BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

POST-HEARING BRIEF OF

DIRECT ENERGY SERVICES, LLC AND

DIRECT ENERGY BUSINESS, LLC AND

INTERSTATE GAS SUPPLY, INC.

December 11, 2012

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I. INTRODUCTION

On October 4, 2012 (as amended on November 27, 2012), the Public Utilities Commission of Ohio ("Commission") received a proposal which creates a blueprint for the final steps of a years-long, methodical process to provide Columbia Gas of Ohio ("Columbia") customers a true competitive marketplace for their natural gas commodity service. Joint Exhibit 2 at 5-6. The Commission has an opportunity to stoke an even more exciting and vibrant marketplace for customers and suppliers during and after the process of achieving the shopping benchmarks to trigger an exit of the merchant function for non-residential customers. Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, "Direct Energy") and Interstate Gas Supply, Inc. ("IGS") support approval of the amended filings in their entirety and encourage the Commission to adopt a proportional allocation methodology to apportion customers upon the exit of the merchant function by Columbia.

II. THE COMMISSION SHOULD APPROVE A PROPORTIONAL ALLOCATION METHODOLOGY FOR THE INITIAL ALLOCATION AND FUTURE ALLOCATION OF CUSTOMERS UPON AN EXIT OF THE MERCHANT FUNCTION BY COLUMBIA FOR NON-RESIDENTIAL CUSTOMERS.

The Amended Joint Stipulation states as follows: "Prior to Columbia's exit of the merchant function, a method for assigning supply default Choice-Eligible Customer should be determined. The Parties acknowledge and agree that such method should be part of this proceeding and include both the *initial allocation* upon Columbia's exits *as well as an allocation methodology for future supply* default Choice-Eligible Customers. The Parties agree that the allocation methodology shall be addressed by the undersigned in the testimony phase of this proceeding." Joint Exhibit 1 at 13, ¶39 (emphasis added).

A. <u>The Commission should adopt a proportional allocation methodology for the initial allocation of non-residential customers upon an exit of the merchant function by Columbia for non-residential customers.</u>

When reviewing the approval of this settlement one key component the commission must decide is how to allocate customers who have not yet selected a competitive supplier, once an exit occurs. Direct Energy and IGS strongly urge the Commission to choose a methodology that incents businesses to invest in customers and products here in Ohio. The methodology must be in line with the reality of what businesses can actually handle to avoid customer dissatisfaction. Lastly, any methodology which allows a supplier to avoid having a loyal relationship with customers and avoid investment in Ohio should be rejected.

First, the Commission should order a proportional allocation methodology for the initial allocation of non-residential customers upon an exit of the merchant function of non-residential customers by Columbia. A proportional allocation methodology for the initial allocation of non-residential customers is supported by Columbia, Direct Energy, and IGS. Columbia Exhibit 6 at 16; Direct Energy Exhibit 1 at 6-8; IGS Exhibit 1 at 3-9. A proportional allocation methodology, as proposed by Direct Energy and IGS, is the best way to enhance the competitive market for customers and for suppliers. Direct Energy Exhibit 1 at 6-8; IGS Exhibit 1 at 6-9.

Under a proportional allocation methodology non-residential customers would be assigned to a supplier based upon the supplier's market share in the Columbia market at the time of the assignment of non-residential customers. IGS Exhibit 1 at 3-4. In determining market share it would simply be a calculation by supplier, those desiring an allocation, with the numerator the number of customers served by the supplier in bi-lateral contracts and the denominator as the total number of customer served in bi-lateral contracts. IGS Exhibit 1 at 5.

A proportional allocation methodology provides specific benefits to customers. For example, by rewarding the "organic" acquisition of customers by suppliers, a proportional allocation methodology should induce lower prices for customers to choose from among supplier offers. IGS Exhibit 1 at 6. Further, customers would benefit through enhanced incentivizing of more innovative products and services if a supplier knows their efforts to enroll customers will be rewarded through the proportional allocation methodology. IGS Exhibit 1 at 6. Finally, a proportional allocation methodology provides the greatest incentive to achieve the shopping targets contained in the Amended Joint Stipulation in order to realize the full benefits of an exit the merchant function for customers. Direct Energy Exhibit 1 at 6-7.

