

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

FILE In the Matter 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. :

APPLICATION FOR REHEARING
AND
MEMORANDUM IN SUPPORT
OF
DOMINION RETAIL, INC.

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APPLICATION FOR REHEARING
OF
DOMINION RETAIL, INC.

Dominion Retail, Inc. ("Dominion Retail"), pursuant to Section 4903.10, Revised Code, and Rule 4901-1-35(A), Ohio Administrative Code ("OAC"), hereby applies for rehearing from the Commission's January 9, 2013 opinion and order in this docket, and, more specifically, from the Commission's determination of the methodology to be employed for allocating the remaining SCO customers to MVR suppliers upon the Columbia Gas of Ohio's exit from the non-residential merchant function. As its grounds for rehearing, Dominion Retail submits that the Commission's order is unreasonable and unlawful in the following particulars:

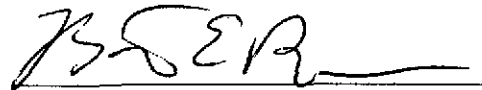
1. The Commission's determination that tranches awarded in SSO auctions should be considered in calculating the ratio to be applied in allocating customers to MVR suppliers ignores that SSO auctions were wholesale auctions, that no future SSO auctions are contemplated by the Amended Stipulation, and that certain winning bidders in the prior SSO auctions are not certified CRNGS providers and are no longer active in COH's service area.
2. There is no rational basis for the Commission's determination that tranches awarded in the 2012 SCO auction should be considered in calculating the ratio to be applied in allocating customers to MVR suppliers upon COH's exit from the non-residential merchant function.
3. The SCO customer allocation methodology approved by the Commission is internally inconsistent and fails to provide sufficient guidance with respect to the specifics of the calculation to be employed in determining the allocation ratio.

4. The allocation of a minimum of at least one percent of the pool of SCO customers to an MVR supplier with a market share less than or equal to one percent is inconsistent with the objective of assuring that MVR suppliers are equipped to handle the number of customers allocated to them and reduces the incentive for CRNGS suppliers to compete for market share.

Pursuant to Rule 4901-1-35(A), OAC, a memorandum in support more fully explaining these grounds for rehearing is attached hereto.

WHEREFORE, Dominion Retail respectfully requests that the Commission grant its application for rehearing,

Respectfully submitted,



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**MEMORANDUM IN SUPPORT
OF
APPLICATION FOR REHEARING
OF
DOMINION RETAIL, INC.**

Introduction:

By its January 9, 2013 opinion and order (“Order”), the Commission adopted the amended stipulation and recommendation filed herein on November 21, 2012 by Columbia Gas of Ohio, Inc. (“COH”), the Commission staff, and a number of parties to this proceeding (“Amended Stipulation”) as its resolution of the matters raised by the above-styled joint motion to modify the exemption orders previously issued for COH in Case No. 08-1344-GA-EXM. Although the Amended Stipulation addressed, *inter alia*, the criteria for COH’s future exit from the non-residential and residential merchant functions, the Amended Stipulation reserved for litigation the question of the methodology to be employed for allocating the remaining pool of non-shopping customers to competitive retail suppliers under the monthly variable rate (“MVR”) program once COH was relieved from arranging for default commodity service.¹ Thus, it fell to the Commission to establish the appropriate customer allocation methodology based on its evaluation of the recommendations of the five witnesses that provided testimony on this subject.

¹ See Joint Exhibit 1, at 13 (Paragraph 39).

