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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Columbia Gas of Ohio, Inc.	:	Case No. 04-221-GA-GCR
In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Columbia Gas of Ohio, Inc.	:	Case No. 05-221-GA-GCR

REPLY BRIEF
OF
DOMINION RETAIL, INC.

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I. INTRODUCTION

In its initial brief, Dominion Retail, Inc. ("Dominion Retail") focused on three basic propositions. First, regardless where the Commission comes out on the "calendar year" issue raised by the Office of the Ohio Consumers' Counsel ("OCC") and the TCCRP issue raised by both OCC and the Commission staff ("Staff"), under no circumstances should the 2003 Stipulation be terminated prior to its specified October 31, 2008 expiration date. Second, the Commission should not require Columbia Gas of Ohio, Inc. ("COH") to conduct a wholesale auction without providing the opportunity for stakeholder input in the development of the process. Finally, the OCC-proposed adjustment to reallocate pipeline capacity costs between Choice and GCR customers is unlawful and unreasonable on several grounds. Dominion Retail respectfully submits that there is nothing in the initial briefs filed by the other parties to this proceeding that undercuts these three propositions, and urges the Commission to adopt these propositions in issuing its order in these cases.

II. ARGUMENT

A. THE APPROPRIATE REMEDY IN THE EVENT OF A COMMISSION FINDING IN OCC'S FAVOR ON THE "CALENDAR YEAR" ISSUE AND/OR THE TCCRP ISSUE IS AN ADJUSTMENT TO THE GCR RATE, NOT THE TERMINATION OF THE 2003 STIPULATION.

Although taking no position on the "calendar year" or TCCRP issues, Dominion Retail understands that these are important issues that must be decided in the context of these proceedings. However, if the Commission agrees with OCC on the "calendar year" issue and/or with OCC and Staff on the TCCRP issue, the obvious remedy is to make the adversely affected customers whole by ordering an adjustment to the GCR rate to refund any amounts that the Commission finds that COH collected in violation of the terms of the 2003 Stipulation. These adjustments can be readily calculated, and would fully right any wrongs that the Commission determines have been committed. The additional remedy proposed by OCC – the termination of the 2003 Stipulation – not only would serve no purpose, but would create a vacuum that would leave the Choice program completely adrift.

On brief, the Ohio Gas Marketers Group ("OGMG") and Honda of America Mfg., Inc. ("Honda") joined Dominion Retail in pointing out that the 2003 Stipulation, which was the product of extensive negotiations and vigorous litigation, constitutes the framework governing the complex relationship between COH and the marketers operating on its system (*see* OGMG Br., 2; Honda Br., *passim*). OCC, on the other hand, makes no mention in its initial brief of the consequences of terminating the 2003 Stipulation prematurely, apparently taking the position that the Commission should terminate the 2003 Stipulation simply because it reserved the right to do so (OCC Br. 11-12), without regard to the fact that this "remedy" would throw the baby out with the bathwater. Indeed, this remedy, if adopted, would punish marketers participating in the Choice program, because marketers necessarily relied on the terms of the 2003 Stipulation in entering into contracts with their end-user customers. Moreover, what would replace the 2003 Stipulation? OCC has yet to tell us. In no event should the Commission terminate the 2003 Stipulation prior to October 31, 2008.

B. THE COMMISSION SHOULD NOT ORDER COH TO CONDUCT A WHOLESALE AUCTION WITHOUT PROVIDING THE OPPORTUNITY FOR STAKEHOLDER PARTICIPATION IN THE DEVELOPMENT OF THE PROCESS.

On brief, OCC continues to assert that the Commission should order COH to implement a wholesale auction process forthwith, without any necessity for further proceedings (OCC Br. 57-62). As OCC would have it, additional stakeholder input is unnecessary because, if the Commission does not like the results of the auction, it can simply pull the plug on the process. Dominion Retail believes this approach is short-sighted and places the cart before the horse. Although, as indicated in its initial brief, Dominion Retail is not opposed to the concept of an auction process, Dominion Retail believes the far more logical course is to take up this issue in the context of the discussion of what will replace the 2003 Stipulation, where other important issues, such as COH's possible exit from the merchant function, can also be fully explored.