A proportional allocation methodology also provides appropriate market signals to suppliers. A proportional allocation methodology ensures that a supplier's customer allocation is in proportion to the efforts the supplier made to achieve the shopping percentage requirements for an exit of the merchant function. Direct Energy Exhibit 1 at 6-8. Such an allocation methodology sends the proper signals to market participants to continue existing investments and to spur future, long-term investments in the Ohio marketplace. Direct Energy Exhibit 1 at 6-8. Many of these investments occur in Ohio, including employment of Ohioans as well as the purchases of many goods and services from Ohio companies. Direct Energy Exhibit 1 at 8; IGS Exhibit 1 at 8-9. A proportional allocation also incentivizes suppliers to make long-term investments and to actively participate in the Ohio marketplace. IGS Exhibit 1 at 7.

i. <u>The Commission should reject the allocation methodologies supported by Hess Corporation ("Hess") and Ohio Partners for Affordable Energy ("OPAE").</u>

Hess Corporation ("Hess") agrees that a proportional allocation of customers is appropriate. Hess Exhibit 1 at 7-8. However, Hess proposes a market share calculation that factors in the average number of tranches served by a supplier since the inception of Columbia's first standard service offer ("SSO") auction through the final standard choice offer ("SCO") auction before an exit of the merchant function. Hess Exhibit 1 at 7-8, Exhibit OM-2. Hess contends such an allocation methodology is necessary to continue to incent investment in the SCO auction and without this incentive SCO prices will increase in the future. Hess Exhibit 1 at 8. Hess' proposal suffers from several deficiencies and should be rejected.

First, Hess' argument should be rejected inasmuch as it attempts to bolster the very default rate mechanism the possible elimination of which is provided for by the Amended Joint Stipulation and Recommendation. Direct Energy and IGS both demonstrated adoption of the Amended Joint Stipulation and Recommendation will benefit customers and suppliers. Direct Energy Exhibit 1 at 7; IGS Exhibit 1 at 6-9. Hess made no attempt to rebut the customer and supplier benefits of the proportional allocation methodology supported by Direct Energy and IGS.

Hess also made no attempt to counter concerns raised by Direct Energy and IGS that an allocation methodology that includes consideration of previous auction results may result in awarding customers to bid winning suppliers who have no intent to further the long-term market for customers and suppliers. Direct Energy Exhibit 1 at 7. In fact, Hess' witness admitted as much, saying that even if the Commission adopted Hess' methodology that it might choose not to serve that class of customers and Hess might not accept the customers assigned to it. Tr. Vol. III at 155-156.

Hess' proposed allocation methodology might also lead to allocations of customers to companies who have left the Ohio marketplace entirely and therefore require a reallocation of those customers to winning bidder suppliers who actually remain in Ohio. Tr. Vol. III at 152-153; 156-157. Hess' explanation of its proposal would inject into its own proposed allocation methodology the same concerns about the rotational allocation methodology raised by Direct Energy and IGS. Specifically, the Hess proposal leaves open the question of whether a supplier allocated customers due to being an SSO/SCO bid winner would have the wherewithal to serve, or even would want to serve, the additional customers assigned to it because of another former bid winner's decision to leave Ohio and not take its allocation of customers. *See* Direct Energy Exhibit 1 at 8-9; IGS Exhibit 1 at 7, 9-11.

Finally, Hess claims adopting the Amended Joint Stipulation will create regulatory uncertainty in the retail and SCO markets and will therefore raise SCO prices. Hess Exhibit 1 at 8. First it should be noted that the Amended Joint Stipulation puts greater regulatory certainty into today's process by creating triggers and specific timelines for an exit of non-residential customers. In fact, the only portion for non-residential customers that is uncertain is how the post exit allocation of customers to suppliers for MVR would occur. Under the proportional methodology supported by Direct Energy and IGS, suppliers will be able to make investments commensurate with these triggers and timelines to increase their market share in preparation for an exit. SSO/SCO suppliers who rely solely on that business model have no incentive to make additional investments, bring new products, or take time to become part of the community in this state if the allocation uses historical SSO/SCO load to allocate customers. In addition, Hess' position as it relates to including historical tranche ownership in the proportional allocation methodology would introduce the same uncertainty for SCO bid winners that Hess complains about in its testimony. There are many suppliers who have bid into earlier auctions that are not currently active retail suppliers in the Ohio marketplace. Hess witness Mangani recommends that if an SSO/SCO bid winner is no longer in the Ohio marketplace that any customers assigned to that supplier would be divvied up among remaining SSO/SCO bid winners in Ohio at the time of an exit of the merchant function. Tr. Vol. III at 156-157. However, an SSO/SCO bid winner will have no way to know what its ultimate share of customers would be at the time of an exit because it would not know how many SSO/SCO suppliers will be in the market at the time of the exit. This sort of uncertainty would logically factor into SCO bidders' behavior and be a detriment to the marketplace and customers.

Finally, several of the SSO/SCO suppliers have never served customers in a bi-lateral retail natural gas contract, such as BP and JP Morgan, and as stated previously Hess does not serve residential customers intentionally, and has no real desire to serve that customer class in the foreseeable future. Tr. Vol. III at 155-156. If SSO/SCO is included in the proportional allocation methodology, SSO/SCO suppliers might decide to take the allocation simply to resell the customers to other suppliers. Although any supplier should have the ability to exercise its right related to the customers it serves, including the SSO/SCO supplied tranches in determining the proportion allocated could have an unintended consequence of customers changing hands several times in very short order, which may create some confusion. Simply keeping the proportional allocation to those suppliers that have demonstrated a desire to serve customers through bi-lateral contracts ensures that those receiving an allocation intend to be in that market for the long term.

