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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) Case No. 08-1344-GA-EXM
Exemption of Certain Natural Gas Commodity)
Sales Services or Ancillary Services from)
Chapters 4905, 4909, and 4935 except Sections)
4905.10, 4935.01, and 4935.03, and from)
Specified Sections of Chapter 4933 of the)
Revised Code.)

OHIO GAS MARKETERS' GROUP
MEMORANDUM CONTRA TO THE APPLICATION FOR REHEARING
BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND
OHIO PARTNERS FOR AFFORDABLE ENERGY

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I. INTRODUCTION

On September 7, 2011, the Commission issued a second Opinion and Order in the above styled proceeding affirming its first Opinion and Order issued December 2, 2009. The December 2, 2009 Opinion and Order approved a Stipulation which replaced Columbia Gas of Ohio's Gas Cost Recovery mechanism for procuring and pricing natural gas for use with its standard service, with a public auction. Specifically, the December 2, 2009 Opinion and Order authorized two different types of auctions during service years¹ 2010, 2011 and 2012. In the first two years, Columbia was to procure natural gas supplies for its provider of last resort service by use of a standard service offer ("SSO") type auction. An SSO auction is one in which the winning bidders each get an allocated portion of the aggregate demand and Columbia provides daily delivery requirements to the bid winning suppliers as to the amount of gas needed². In service year 2012, the auction method is to be altered so that instead of an allocated portion of the

¹ The Columbia Gas service year runs from April 1st to March 31st.

² See Direct Prepared testimony of Dan Creekmur Columbia Exhibit No. 1.

aggregate demand of all default customers, the winning auction bidders are given an allocated portion of specific default customer loads. The auction that will replace the SSO auction is called the standard choice offer, or SCO auction.. An SCO Auction is the method now in use by the East Ohio Gas Company and Vectren Energy Delivery of Ohio.

The Stipulation which was the basis for the Commission's December 2, 2009 Opinion and Order also provided that a party to the Stipulation could petition the Commission to revoke use of an SCO auction in favor of another SSO auction for the 2012 service year. The Office of the Consumers' Counsel (OCC) and the Ohio Partners for Affordable Energy ("OPAE") made such a petition. A full hearing was conducted including pre-trial discovery, direct testimony by expert witnesses, cross examination and closing arguments. Based on the record, the Commission found that the 2012 auction should proceed as previously authorized.

On October 7, 2011, the OCC and OPAE in a joint application for rehearing raised five alleged errors which they claim require revocation of the September 7, 2011 Opinion and Order. The five alleged errors present two main issues³. First, OCC and OPAE, without any support in the record, allege that the SCO auction constitutes replacing Columbia as the provider of last resort with the bid winner on a Choice contract basis. Second, the OCC and OPAE continue to argue that since state and local taxes are higher with the SCO auction and since residential customers get no benefit from those taxes, the SCO procured gas is more expensive. Both arguments are based on faulty presumptions. As Mr. Creekmur's testimony⁴, and the program outline filed April 15, 2011 clearly states Columbia is continuing to provide the default commodity service to all customers that do not affirmatively choose a supplier. The SCO auction

³ At hearing the OCC and OPAE alleged three main issues - See September 7, 2011 Opinion and Order p. 11. The issue of customers being confused by having the name of the bid winning supplier on the invoice has been dropped for purposes of the rehearing petition.

⁴ Columbia Exhibit No. 1 p. 1.

conducted exactly the same as the SSO auction in all material respects including use of a descending clock format to establish the adder, plus the New York Mercantile Exchange (NYMEX) monthly closing price for customers that have not selected a competitive supplier. The red lined compliance tariffs filed in this proceeding in large measure merely substitutes the acronym of "SCO" for "SSO". The only additional change that occurs in the SCO paradigm that does not exist in the SSO paradigm is the disclosure to each customer of the identity of the supplier. The customer retains the right at all times to change from the SCO supply price to any competitive supplier of their choosing, without a cancellation fee and without any interruption in service. The tariffs still provide for a Choice program separate and apart from the SCO auction. No evidence was presented in this case that Columbia was exiting the merchant function and merging its standard service offer into the Choice program. However, ample evidence was provided that between the two auctions, SSO and SCO, the SCO auction was significantly more consistent with the Ohio policy as set forth in 4929.02(A) Ohio Revised Code.⁵

The Energy Policy claims make up four of the five errors claimed by the OCC and OPAE. The last claim is the lack of benefit provided by the SCO. The basis for this error is the tax issue. More than half of the 44 page application for rehearing is devoted to restating the OCC's belief that the price of natural gas must be measured with the after sale taxes and that citizens get less than a dollar's worth of services for a dollar paid in state and local taxes levied on natural gas.