COH witness Brown, Interstate Gas Supply, Inc. (“IGS”) witness Friedeman, and Direct Energy Services, LLC /Direct Energy Business, LLC (“Direct”) witness Bryzewski all recommended assigning the remaining SCO customers to CRNGS suppliers participating in the MVR program based on relative market share as reflected by the proportion of their Choice enrollment and governmental aggregation customers at the time of the allocation.² However, COH witness Brown, who limited his recommendation to the allocation of the non-residential customers, proposed that a minimum of one percent of the customers to be allocated be assigned to an MVR supplier with a market share less than or equal to one percent, and that new customers (*i.e.*, customers applying to COH for distribution service subsequent to COH’s exit from the non-residential merchant function) be done on a rotational basis.³ On the other hand, IGS witness Friedeman proposed that new customers should also be allocated to MVR suppliers on a proportional market-share basis,⁴ and both he and Direct witness Bryzewski advocated that the methodology should be established for allocating both non-residential and residential customers to MVR suppliers as a part of this proceeding.⁵

Hess Corporation (“Hess”) witness Magnani recommended a non-residential customer allocation methodology that would also take into account suppliers’ historic SSO and SCO tranche ownership. More specifically, Mr. Magnani proposed that the ratio used to allocate the non-residential, non-shopping customers should be based on the number of Choice-eligible customers served by the supplier at the time of the exit, plus the number of customers represented by the relative percentage of SSO/SCO customers served by the supplier from the first SSO auction in 2010 through the final SCO auction before the exit, divided by the total

² See COH Exhibit 6 (Brown Direct), 16; IGS Exhibit 1 (Friedeman Direct), 12, and Direct Exhibit 1 (Bryzewski Direct), 3-4.

³ See COH Exhibit 6 (Brown Direct), 16.

⁴ See IGS Exhibit 1 (Friedeman Direct), 12.

⁵ See IGS Exhibit 1 (Friedeman Direct), 5; Direct Exhibit 1 (Bryzewski Direct), 4.

number of Choice-eligible non-residential customers at the time of the exit.⁶ Hess, which was not a signatory to the Amended Stipulation, opposed a COH residential exit,⁷ at least until residential shopping reaches a level considerably higher than stipulated 70 percent trigger,⁸ but Mr. Magnani did indicate that he would recommend this same customer allocation methodology in the event of a residential exit.

Ohio Partners for Affordable Energy (“OPAE”) witness Harper argued that a decision with respect to the methodology to be employed to allocate SCO customers among suppliers for service at the MVR rate should be deferred to a separate proceeding to be conducted if and when SCO default service is, in fact, eliminated.⁹ However, Ms. Harper also appeared to suggest that a rotational assignment of SCO customers to MVR suppliers would be preferable to an allocation based on an MVR supplier’s relative market share.¹⁰

In its Order, the Commission, after summarizing the testimony of the witnesses and the arguments advanced by the parties,¹¹ stated that “(f)or the most part, we find the proposal submitted by Hess regarding the initial allocation to be the most persuasive and reasonable,”¹² However, the Commission then set forth the following as the approved initial allocation methodology:

- (1) The initial allocation will be done on a proportional basis, as compared to the MVR supplier's Choice enrollment at the time of allocation, including a supplier's average historical SSO and SCO tranche ownership for nonresidential customers.
- (2) A supplier's average historical SSO and SCO tranche ownership for nonresidential customers shall be measured as of the date of this order going forward.

⁶ *Id.*

⁷ *Id.*

⁸ *See* Tr. III, 144.

⁹ *See* OPAE Exhibit 2A, 25-26.

¹⁰ *See* OPAE Exhibit 2A, 26.

¹¹ *See* Order, 33-35.

¹² *See* Order, 36.

- (3) For the initial allocation, a minimum of one percent shall be assigned to an MVR supplier with equal to, or less than, one percent Choice enrollment.¹³

The Commission further found that, as advocated by COH witness Brown, new non-residential customers applying to COH for distribution service after its exit from the non-residential merchant function should be assigned to MVR suppliers on a rotational basis.¹⁴ Finally, the Commission determined that, because there will be a separate proceeding in advance of COH's exit from the residential merchant function, it would be inappropriate to establish the residential customer allocation methodology at this time.¹⁵

Although Dominion Retail continues to believe that a case can be made for a market share-based assignment of new customers and that establishing the methodology for allocating non-shopping residential customers in this case would promote competition in the residential market, Dominion Retail will not contest the Commission's determinations with respect to these issues. However, the methodology adopted by the Commission for allocating the remaining non-residential SCO customers at the time of COH's non-residential exit is fatally flawed in several respects. At a minimum, the Commission should grant rehearing for the purpose of clarifying the methodology, which, as it now stands, is so ill-defined that the parties can only guess at what is intended.