The proportional allocation methodology supported by Direct Energy and IGS also guards against the possible negative effects of the rotational methodology championed by OPAE.

OPAE Exhibit 2 at 26-27. No supplier proposed such a methodology; the only party to propose a rotational methodology was OPAE. OPAE Exhibit 2 at 26-27. OPAE's testimony makes blanket conclusory statements with no factual support about why the rotational allocation should be adopted. Further, OPAE provides no solutions for the issues identified by both Direct Energy and IGS with adopting a proportional allocation methodology for the initial allocation of non-residential customers upon an exit of the merchant function. These issues include whether a supplier could handle a large influx of customers on an operational and credit basis as well as possible higher monthly variable rate ("MVR") prices from those inexperienced suppliers to compensate for these risks. Direct Energy Exhibit 1 at 8-9; IGS Exhibit 1 at 7, 9-11.

The Commission should adopt the proportional allocation methodology supported by Direct Energy and IGS for the initial allocation of non-residential customers upon an exit of the merchant function in order to provide benefits to customers and suppliers, send the proper market signals to suppliers, and protect against the possible negative effects of other allocation methodologies described above. The concerns raised above do not exist with the proportional allocation methodology supported by Direct Energy and IGS. Suppliers that have significant market share are already very engaged in the organic acquisition retail market, are ready (operationally and financially) to serve an influx of assigned customers, and will enthusiastically accept those customers. The Commission should reject the allocation methodologies supported by Hess and OPAE.

B. The Commission should adopt a proportional allocation methodology for the future (on-going) allocation of customers upon an exit of the merchant function for non-residential customers of Columbia.

The Commission should also adopt a proportional allocation methodology for the future supply of non-residential default choice-eligible customers. Direct Energy and IGS demonstrated such an allocation methodology is in the best interests of customers as well as suppliers. Direct Energy Exhibit 1 at 10; *see also* IGS Exhibit 1 at 12. A proportional allocation methodology for the future allocation of customers incents those suppliers active in the market to continue (even after an exit of the merchant function) to provide solid value propositions to customers knowing their efforts will be recognized and their competitors will not be receiving the same benefits as they receive with little or no effort. Direct Energy Exhibit 1 at 10. Additionally, it would ensure that suppliers who are assigned customers as the exit the merchant function process continues to unfold are capable of handling those customers and providing them reliable and quality service. Direct Energy Exhibit 1 at 10; IGS Exhibit 1 at 9-11. It also allows new entrants into the market to know that with investment it can achieve (over time) increased market share and, thus, additional assignment.

To facilitate an on-going proportional allocation, the Commission should require Columbia to re-calculate the market share of each Supplier each month and then for that month allocate eligible customers according to that month's market share. Direct Energy Exhibit 1 at 10. Columbia already provides a monthly update on shopping customers and other statistics to interested parties so Columbia appears to be collecting and disseminating this kind of data already. Direct Energy Exhibit 1 at 10. Direct Energy recommends that the Commission order Columbia to work out the details of the monthly re-calculation as part of a working group with Suppliers. Direct Energy Exhibit 1 at 10-11.

For these reasons the Commission should adopt a proportional allocation methodology for the future allocation of non-residential default choice-eligible customers upon an exit of the merchant function by Columbia.

III. THE COMMISSION SHOULD APPROVE A PROPORTIONAL ALLOCATION METHODOLOGY FOR THE ALLOCATION OF RESIDENTIAL CUSTOMERS IF AND WHEN AN EXIT OF THE MERCHANT FUNCTION FOR RESIDENTIAL CUSTOMERS OCCURS.

The Commission should also determine now that a proportional allocation methodology is the default construct for the allocation of residential customers if and when an exit of the merchant function for residential customers occurs. Direct Energy Exhibit 1 at 11. This position is unopposed on the record and should be adopted.

A Commission decision now on this important issue sends a strong message to the supplier community that its investments and efforts will be rewarded in the allocation of residential customers just as they are for commercial customers. Direct Energy Exhibit 1 at 11. Even though a residential exit the merchant function is on a delayed track as compared to the non-residential exit the merchant function, efforts to enroll residential customers will continue and the same benefits and incentives as described above are equally applicable here. Direct Energy Exhibit 1 at 11. In the alternative, if the Commission does not affirmatively adopt a proportional allocation methodology for a residential customer exit, then the Commission should at least declare that a proportional allocation methodology will be the rebuttable presumption in any proceeding to exit the merchant function for residential customers. Direct Energy Exhibit 1 at 11.

IV. CONCLUSION

Direct Energy and IGS respectfully request that the Commission expeditiously approve the Amended Joint Motion and Amended Joint Stipulation as well as adopt a proportional allocation methodology supported by Direct Energy and IGS for both non-residential and residential customers.

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 this 11th day of December, 2012 by electronic mail, upon the persons listed below.

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