II. ARGUMENTS

The first two grounds alleged in the OCC and OPAE Joint Application for Rehearing are as follows:

- A. The Commission erred when it determined that Columbia may implement a retail SCO auction process, in violation of the state policy in R.C. 4929.02(A)(3) mandating that consumers must be given "effective choices over the selection of

⁵ See OGMG Exhibit No. 1 p. 3.

those supplies and suppliers." Customers are not given "effective choices" and "selection" under the process in the SCO auction that assigns customers to Marketers without the customers' consent.

- B. The Commission erred when it determined that Columbia may implement a retail SCO auction process, in violation of the state policy in R.C. 4929.02(A) (7) mandating that retail natural gas competition must provide for "willing buyers," among other things. Customers are not "willing buyers" under the process in the SCO auction that assigns customers to Marketers without the customers' consent.

First, and most importantly, the first and second Assignments of Error should be denied in their entirety inasmuch as OCC and OPAE have not presented any new arguments for the Commission's consideration. As the Commission pointed out, Ohio Gas Marketer witness Vincent Parisi specifically testified on 4929.02(A) Ohio Revised Code, and how SCO auctions are more consistent with State Policy in Section 4929.02, Revised Code, and many of the sections therein. Second Opinion and Order at 11. The Applicants had an opportunity to present witnesses or evidence at hearing to support the allegations presented in their first two Assignments of Error and failed to do so. The Commission has already determined that moving to an SCO auction is consistent with and advances the state policy in Section 4929.02, Revised Code when it authorized the use of an SCO auction in the December 2, 2009 Opinion and Order in the above styled proceeding.

While the Commission can and should deny the Application for Rehearing on this ground alone, the assertions made in the Application for Rehearing should be also denied for the reasons explained below.

The basis for OCC's and OPAE's first and second alleged error as to the Commission September 7, 2011 Opinion and Order is premised on the belief that an SCO auction eliminates Columbia from its role as provider of last resort and replaces that role with the a Choice contract supplied by the SCO bid winner. Assuming that erroneous fact, OCC and OPAE then argue that

residential customers only have the Choice program and no standard service option. Thus, the SCO auction eliminates a method by which residential customers can purchase natural gas and that violates Section 4929.02(A)(3), Revised Code. The second alleged error is that the assignment of the default customer to a Choice supplier under a Choice contract violates the State Energy Policy as to natural gas Section 4929.02(A)(7), Revised Code because the residential customer did not willing select the Choice program. As noted above, there is no basis in fact or in the record by which one can conclude that the standard offer is being eliminated and replaced with Choice contracts. Simply stated, whether it is a standard service offer (SSO) or standard choice offer (SCO) auction, either results in default service being priced as a monthly NYMEX plus adder product to the customers that have not shopped, and both are the default service for the same group. The terms and conditions of the default service are set by tariff. The price for the standard service supplied natural gas is set via an auction, the results of which are approved by the Commission. The SCO supplier cannot and does not set either the price or the duration of the service or for that matter any other term and condition. The SCO continues to be the default service for customers that have made no election. Finally, the SCO bid winning suppliers sign a supply agreement with Columbia⁶.

Simply put, the standard service offer is a tariffed supply service for default customers, similar to that provided under the SSO paradigm. Should the bid winning supplier go bankrupt, the standard service customer continues to receive default service under the same pricing and paradigm as what would have existed in an SSO paradigm. Customers are in no more danger of losing service under SCO than in SSO.⁷

Thus, contrary to the first and second alleged err, the consent for the default service rests

⁶ See the Revised Program Outline, Section 16.