C. THE OCC-PROPOSED ADJUSTMENT TO REALLOCATE PIPELINE CAPACITY COSTS BETWEEN CHOICE AND GCR CUSTOMERS IS NOT SUPPORTED BY THE RECORD.

As argued by Dominion Retail in its initial brief, OCC's proposed adjustment to reallocate pipeline capacity costs between Choice and GCR customers is not supported by the record, would constitute impermissible retroactive ratemaking, is inconsistent with the 2003 Stipulation, and would create an additional barrier to competition in the COH service territory. Although no purpose would be served by repeating those arguments here, there is one comment in OCC's brief regarding this issue that Dominion Retail must address.

As noted in Dominion Retail's initial brief, one of the fundamental flaws in OCC witness Haugh's recommendation is that, contrary to fundamental ratemaking principles, he proposes to allocate pipeline capacity costs between Choice and GCR customers based on relative annual consumption rather than on relative peak-day demand, the basis upon which those costs are incurred. On brief, OCC attempts to support Mr. Haugh's use of this inappropriate methodology with the claim that "the M/P Auditor opined that Mr. Haugh's allocation was a reasonable alternative to the full study that the M/P auditor recommend that COH conduct" (OCC Br., 55, citing Tr. I, 82-83). As a review of the transcript will show, this is not at all what the M/P auditor said. After the M/P auditor reaffirmed that one could not determine whether the current, stipulated methodology actually worked to the detriment of the GCR customers without doing the load study he recommended (Tr., I, 79), counsel for OCC attempted to coax the M/P auditor into conceding that another way to allocate these costs would be to compare the relative usage of Choice customers and GCR customers as Mr. Haugh had done (Tr. I, 80). The M/P auditor rejected this, noting the apples-to-oranges nature of comparing usage over a given period to peak-day demand, and stating that, if one wanted to utilize an approach of this type, the only way to do so would be to install demand meters at every customer's premises (*id.*). OCC counsel then engaged the witness in a discussion of the cost that would be associated with such a measure (Tr. I, 80-83), which culminated with a question as to whether Mr. Haugh's approach would be a reasonable alternative to incurring this extraordinary cost (Tr. I, 83). Not surprisingly, when presented with only these two choices, the M/P auditor agreed that Mr. Haugh's approach would be a reasonable alternative (*id.*). However, the M/P auditor most certainly did not say that Mr. Haugh's approach was a reasonable alternative to either the current methodology, or to the study he recommended be conducted to fine-tune this long-standing methodology. More importantly, the M/P auditor never remotely suggested that Mr. Haugh's proposed retroactive reallocation of costs based on historical consumption was reasonable or appropriate.

COH properly relied on the stipulated allocation methodology in determining the price marketers paid for capacity over the audit period. Notwithstanding Mr. Haugh's attempt to couch this in terms of the reasonableness of the GCR rate to avoid the retroactive ratemaking hurdle (OCC Ex. 13, at 5), this is a zero-sum game. If, as OCC asserts, GCR customers paid too much for capacity, it necessarily follows that marketers paid too little. Obviously, the Commission cannot order marketers or their customers to make up this alleged underpayment, so OCC set it sights on COH, contending that COH should reimburse GCR customers even though the price the GCR customers paid was determined in accordance with the methodology that COH was bound to follow. This proposed after-the-fact adjustment should be rejected out of hand.

III. CONCLUSION

For the foregoing reasons, the Commission should reject the OCC proposals identified above.

Respectfully submitted,

BER

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following persons via first-class U.S. mail, postage prepaid, this 9th day of May 2007.

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