

**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 OCC’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 Association<sup>1</sup> (“RESA”), and Direct Energy Services, LLC and Direct Energy Business Marketing, LLC (collectively, “Direct Energy”) submit this joint memorandum contra to the Office of the Ohio Consumers’ Counsel’s motion to modify the Commission’s June 9, 2013 Opinion and Order (the “2013 Order”) in this proceeding. OCC asks the Commission to modify the 2013 Order to stop the random assignment of choice-eligible residential customers to suppliers at the suppliers’ monthly variable rates. The 2013 Order, however, had nothing to do with the assignment of choice-eligible residential customers. Instead, the 2013 Order focused solely on service to choice-eligible non-residential customers.<sup>2</sup> It was five years earlier, on June 18, 2008, that the Commission approved and implemented the assignment mechanism for choice-eligible residential customers in Case No. 07-1224-GA-EXM

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<sup>1</sup> 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](http://www.resausa.org).

<sup>2</sup> See 2013 Order at page 5 summarizing proposed modification.

(the “2008 Order”). That timing and the fact that the Commission’s findings in the 2013 Order related to non-residential customers renders OCC’s filing of its motion in this docket procedurally improper.<sup>3</sup> The motion should be denied.<sup>4</sup>

To the extent that OCC desires to modify the existing tariff, OCC 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 2013 Order only applied to non-residential customers.**

OCC cannot seek to modify the residential monthly variable rate assignment in this proceeding because the assignment of choice-eligible residential customers to a supplier’s posted monthly variable rate was not part of the 2013 Order. That aspect of DEO’s exemption was the subject of the Commission’s June 18, 2008 order issued in Case No. 07-1224-GA-EXM (the 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 monthly variable rate (“MVR”):

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<sup>3</sup> OCC noted in footnote one of the Motion that the request was filed under Ohio Admin. Code 4901:1-19-11. R.C. 4929.08 is the statutory basis for modifying an exemption order.

<sup>4</sup> RESA and Direct Energy requested additional time (until March 30, 2018) to file this memorandum contra to OCC’s motion. That request was not opposed. RESA and Direct Energy file this 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.**

OCC was a signatory party to the April 10, 2008 stipulation, which the Commission approved in 2008 without modification. DEO submitted tariff sheets in compliance with the Commission's approval, and the MVR assignment mechanism for residential customers has been in place since then.<sup>5</sup>

**B. OCC is wrong to imply that the 2013 Order implemented the residential customer MVR assignment.**

OCC drafted its Motion and Memorandum in Support to create the appearance that the Commission approved the residential customer assignment mechanism in the 2013 Order. For example, OCC claims at page 1 of its Memorandum in Support that “[i]n the 2013 Order, the PUCO adopted, with modifications, a settlement that continued phase two of Dominion’s plan, including the assignment of choice-eligible residential customers to the Monthly Variable Rate.”<sup>6</sup> But the actual issue in the 12-1842 proceeding that resulted in the 2013 Order was the

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<sup>5</sup> 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.

<sup>6</sup> OCC Motion at 1.

modification of the 2008 Order to allow DEO to discontinue SCO service to non-residential customers (and did not involve residential customers).<sup>7</sup>

Another example is at page 2 of its Memorandum in Support where OCC implies that the June 15, 2012 stipulation in Case No. 12-1842 included provisions whereby residential customers with expiring supply contracts or expiring aggregation contracts would be assigned to a supplier with an MVR if the customer does not make an affirmative election. OCC is wrong, as those provisions were included in the April 10, 2008 stipulation signed by OCC and approved in the 2008 Order. OCC also points to statements the Commission made in the 2013 Order, claiming those findings are no longer valid and justify why the residential customers should not be assigned to a supplier's MVR.<sup>8</sup> But the Commission's statements in the 2013 Order were about non-residential customers (not residential customers).

OCC even goes so far as to claim at pages 9-10 of its Memorandum in Support that "[t]he PUCO's 2013 Order also included the random assignment of choice-eligible residential customers to the Monthly Variable Rate which is unjust and unreasonable to customers." Tellingly, OCC does not provide a citation to support that baseless statement and it cannot because it was the 2008 Order and not the 2013 Order that implemented random assignment for choice-eligible residential customers. Looking past OCC's misleading drafting, it is evident that OCC is asking the Commission to modify the 2008 Order.

**C. OCC's motion is not properly filed in this docket because OCC is trying to modify the 2008 Order.**

Because there can be no dispute that the 2008 Order implemented the random assignment of choice-eligible residential customers to suppliers and the suppliers' monthly variable rates, OCC's motion in this proceeding (regarding the 2013 Order) is improper. OCC appears to take

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

<sup>8</sup> OCC Memorandum in Support at 5-6.

the position in its Motion that the Commission's 2013 Order on the non-residential customer exit acts as a "renewal" of the exemption order. Specifically, at page 4 of its Memorandum in Support, OCC points to page 17 of the 2013 Order where the Commission stated "[a]s provided for in Section 4929.08, Revised Code, the Commission is permitted to abrogate or modify the exemption provided for in this order within eight years after the effective date of this order, without DEO's consent." But 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 OCC'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, OCC 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, OCC 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. OCC has filed its Motion in the wrong proceeding.

Precluded from filing in the 2013 Order proceeding, OCC also cannot unilaterally file in the 2008 proceeding because the 2008 Order was issued almost 10 years ago. At a minimum, any attempt by OCC to unilaterally seek a modification to the existing exemption structure should be through a separate proceeding in which parties can intervene, a procedural schedule set and arguments heard.<sup>9</sup> RESA and Direct Energy would also expect that OCC would engage stakeholders (including DEO) prior to making a filing in a new docket to discuss its concerns over the existing MVR assignment.

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<sup>99</sup> 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.

Lastly, the Revised Code is clear that OCC “... shall follow the policies of the state as set forth in Chapter 4929. of the Revised Code that involve **supporting retail natural gas competition.**” R.C. 4911.02 (emphasis added). In furtherance of retail natural gas competition, Chapter 4929 states that it is the state policy to: “[p]romote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. of the Revised Code.” R.C. 4929.02(7). OCC would be well suited to follow that directive instead of advocating a return to the SCO as a default service.

### **III. CONCLUSION**

OCC signed the April 10, 2008 stipulation which the Commission approved in the 2008 Order, including the residential customer MVR assignment. Now, almost 10 years later, OCC seeks to modify that order but in a proceeding that was unrelated to the 2008 Order. OCC’s Motion is neither proper in this proceeding nor proper in the 2008 Order proceeding. The Motion should be denied.

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

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

Gretchen L. Petrucci

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