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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services.	))))	**Case No. 08-1344-GA-EXM**

OHIO GAS MARKETERS' GROUP
PROTEST AND OBJECTION TO COLUMBIA GAS OF OHIO, INC.
REVISED PROGRAM OUTLINE

I. INTRODUCTION

In accordance with the Commission's Entry of April 27, 2011, now come Commerce Energy, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, Inc.; Exelon Energy Company; Hess Corporation; Integrys Energy Services, Inc., Interstate Gas Supply, Inc.; Southstar Energy Services, LLC; and Vectren Retail LLC all parties of record in the above styled proceeding and collectively participating in this proceeding as the "Ohio Gas Marketers Group" ("OGMG") present a single objection to the Program Outline filed by Columbia Gas of Ohio ("Columbia") on April 15, 2011.

The Ohio Gas Marketers Group members are all active natural gas suppliers who are engaged in supplying natural gas in the Columbia Gas of Ohio service area. The OGMG has been an active participant in the Stakeholders Group since its inception. As regards the 2012 auction, the OGMG representative and many of the members attended every Stakeholder meeting. At these meetings the OGMG worked with Columbia and the other Stakeholders to develop a suitable Program Outline for the upcoming 2012 auction. Following months of discussions, on April 15, 2011, Columbia filed for Commission approval a Revised Program Outline which presents the procedures and key provisions for the 2012 Standard Choice Offer ("SCO"). The SCO shall be the way in which natural gas customers who do not have natural gas procurement arrangements will receive their natural gas commodity. In its SCO Program Outline, Columbia noted that other than the general challenge to the structure of a Standard Choice Offer[1], there was only one other matter to which some of the stakeholders objected.

The single issue raised by the OGMG is the manner and mode in which financial security to fund for possible supplier default is addressed. In the SCO Program Outline, as was the case in Columbia's two previous Standard Service Auctions, each bid winning supplier is required to back up the other suppliers in the event that any of the bid winning suppliers default in their load obligations. To protect the public, non defaulting suppliers step in to serve the load previously provided by the defaulting supplier at the auction clearing price. To prevent a domino effect of one defaulting bid winning supplier creating an obligation which financially imperils one or more of the other bid winning suppliers, each bid winning supplier is required to post financial security for the benefit of the other bid winning suppliers. In that fashion, if a bid winning supplier defaults and the remaining bid winning suppliers must step in to cover at the auction price, a form of insurance funds (referred to by the suppliers as the "Cross Collateral") will be made available to the non defaulting bid winning suppliers to enter the market and purchase the necessary supplies.

The Cross Collateral is posted only by the bid winning suppliers for the benefit of the other bid winning suppliers to meet their back up obligation. The Program Outline provides Columbia itself with separate collateral also supplied by bid winning suppliers which covers just Columbia's possible financial exposure in the event a bid winning supplier defaults. Because of

[1] The Office of the Consumers' Counsel and Ohio Partners for Affordable Energy qualified their support for an SCO auction as part of the October 7, 2009 Stipulation (See page 2. Footnote 6).

the two separate collateral provisions, no set of circumstances exists in which Columbia would receive any of the Cross Collateral funds for its own use or to offset its obligations under the SCO Program. Nevertheless, over the objections of all the supplier stakeholders, Columbia has proposed that the Cross Collateral security be paid to Columbia in the form of a cash deposit. Further, Columbia proposes no restriction on the account in which the cash deposit will be posted, or on the use of the cash deposit. The amount of the Cross Collateral security is estimated to be in the range of $35 to $40 million in 2012.

Since discussions commenced regarding the ongoing program, the Ohio Gas Marketers Group requested on several occasions the use of letters of credit or surety bonds in lieu of a cash deposit. A cash deposit as proposed by Columbia has two major flaws. First, it is not as secure as a letter of credit or surety bond. Second, a cash deposit is more expensive. The higher cost of using a cash deposit should be of great concern to the Commission, as a cost of Cross Collateral gas will be part of the bid price which customers pay. Using lower cost letters of credit or surety bonds should reduce the ultimate cost of natural gas to the retail standard service customer.

Thus, the Ohio Gas Marketers request the Commission to amend Section 15 of the SCO Program Outline so that in lieu of supplying Columbia with a cash deposit for the Cross Collateral, bid winning suppliers would provide a letter of credit or surety bond from a bank or financial institution.

II. ARGUMENT: THE COMMISSION MUST ELIMINATE THE MANDATORY CASH DEPOSIT FOR SUPPLIERS CONTAINED IN SECTION 15, SUBSECTION 5 OF THE APRIL 15, 2011 REVISED PROGRAM OUTLINE.

