified beginning in December 2021, the disqualification would continue through the March 2023 billing cycle.

and reassignment shall be effective with the April billing cycle. Any MRR Supplier can be eligible to receive assignment of these customers. The Signatory Parties acknowledge and accept that, through this stipulated random reassignment process, it is possible that an MRR customer could be reassigned to the same MRR Supplier.

11. At least one billing cycle before an assignment or a reassignment, Dominion shall provide notice, which may be completed by bill insert, bill message, or other reasonable method, to the non-residential customer who is subject to random assignment to an MRR Supplier through the MRR program that the customer will be randomly assigned or reassigned to an MRR Supplier if the customer does not choose to receive natural gas commodity supply service through the SCO (subject to customer eligibility), an Energy Choice Supplier, or a governmental aggregation program.
12. Within 60 days after an order approving the Stipulation without material modification or other time period mutually agreed upon by the Signatory Parties, the PUCO Staff shall convene a collaborative meeting of interested stakeholders to discuss the development of a consumer education program designed to help Choice-eligible customers, including customers who are participating in the MRR program, compare options for natural gas service and understand how those options can affect the information on their natural gas bills in Dominion's service territory. Focus groups and surveys shall be conducted to assess why customers who were in the former MVR program for over 12 months did not affirmatively make a supply choice. The content and approach of any focus groups and surveys will be developed through the collaborative group, which will have access to the results of any focus groups and surveys. Collaborative group members, including

Signatory Parties, may seek a resolution from the PUCO regarding customer education issues, including notices to customers.

13. Dominion shall use existing education funds to provide (a) notices to customers that are to be assigned or reassigned as a result of the implementation of this Stipulation and (b) consumer education and other activities as described in paragraph 12. Additional funding for customer notices, consumer education, and the activities described in paragraph 12 shall be funded through a new fee. Beginning December 1, 2021, and subject to Commission approval of any necessary changes in its tariff, Dominion shall assess the fee in the amount of \$0.01/Mcf to all Suppliers participating in Dominion's Energy Choice program, to all Suppliers of governmental aggregations in Dominion service territory, participating in the MRR program, and to the Suppliers awarded tranches through the SCO or SSO auctions. The fee will continue to be assessed to Suppliers for all such volumes billed prior to the first billing cycle in December 1, 2025. Dominion shall hold the collected fees in a segregated account. The collection and use of the fees shall be subject to Commission audit. At least once per year, Dominion shall provide Commission Staff and the Signatory Parties an accounting of the amounts received from the fee charged under this provision and a brief report describing its consumer education funding expenditures. Dominion shall make reasonable efforts to expend funding collected under this paragraph as it becomes available for use, subject to all of the following conditions: (x) that Dominion determines there is adequate support from the collaborative for such expenditures; (y) that Dominion shall be under no obligation to make such expenditures to the extent their intended use is being contested

by any collaborative member; and (z) for the avoidance of doubt, that Dominion shall be under no obligation to make such expenditures in excess of available funding.

14. Not later than three years after an order approving the Stipulation without material modification, the Signatory Parties shall meet to discuss the results of the changes implemented by this Stipulation and whether any further enhancements or changes should be made to the MRR program.
15. After an order approving the Stipulation without material modification, Dominion shall provide the Signatory Parties with readily available, aggregated non-Supplier-specific switching statistics and data regarding the various commodity service options, including usage and customer count information, in a format similar to that set out in Exhibit B.
16. Dominion shall retain aggregated non-Supplier-specific rate, usage, and customer count information consistent with the data and information previously provided to the signatory parties of the settlement agreement adopted in Case No. 12-1842-GA-EXM. The information retained by Dominion under this paragraph shall not be available or used in any proceeding except one that relates to a modification of the MRR Program or Dominion's exit from the merchant function (including any material modification of the process, terms, and conditions applicable to, or any limitation or modification of the availability of, SCO and/or SSO commodity service). However, the restriction on use of information pursuant to this paragraph shall not prohibit a Signatory Party from making requests in future proceedings to seek information which has independent relevance in such future proceeding. To the extent there is a dispute concerning whether information previously provided to the Signatory Parties is independently

relevant in a future proceeding, such dispute shall be addressed in the future proceeding. Dominion will work with Staff to determine what information needs to be provided, and to provide such information, to Staff. Dominion shall designate any such information provided to Staff that may be confidential or proprietary as such, and Staff shall take appropriate actions to protect information that is so marked.

17. The Signatory Parties agree that they shall not individually or jointly request Commission approval for Dominion to exit the merchant function or to modify the MRR program structure for any of Dominion's consumers prior to July 1, 2023. The Signatory Parties reserve their rights to challenge any application or request filed with the Commission by a Signatory Party or non-signatory party seeking approval for Dominion to exit the merchant function or to modify the structure of the MRR program.
18. Notwithstanding anything to the contrary in paragraph 17 of this Stipulation, Dominion may request a limited modification to the Energy Choice or MRR programs to the extent necessary (a) to address issues concerning operation of the distribution system or program administration; or (b) to implement new or changed state or federal laws or regulations affecting its operations or the Energy Choice or MRR programs. The Signatory Parties reserve all rights to support or oppose any such request by Dominion.
19. Subject to the conditions set forth in this paragraph, Dominion's signature on this Stipulation constitutes its consent under R.C. 4929.08(A)(2) to any modification of any prior exemption order that is necessary to approve or implement this Stipulation. This consent is expressly conditioned on the Commission's approval of the Stipulation without material modification. For purposes of this paragraph, Dominion has the right, in its sole discretion, to determine whether the Commission's approval of this Stipulation contains a

material modification. If Dominion chooses to revoke or withdraw its consent, it may do so under any and all of the circumstances in which withdrawal is permitted, and it shall do so in accordance with the procedures for withdrawal set forth, in the “Additional Terms and Conditions” that follow. For the avoidance of doubt, revocation or withdrawal of consent under this paragraph shall not operate to bar or limit Dominion from consenting to any future modification proposed or requested under R.C. 4929.08.