⁷ Id.

with the service agreement between Columbia and the customer which imposes the terms and conditions of the Columbia tariff, although in the SCO a customer has more information specifically the name of the supplier providing his/her commodity service. As a provider of last resort, Columbia will ensure that each residential customer has full service and if a residential customer does not have its own source of natural gas purchased from a competitive retail natural gas supplier, the customer will receive default service and his/her natural gas from an SCO bid winning supplier. Further, the residential customer can at any time change from the standard service to a Choice provider. The process of requesting such a change and the amount of time to implement the change from standard service to Choice is identical regardless of whether the supply is obtained by Columbia via an SSO or SCO auction.

Since there is no basis for OCC and OPAE claim that the SCO auction eliminates the availability of standard service, the first alleged error should be denied by the Commission.

The third ground for rehearing contained in the OCC and OPAE Joint Application for Rehearing is as follows:

- C. The Commission erred when it determined that Columbia may implement a retail SCO auction process, in violation of R.C. 4905.72 which prohibits any public utility from requesting or submitting, or causing to be requested, or submitted, a change in the provider of natural gas to a consumer in this state, without first obtaining, or causing to be obtained, the "verified consent of the consumer" in accordance with rules adopted by the Commission.

The OCC and OPAE third alleged error is that by moving a standard service residential customer from the standard service offer to a Choice supplier without affirmative consent of that residential customer, Columbia has committed "slamming" in violation of the Section 4905.72, Revised Code. Once again, this argument is based on the faulty premise that a standard service customer is being transferred to the Choice program. The fact of the matter is that if a standard service customer in 2011 does not voluntarily sign up with the competitive retail natural gas supplier,

such a customer will continue to receive the standard service in 2012. Further, the gas supplied for the standard service will be provided by an auction bid winner, the same as in the SSO auction, and that bid winning supplier will be selected because it has bid the lowest price in a publically run auction. The only difference between the SCO auction and the SSO auction is the back room administration by which the bid winning supplier provides the natural gas to Columbia needed for the standard service program, and the name recognition the supplier will receive on the invoice.

This brings us to the OCC and OPAE's fourth alleged error, that the SCO is not more beneficial to customers than an SSO auction:

- D. The Commission erred when it determined Columbia may implement a retail SCO auction process, rather than another wholesale SSO auction process, because the parties supporting the SCO auction failed to meet their burden to prove that the anticipated benefits from an SCO auction are real.

The fourth error alleged by OCC and OPAE is that the proponents of the SCO auction have failed to "...prove that the anticipated benefits from an SCO auction are real".⁸ As a threshold matter, this Assignment of Error should be denied inasmuch as (like the first two assignments of error), OCC and OPAE have raised no new arguments for the Commission's consideration. The Commission's Second Opinion and Order demonstrates that the Commission thoroughly considered the arguments raised by all parties (including OCC and OPAE in their Application for Rehearing) and therefore the Application for Rehearing should be denied in its entirety on this ground alone. Second Opinion and Order at 4-9, 11-13.

Further, it must be noted that as written the claimed error is flawed. How can one "prove" that a projected event is real if by definition a projected event has not occurred yet? Second Opinion

⁸ Joint Application for Rehearing pp. 13 -28.

and Order at 12, *citing* Tr. II at 299. Not only does that fact not seem to bother the OCC and OPAE, but on page 11 of the Joint Application for Rehearing OCC and OPAE declare that:

“Quantification of benefits is crucial as the December 2, 2009, Opinion and Order specifically requested “evidence” of anticipated benefits – not merely opinions with respect to anticipated benefits.”

In terms of proving a future event, the best, in fact, the only evidence that is possible is testimony from qualified experts who have based their opinions using the best information available. In the matter at bar, that included Vince Parisi the witness from the Ohio Gas Marketers Group, who as an experienced natural gas marketer provided five reasons why a natural gas supplier would prefer an SCO auction to and SSO auction. The five reasons included administrative efficiency, uniformity among the Ohio local distribution companies⁹, Commission oversight for in an SCO auction all suppliers must be certificated by the Commission and are under Commission regulatory jurisdiction, an opportunity to inform the defaulting customer of shopping opportunities, and that the SCO auction is more in line with state energy policy¹⁰. Further, proof that supply bidders prefer the SCO auction to the SSO was provided by witness Cahaan who surveyed the seven suppliers. Finally, and most impressive was the longitudinal study prepared by Staff Witness Puican that found that offers were lower in the SCO auctions conducted by East Ohio and Vectren to SSO auctions, and that the SCO auction brought out more bidders¹¹.