First Ground for Rehearing:

The Commission's determination that tranches awarded in SSO auctions should be considered in calculating the ratio to be applied in allocating customers to MVR suppliers ignores that SSO auctions were wholesale auctions, that no future SSO auctions are contemplated by the Amended Stipulation, and that certain winning bidders in the prior SSO auctions are not certified CRNGS providers and are no longer active in COH's service area.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

Dominion Retail prefaces its discussion of this assignment of error by acknowledging that it is not at all certain what the Commission means by its reference in paragraph (1) of the approved methodology to the “supplier’s average historical SSO and SCO tranche ownership for nonresidential customers.” Because the Commission concluded that Hess’s proposed initial allocation methodology was the most “persuasive and reasonable,” it would appear, at first blush, that the Commission was adopting Mr. Magnani’s proposal that the results of the SSO auctions held in 2010 and 2011 should be included in determining a supplier’s allocation ratio. However, paragraph (2) of the approved methodology indicates that “a supplier’s historical SSO and SCO tranche ownership for nonresidential customers shall be measured as of the date of this order going forward.” (emphasis added) If, by this, the Commission means that, notwithstanding Hess witness Mr. Magnani’s recommendation, tranches awarded in the 2010 and 2011 SSO auctions – the only COH SSO auctions ever conducted -- will not be considered, this ground for rehearing is moot, as the Amended Stipulation anticipates that, going forward, all auctions will be SCO auctions.¹⁶ However, in no event should the fact a supplier was a winning bidder in a wholesale SSO auction bear upon the allocation of customers when COH exits the non-residential merchant function.

Although not expressly stated in the Order, Dominion Retail assumes that, in adopting, “(f)or the most part,” Hess witness Magnani’s recommendation, the Commission was persuaded by his argument that allocating the remaining SCO customers to winning SCO auction bidders that ultimately elect to participate in the MVR program would incentivize participants to compete more aggressively in future SCO auctions, thereby resulting in a lower SCO auction

¹⁶ In so stating, Dominion Retail recognizes that the Commission retains the authority to reestablish the SCO or any other pricing mechanism, including an SSO, if it determines that COH’s non-residential exit is unjust or unreasonable. *See* Order, 46. However, by definition, the reference in paragraph (1) of the approved methodology cannot be to a future SSO auction conducted pursuant to this authority because, if it the Commission subsequently determines that the COH’s non-residential exit is unreasonable, there will be no allocation of non-shopping customers.

price – and, thus, a lower price for SCO default service – than would otherwise be the case. However, this rationale obviously does not apply to the 2010 and 2011 SSO auctions, which have long been a closed book. Moreover, although the Commission appears to have bought into Mr. Magnani’s dubious argument that the fact that bidders incur some costs in order to participate in the auction means that the winning bidders should be rewarded a second time by being handed customers when Columbia is relieved of the obligation to provide default commodity service,¹⁷ Dominion Retail would remind the Commission that the SSO auctions were wholesale auctions. Bidders in the SSO auctions were competing to provide wholesale gas supply to COH, not to serve tranches of individual customers as in SCO auctions. Although the Commission mentions that SCO suppliers are also certified CRNGS suppliers, there was no requirement that SSO auction participants be certified suppliers, and, in fact, some of the winning bidders were not. To allocate customers to suppliers that heretofore have had no interest in providing retail service to individual customers makes no sense. Further, the record shows that some of the winning SSO auction bidders are no longer active in Ohio. Thus, the results of the 2010 and 2011 SSO auctions should in no way be part of the calculus used to determine the allocation ratio to be applied for assigning remaining SCO default service customers to suppliers upon COH’s exit from the non-residential merchant function.

