

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the Joint Motion)
to Modify the December 2, 2009 Opinion and Order) Case No. 12-2637-GA-EXM
and the September 7, 2011 Second Opinion and)
Order in Case No. 08-1344-GA-EXM.)

**HESS CORPORATION’S
MEMORANDUM CONTRA JOINT MOVANTS’
MOTION TO MODIFY ORDERS GRANTING EXEMPTION AND
MOTION FOR BIFURCATION OF THE CAPACITY AND BALANCING ISSUES
ON AN EXPEDITED BASIS**

I. INTRODUCTION

On October 4, 2012, Columbia Gas of Ohio, Staff of the Public Utilities Commission of Ohio, Ohio Gas Marketers’ Group, Retail Energy Supply Association, and Dominion Retail, Inc. (collectively, “Joint Movants”) filed a Joint Motion to Modify Orders Granting Exemption and Motion for Bifurcation of the Capacity and Balancing Issues on an Expedited Basis. Hess Corporation (“Hess”) opposes an expedited ruling on the Joint Motion to Modify Orders Granting Exemption as unlawful. Hess does not oppose an expedited ruling on the Motion for Bifurcation, nor does it oppose the Motion for Bifurcation as long as the stipulation on which the Commission is to rule also is bifurcated, and the parties are provided ample due process in each phase of the proceeding, including meaningful time for discovery, hearing and briefing.

II. ARGUMENT

A. Issuance of an Expedited Ruling on the Joint Application is Unlawful.

The Joint Motion, at 2, and Memorandum in Support, at 10, appear to request an expedited ruling on the Joint Motion to Modify Orders Granting Exemption. Hess notes that the Joint Motion was filed pursuant to Section 4929.08(A), Ohio Rev. Code, which requires notice

and hearing before the previous Commission orders may be modified. Thus, an expedited ruling on the Joint Motion would be unlawful. By motion filed contemporaneously with this memorandum contra, Hess seeks to intervene in this proceeding and opposes the Joint Motion to Modify Orders Granting Exemption on its merits. Hess' memorandum in support of its motion to intervene is incorporated by reference herein as the basis for Hess' opposition to the Joint Motion.

B. Hess Does Not Oppose an Expedited Ruling on the Motion to Bifurcate

Although unclear, Hess believes that Joint Movants actually seek an expedited ruling only on the Motion to Bifurcate. Hess does not oppose an expedited ruling on such motion, provided interested persons are provided at least seven days from filing such motion to file memoranda contra, as provided in Rule 4901-1-12(C), Ohio Admin. Code.

C. A Bifurcated Proceeding Requires that the Stipulation be Bifurcated.

The Commission uses a three-pronged standard for reviewing stipulations and partial stipulations presented for its consideration:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

See, e.g., *In Re Vectren Energy Deliver of Ohio, Inc. for Approval of its Exemption Authority Granted in Case No. 07-1285-GA-EXM*, PUCO Case NO. 12-483-GA-EXM (Opinion and Order, May 16, 2012). If this proceeding is bifurcated as Joint Movants propose, the Commission will be precluded, under the above standard of review, from considering whether the entire “settlement, as a package, benefit[s] ratepayers and the public interest.” Emphasis

supplied. Obviously, in the first phase of the bifurcated proceeding, the Commission cannot rely on yet-to-be adjudicated matters in the second phase of the proceeding to make the determination required by the second prong of its standard. Accordingly, Hess opposes bifurcation of these proceedings unless the stipulation is bifurcated for consideration of the respective issues in each phase of the proceeding.

III. CONCLUSION

Wherefore, for the foregoing reasons, Hess (1) opposes granting an expedited ruling on the Joint Motion to Modify Orders Granting Exemption as unlawful, (2) does not oppose an expedited ruling on the Motion to Bifurcate, and (3) does not oppose the Motion for Bifurcation as long as the stipulation is bifurcated for consideration of the respective issues in each phase of the proceeding, and the parties are provided ample due process in each phase of the proceeding, including meaningful time for discovery, hearing and briefing.

Respectfully submitted,

/s/ Dane Stinson

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing *Hess Corporation's Memorandum Contra Joint Movants' Motion to Modify Orders Granting Exemption and Motion for Bifurcation of the Capacity and Balancing Issues on an Expedited Basis* was served by regular U.S. Mail and electronic mail this 9th day of October, 2012, on the persons listed below.

/s/ Dane Stinson

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/9/2012 3:16:30 PM

in

Case No(s). 12-2637-GA-EXM

Summary: Memorandum Contra Joint Motion electronically filed by Mr. Dane Stinson on behalf of Hess Corporation