To refute the testimony of witnesses Parisi, Cahaan and Puican of the clear preference by suppliers for SCO versus SSO auctions (which in the past has led to lower auction clearing prices), the OCC and OPAE note that DTE Energy and Hess, while signing the Stipulation in

⁹ When Columbia goes to the SCO auction, three of the four local distribution utilities will be using the same system.

¹⁰ OGMC Exhibit No. 1, p. 3.

¹¹ See Staff Exhibit No. 1 – Table 1 which is reproduced on page 8 of the September 7, 2011 Opinion and Order.

2009 to have two SSO auctions followed by an SCO auction, inserted a footnote to say that their support for the Stipulation should not be taken as support for SCO auctions. From this, the OCC and OPAE extrapolate the position that some suppliers like Hess and DTE may not participate in a future Columbia auction if it is an SCO¹². There is no support for this speculation. In fact, if one was going to make an inference, the stronger argument is that DTE and Hess are indifferent. Counsel for DTE attended the hearing and was asked if he wished to make a closing statement. Counsel did not express an opinion that DTE would not participate in an SCO auction, or for the matter even the weaker position of DTE will participate would prefer the SSO auction. Similarly, Hess, though a participant in the 2009 proceeding, did not make a presentation on the record either opposing the SCO auction or just favoring the SSO. In fact, the only party opposing the SCO auction is the OCC and OPAE, neither of whom are suppliers.

The argument that OCC and OPAE present to defend their position is that the SSO auction is a rehash of the argument that the Commission must assess the after sale tax implications and reduce the taxes paid by customers. Reducing tax payments is only beneficial if the reduced taxes will not result in less services or additional taxes being assessed in another form. The only argument that the OCC and OPAE raise is that the Commission failed to find that the sales tax rates could be higher than the Gross receipt tax rates¹³. The Commission could not have been more clear in its Opinion and Order that it would not sit in judgment of the Ohio state and local government taxing scheme and would not change energy regulatory policy to alter

¹² Joint Application for Rehearing, p. 23.

¹³ Id., at 30.

the tax outcome of transactions¹⁴. There appears to be nothing further than can be added to the Commission decision.

The fifth alleged error presented in the OCC and OPAE Application for Rehearing is as follows:

- E. The Commission erred when it failed to comply with the requirements of R.C. 4903.09, which requires the PUCO to provide specific findings of fact and written opinions that were supported by record evidence, including that the Commission erred by not filing any findings of fact and written opinions regarding the issue (Tr. II at 438 et seq.) of whether customers are "willing buyers" as required by R.C. 4929.02 (A)(7).

This assignment of error should be denied inasmuch as the Commission's Opinion and Order does not violate Section 4903.09, Revised Code. The Ohio Supreme Court has held that in order "to meet the requirements of R.C. 4903.09, *** the PUCO's order must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion." *Indus. Energy Users-Ohio v. Pub. Util. Comm'n*, 117 Ohio St.3d 486, 885 N.E.2d 195 (2008). Further, strict compliance with the terms of Section 4903.09, Revised Code, is not required, but the Commission must have record support for its orders. *Tongren v. Pub. Util. Comm'n*, 85 Ohio St.3d 87, 90, 706 N.E.2d 1255 (1999). The Commission's Second Opinion and Order provides the basic rationale and citations to the record to support its Order and therefore there is no violation of Section 4903.09, Revised Code.

Additionally, Section 4929.02(A)(7), Revised Code makes it state policy to support moving away from regulated rates to market transaction rates. That is the only context within the statute that makes reference to "willing buyers" and "willing sellers". The testimony of OGMG witness Parisi demonstrates how moving to an SCO auction is consistent with and

¹⁴ September 7, 2011 Opinion and Order, p. 12.

advances the state policy under Section 4929.02, Revised Code, including subsection (A)(7).

The Commission adopted OGMG's unrefuted position on this section of the Revised Code.

Second Opinion and Order at 11. The Application for Rehearing should be denied inasmuch as it is wrong and it raises no new issues for the Commission's consideration.

III. CONCLUSION

For all the reasons discussed above, the Ohio Gas Marketers request the Commission to deny the request for Rehearing filed by OCC and OPAE.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

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