### **ADDITIONAL TERMS AND CONDITIONS**

This Stipulation is expressly conditioned upon the Commission’s adoption and approval of the Stipulation in its entirety, without material modification. Each Signatory Party has the right, in its sole discretion, to determine whether the Commission’s approval of this Settlement contains a material modification.

If the Commission rejects or materially modifies all or any part of the Stipulation, any Signatory Party shall have the right, within 30 days of issuance of the Commission’s Order, to apply for rehearing or to withdraw from the Stipulation by filing a notice (“Notice of Withdrawal”) with the Commission in this proceeding and serving the Notice of Withdrawal on all Signatory Parties. If the Commission does not adopt the Stipulation without material modification upon rehearing, or if the Commission makes a material modification to any Order adopting the Stipulation pursuant to any reversal, vacation, and/or remand by the Supreme Court of Ohio, then within thirty (30) days of the Commission’s Entry on Rehearing or Order on Remand any Signatory Party may withdraw from the Stipulation by filing a Notice of Withdrawal with the Commission. The filing of a Notice of Withdrawal within 30 days of the issuance of the initial Opinion and Order addressing this Stipulation shall stay the effective date of the implementation of the terms of the Stipulation until such time as the Commission issues a

subsequent Opinion and Order following a hearing in which the withdrawing party is given an opportunity to contest the Stipulation.

No Signatory Party shall file a Notice of Withdrawal without first negotiating in good faith with the other Signatory Parties to achieve an outcome that substantially satisfies the intent of the Stipulation. If a new agreement achieves such an outcome, the Signatory Parties will file the new agreement for Commission review and approval. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are unsuccessful, and a Signatory Party files a Notice of Withdrawal, then the Commission will convene an evidentiary hearing to afford that Signatory Party the opportunity to contest the Stipulation by presenting evidence through witnesses, to cross-examine witnesses, to present rebuttal testimony, and to brief all issues that the Commission shall decide based upon the record and briefs as if the party had never executed the Stipulation. If the discussions to achieve an outcome that substantially satisfies the intent of the Stipulation are successful, then some or all of the Signatory Parties shall submit the amended Stipulation to the Commission for approval after a hearing.

This Stipulation is entered into as an overall compromise and resolution of all of the issues presented in this proceeding. This Stipulation does not necessarily represent the position any Signatory Party would have taken absent the execution of this Stipulation as a package. This Stipulation shall not be cited as precedent in any future proceeding for or against any Signatory Party, except to enforce the terms of the Stipulation.

Except as otherwise specified in this Stipulation, the Signatory Parties urge the Commission not to construe or apply any specific element or item contained in or supporting the Stipulation as the results that any Signatory Party might support or seek had the Signatory Parties not reached this Stipulation.

The Signatory Parties urge the Commission to accept and approve the terms hereof as promptly as possible to enable timely implementation of the program changes set forth in this Stipulation.

### **CONCLUSION**

The Signatory Parties stipulate, agree, and recommend that the Commission promptly issue a final Opinion and Order in this proceeding adopting this Stipulation without modification.

AGREED TO THIS 5th DAY OF FEBRUARY, 2020.

Respectfully submitted,

/s/ Madeline Fleisher (per e-mail auth.)

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Consumers' Counsel*

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served by electronic mail to the following recipients on this 5th day of February, 2020:

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*/s/ Kimberly W. Bojko*  
\_\_\_\_\_  
Special Counsel for the Office of the Ohio  
Consumers' Counsel

**EXHIBIT A TO JOINT STIPULATION AND RECOMMENDATION  
CASE NO. 18-1419-GA-EXM**

**EXAMPLE MONTHLY MEDIAN MRR PRICE CALCULATION  
SUPPLIER WITH MEDIAN PRICE SHOWN IN RED**

<b>Eligible MRR Supplier</b>	<b>Supplier Lowest Posted MVR Rate</b>
Supplier A	\$9.25
Supplier B	\$7.99
Supplier C	\$6.50
Supplier D	\$6.39
Supplier E	\$5.89
Supplier F	\$4.89
Supplier G	\$4.77
Supplier H	\$4.56
Supplier I	\$4.50
Supplier J	\$4.19
<b>Supplier K</b>	<b>\$4.15</b>
Supplier L	\$3.79
Supplier M	\$3.79
Supplier N	\$3.70
Supplier O	\$3.63
Supplier P	\$3.55
Supplier Q	\$3.39
Supplier R	\$3.13
Supplier S	\$2.90
Supplier T	\$2.70
Supplier U	\$2.36
<b>Monthly Median MRR Price</b>	<b>\$4.15</b>

Aggregated non-Supplier-specific switching statistics and data

**Confidential**

Customer Count and Usage Information for [Month] [Year] Cycle [X] through [Month] [Year] Cycle [Y]

Rate Type	Residential		Non-Residential		Total	
	Count	Mcf	Count	Mcf	Count	Mcf
EC						
Gov Agg						
SCO						
MRR						
Total						

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Summary: Stipulation Joint Stipulation and Recommendation electronically filed by Mrs. Kimberly W. Bojko on behalf of The Ohio Consumers' Counsel