Second Ground for Rehearing:

There is no rational basis for the Commission’s determination that tranches awarded in the 2012 SCO auction should be considered in calculating the ratio to be applied in allocating customers to MVR suppliers upon COH’s exit from the non-residential merchant function.

Although Dominion Retail opposed the Hess proposal to allocate a portion of COH’s remaining SCO customers to winning bidders in SCO auctions, Dominion Retail concedes that

¹⁷ See Hess Exhibit 1 (Magnani Direct), 8.

the policy consideration discussed above – *i.e.* that this measure will incentivize SCO auction participants to bid down the SCO price – is a legitimate objective. However, this incentive was obviously not in play in the 2012 SCO auction. Thus, the Commission erred in determining that a supplier's average historical SCO tranche ownership for nonresidential customers should be measured “as of the date of this order going forward” as provided in paragraph (2) of the approved methodology. If the purpose of including average historical SCO tranche ownership as a factor in the customer allocation methodology is to provide an additional carrot to SCO auction bidders, only SCO auction results after the carrot has been dangled should be included. Again, it may be that this is what the Commission actually meant by the “going forward” language, but, read literally, the reference in paragraph (2) to “tranche ownership as of the date of the order” would certainly suggest that the 2012 auction results are to be included. If that, indeed, was the Commission’s intent, this term of the approved allocation methodology is unreasonable because it does not further the policy objective underlying the inclusion of winning SCO auction bidders in the customer allocation process. Simply stated, the results of the 2012 SCO auction were what they were, and incorporating those results allocation methodology can in no way influence bidder behavior in SCO auctions yet to be held.

Third Ground for Rehearing:

The SCO customer allocation methodology approved by the Commission is internally inconsistent and fails to provide sufficient guidance with respect to the specifics of the calculation to be employed in determining the allocation ratio.

As suggested above, the Commission’s finding that the Hess proposal was “(f)or the most part” the most persuasive and reasonable creates ambiguity as to which parts of Mr. Magnani’s proposal are actually embodied in the approved allocation methodology set forth in the Order. Paragraph (1) states that the initial allocation is to be done on a proportional basis, “as compared

to the MVR supplier's Choice enrollment, including a supplier's average historical SSO and SCO tranche ownership for nonresidential customers." Frankly, Dominion Retail has no idea what this means. Leaving aside the point that this methodology cannot possibly be applied to SSO auction winners because SSO auction winners did not serve any customers, residential or non-residential, this language does not appear to be consistent with the methodology Hess advocated in Mr. Magnani's testimony, which focuses on relative tranche ownership of winning bidders, not the average number of non-residential customers served, to determine the ratio to be use for allocating the remaining non-residential SCO customers at the time of the exit. Moreover, the phrase "as compared to the MVR supplier's Choice enrollment" is particularly confusing because, as we understand Mr. Magnani's proposal, the percentage of tranche ownership is to be combined with the MVR supplier's Choice market share, if any, at the time of the exit in determining the number of SCO customers to be allocated to the supplier in question. At minimum, the Commission should grant rehearing to clarify precisely how all this is supposed to work.

In addition, the Order fails to address how the calculation of relative tranche ownership will be affected if a winning bidder elects not to register as an MVR supplier. At hearing, Mr. Magnani opined that, in this circumstance, the tranche ownership of such a supplier should be divvied up among the auction winners that elect participate in the MVR program,¹⁸ a measure that would increase the number of customers that would otherwise be allocated to them to the detriment of CRNGS suppliers that have actively competed for customers but did not participate in or did not win tranches in prior auctions. In any event, the Order should have batted down how this circumstance will be addressed in the calculation of the allocation ratio.