In its Opinion and Order in Case No. 08-1344-GA-EXM (December 2, 2009), the Commission authorized Columbia to substitute an auction in lieu of a gas cost recovery mechanism for service years 2010, 2011, and 2012[2] pursuant to Section 4929.04, Revised Code. The Opinion and Order approved a Stipulation which presented the basic program. The Stipulation was augmented with a Program Outline[3] that provided additional detail which was incorporated as part of Columbia's application. Section 14 of the current Program Outline entitled "SSO/SCO Supplier Credit Requirements" establishes two financial assurances which every bid winning supplier must supply. The first financial assurance is a credit requirement which is set by Columbia to assure reimbursement if the bid winning supplier defaults and the default causes Columbia to make any expenditure. The second financial assurance is the Cross Collateral. Section 14 of the Program Outline for 2011 specifies that the Cross Collateral security can only be paid in the form of a cash deposit. The Ohio Gas Marketers Group members requested that in lieu of a cash deposit, a letter of credit or surety bond be used as the Cross Collateral. In both the 2010 and 2011 auctions Columbia refused to accept a letter of credit and insisted on a cash deposit. Columbia also refused to put the cash deposits in a segregated account strictly for the benefit of the bid winning suppliers. Columbia merely posts the cash deposits in its general books, and as such the Cross Collateral funds can be attached by Columbia's creditors. Both Dominion East Ohio and Vectren Energy Delivery of Ohio have cross collateral provisions similar to what is used in Columbia. Both Dominion and Vectren use financial instruments rather than cash deposits.

In the Revised Program Outline filed on April 15, 2011, Section 15 entitled "SCO Supplier Security Requirements" replaces Section 14 of the 2011 Program Outline. Once again bid winning suppliers have two sets of financial assurances. Section 15, Subsections 1-3, establish a financial assurance by the bid winning supplier to Columbia in the event that a default

[2] The service runs from April 1 to March 31st to match the storage cycle. Thus, the current 2011 service year will run from April 1, 2011 through March 31, 2012.

[3] Filed on November 12, 2009.

creates a cost to Columbia. The second financial assurance requirement is the Cross Collateral security designed to provide financial security to the bid winning suppliers.

The need for the Cross Collateral for the non-defaulting bid winning suppliers stems from Section 15, Subsection 5, of the Revised Program Outline. To assure an uninterrupted flow of natural gas after a supplier default each non defaulting bid winning supplier is responsible for a pro rata of the short fall. The only limit would occur if the multiple defaults pushed the backup requirement above 150% of its bid winning supplier's contract quantity. In other words, if a default occurs, the non-defaulting bid winning Suppliers not only must step in and physically cover for the shortfall, but they will only be paid the regular bid price for the extra supplies. In a situation where some flowing gas supplies may be constricted for any reason, or market conditions dictate , the price of gas could rise dramatically.

To protect the non-defaulting suppliers financially, Section 15, Subsection 5 requires all bid winning Suppliers to post an additional financial security for the benefit of the other bid winning suppliers to cover the risk of the 50% back up. The Program Outline is clear that this Cross Collateral among the Suppliers is not only posted just by the Suppliers, it is strictly for the Suppliers – not Columbia. Subsection 5 states in part:

> This financial security shall be held and administered by Columbia <u>exclusively for the benefit of the other SCO Suppliers</u> who are called upon to cover for the SCO Supplier in case of their default. (emphasis added)

The amount of this Supplier Cross Collateral in favor of the other Suppliers has been set in Subsection 5 and tariff provisions Section VIII Sheet 6, page 2 of 2, at fifty cents ($.50) per Mcf. Subsection 5 and the tariff require the Cross Collateral to be a "cash deposit". The amount of money required for the Cross Collateral is significant. For the 2011 auction, given the projected volume of Mcf projected as required to cover the SSO load, each Supplier had to deposit over $2.50 million dollars per tranche. Since 16 tranches were awarded, Columbia collected from the Suppliers for service year 2011 more than forty million dollars ($40 million). For the 2012 auction the OGMG expects Cross Collateral to be roughly equal the amount collected in service year 2011.

Columbia's administration of the Cross Collateral financial assurance for the bid winning suppliers during the standard service offer auction has not been in the best interests of the customers and this error should be remedied for Columbia's SCO auctions. First, Columbia did not establish the Supplier Pool in a separate account in a bank or insured financial institution with the Cross Collateral monies pledged exclusively for the benefit of the Suppliers. Thus, Columbia exposed the Supplier to the potential loss of the Cross Collateral cash deposits should Columbia's creditors make claims or file liens upon Columbia's general assets.[4] Second, by failing to bank or invest the cash deposit, Columbia usurped the time value of the Cross Collateral. Third, the use of a cash deposit is more expensive than a letter of credit or surety bond from a bank or financial institution, thereby potentially raising the cost of participation and thus the cost to the retail customers.

[4] As the recent events at Fairport Harbor and the Design A Riser issues of 2008 demonstrate, there is a serious potential for natural gas utilities to have large, unforeseen claims arising out of accidents and fires due to the combustible nature of natural gas.

III. CONCLUSION

The Ohio Gas Marketers Group recommends that Subsection 5 of Section 15 be revised to permit the use of letters of credit or surety bonds in lieu of cash deposits. The letter of credit and surety bonds would clearly identify the other bid winning suppliers as the beneficiary with Columbia acting as custodian.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served by regular U.S. mail, postage prepaid, or by email, where applicable, this 9th day of May, 2011, on the following:

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