¹⁸ See Tr. III, 152.

As the Commission points out in its Order, SCO auction participants must be certified CRNGS providers. However, some winning bidders in SCO auctions, such as Hess, while authorized to do so, have never previously served customers under the Choice program, and some may not desire or be equipped to enter into direct relationships with former SCO customers as will be required of MVR suppliers.¹⁹ When asked, in this connection, what MVR rate would apply in instances where the winning bidder is not an active participant in the Choice program, and, thus, has no published Choice offers on the Apples-to-Apples chart, Mr. Magnani basically indicated that this was a bridge Hess would cross when it came to it by posting an MVR rate for the customers it wished to serve.²⁰ It does not take much imagination to envision that a supplier that is not in the business of competing for Choice-eligible customers could slap any price it wanted to on the Apples-to-Apples chart and charge that price as the MVR to the customers allocated to it. Once the Commission determined that SCO customers should be assigned to winning bidders in past auctions and not just to active Choice market participants, the Commission should have gone on to address this issue as well as other concerns raised by allocating customers to suppliers that may not wish to serve them. To prevent outcomes that are antithetical to the goal of market-based pricing, the Commission should have considered placing additional restrictions on suppliers that are allocated customers solely because they were winning bidders in auctions. One example would be a prohibition against such suppliers selling or assigning the former SCO customers to other suppliers for compensation, a measure that would be at cross-purposes with the objective of promoting competition.

Fourth Ground for Rehearing:

The allocation of a minimum of at least one percent of the pool of SCO customers to an MVR supplier with a market share less than or equal to one percent is inconsistent with the objective of assuring that MVR suppliers are equipped to handle the number of customers allocated to them and reduces the incentive for CRNGS suppliers to compete for market share.

¹⁹ See Tr. III, 155-156.

²⁰ See Tr. III, 154-155.

In rejecting a rotational allocation methodology for the assignment of SCO customers upon COH's exit from the merchant function, the Commission cited the large customer load that would be shifted to MVR suppliers during the initial allocation. As Direct witness Bryzewski explained, a rotational allocation could actually force some MVR suppliers out of the market because they may not have the financial resources or the infrastructure to take on the large number of customers they would receive under a rotational initial allocation.²¹ However, the Commission appears to have lost sight of this concern in establishing the one percent minimum allocation in paragraph (c) of the approved allocation methodology.

Under COH's Choice program requirements, a supplier must have a minimum of 100 customers to participate. The trigger for COH's non-residential exit is 70 percent shopping, which means that that up to 30 percent of the non-shopping, non-residential customers would be allocated to MVR suppliers at that time. Based on COH's current total of Choice-eligible non-residential customers, this would mean that in excess of 32,000 customers will be allocated, which under the one percent minimum allocation set out in paragraph (c) of the Commission-approved methodology, would mean that a supplier serving 100 customers would be allocated over three times the number of customers it currently serves.

In addition, the one percent minimum allocation would reward a supplier that entered the Choice market just prior to COH's merchant function exit in a manner disproportionate to its investment and efforts to enroll customers,²² which would be patently unfair to suppliers that were long-time COH Choice program participants. Moreover, if a number of potential market entrants were to secure CRNGS certificates to take advantage of this three-for-one deal in terms of customer acquisition costs, these new entrants could swallow up a sizeable portion of the pool

²¹ See Direct Exhibit 1 (Bryzewski Direct), 6, 8-9.

²² See Direct Exhibit 1 (Bryzewski Direct), 8-9.

of SCO non-residential customers to be allocated to the detriment of CRNGS providers that have been actively competing for customers in the COH service area for many years. Thus, the Commission should grant rehearing on this ground and should eliminate the one percent minimum allocation provision of the allocation methodology approved in the Order.

Conclusion:

For those reasons set forth above, the Commission should grant Dominion Retail's application for rehearing.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 8th day of February 2013.


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