

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application to Modify)
in Accordance with Section 4929.08,)
Revised Code, the Exemption Granted)
Columbia Gas of Ohio, Inc., in Case No.)
08-1344-GA-EXM.)

Case No 12-2637-GA-EXM

**MEMORANDUM CONTRA APPLICATION FOR REHEARING OF HESS
CORPORATION OF DIRECT ENERGY SERVICES, LLC, DIRECT ENERGY
BUSINESS, LLC, AND INTERSTATE GAS SUPPLY, INC.**

Joseph M. Clark
Jennifer L. Lause
Direct Energy
21 East State Street, 19th Floor
Columbus, Ohio 43215
(614) 220-4369 (office)
(614) 220-4674 (fax)
joseph.clark@directenergy.com
jennifer.lause@directenergy.com

Attorneys for Direct Energy

Matthew S. White
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, Ohio 43016(614) 659-5049
(office)
mwhite@igsenergy.com

**Attorney for Interstate
Gas Supply, Inc.**

February 19, 2013

TABLE OF CONTENTS

<u>Description</u>	<u>Page</u>
I. Introduction	3
II. Memorandum Contra Hess Application for Rehearing	4
A. The Commission should deny Hess's rehearing request to calculate a supplier's market share solely on its non-residential Choice customer market share.	7
B. The Commission should reject Hess's request to count the current SCO year's bid winners in the calculation of the SCO market share for the initial allocation of non-residential customers.	10
C. The Commission should deny Hess's proposed clarification that customers rejected by an SCO supplier should be allocated to other SCO suppliers.	11
III. Conclusion	13

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application to Modify)	
in Accordance with Section 4929.08,)	Case No 12-2637-GA-EXM
Revised Code, the Exemption Granted)	
Columbia Gas of Ohio, Inc., in Case No.)	
08-1344-GA-EXM.)	

I. INTRODUCTION

On January 9, 2013, the Public Utilities Commission of Ohio (“Commission”) issued its Opinion and Order in this proceeding adopting an Amended Stipulation and Recommendation (“Stipulation”) supported by Columbia Gas of Ohio (“COH”), Commission Staff (“Staff”), Ohio Gas Marketers’ Group (“OGMG”), Retail Energy Supply Association (“RESA”), Dominion Retail, Inc. (“Dominion Retail”), and the Ohio Consumers’ Counsel (“OCC”). Additionally, the Commission adopted an initial as well as an on-going or prospective allocation methodology for apportioning the remaining non-residential customers upon an exit of the merchant function by COH for non-residential customers.

On February 8, 2013, Hess Corporation (“Hess”) filed an Application for Rehearing challenging the Commission’s adoption of the six (6) cent security deposit per thousand cubic feet (“Mcf”) on standard choice offer (“SCO”) tranches as well as the allocation methodology prescribed by the Commission. Direct Energy Services, LLC and Direct Energy Business, LLC (collectively, “Direct Energy”) and Interstate Gas Supply, Inc. (“IGS”) respectfully file the below Memorandum Contra to the Applications for Rehearing of Hess and OPAE. Direct Energy and IGS support the Memorandum Contra filed by OGMG / RESA related to non-allocation methodology issues.

II. MEMORANDUM CONTRA HESS APPLICATION FOR REHEARING

The Commission's Opinion and Order adopted the following 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 non-residential customers.
- (2) A supplier's average historical SSO and SCO tranche ownership for non-residential customers shall be measured as of the date of this Order going forward.
- (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.

Hess repeatedly states the Commission found its proposed initial allocation methodology was the "most persuasive and reasonable." Hess conveniently omits the beginning of that sentence in the Opinion and Order, which noted the Commission "For the most part," agreed with its proposed initial allocation methodology. Opinion and Order at 36. Additionally, the Opinion and Order directs Staff to meet with Columbia and the stakeholders to discuss and determine the parameters of the nonresidential exit from the merchant function. Opinion and Order at 46.

Direct Energy and IGS are members of the OGMG (Direct Energy is also a member of RESA) and support the limited Joint Application for Rehearing filed by COH, OGMG, and RESA (hereinafter "Joint Application for Rehearing") to rectify issues related to implementation of the one percent minimum allocation directive. Notably, Hess and Dominion Retail identified many of the same issues with the one percent minimum allocation in their respective Applications for Rehearing. Absent the changes identified regarding the one percent mechanism,

Direct Energy and IGS did not file for rehearing and accept the Commission's decision to "for the most part" adopt Hess's initial allocation methodology.

As an initial matter, the Commission should deny Hess's Application for Rehearing as it relates to the one percent minimum allocation. While Hess identifies several of the same issues spotted by the Joint Application for Rehearing as well as Dominion Retail's Application for Rehearing, Hess's proposed fix is to only assign the minimum one percent allocation to a supplier with at least 0.5 percent Choice market share of non-residential Choice customers. Hess Application for Rehearing at 18. The Commission should reject Hess's proposed solution because it ultimately does not solve the problems related to a minimum allocation percentage. For example, if several suppliers fall between the 0.5 percent and one percent threshold then mathematical impossibility situations again creep into the picture as a possibility. Further, the 0.5 percent threshold does not fully address the affiliate gaming issue. The Joint Application for Rehearing proposes a straight proportional allocation regardless of market share (rounding only to the next whole customer and not to a percentage) that does not suffer these defects and should be adopted.

Further, the Commission should reject Hess's Application for Rehearing regarding the other aspects of the initial allocation methodology (Subsection E of the Application for Rehearing) that Hess would like to "clarify." These "clarifications" are much more than simple clarifications. Hess's "clarifications" would completely tip the balance of the initial allocation methodology and essentially adopt Hess's proposal in its entirety, eliminating the "for the most part" provision of the Commission's Opinion and Order. Additionally, the sheer number of "clarifications" that Hess requests demonstrate, in and of themselves, that the Commission's Opinion and Order left many questions unanswered. However, the Commission recognized there

would be details to work out and included a directive to do just that. Opinion and Order at 46. Save the clarification regarding the one percent issue, the Opinion and Order on its face is capable of being implemented without “clarification” as proposed by Hess, which would fundamentally and substantially rebalance the results of the Opinion and Order. The Hess proposals significantly eviscerate the value provided to the Choice suppliers and customers in the Stipulation and achieved through the Opinion and Order, for the most part favoring only Hess and to a lesser extent other SCO providers.

Hess’s Application for Rehearing regarding its “clarifications” should be denied in order to allow COH and stakeholders an opportunity to create a formula, consistent with the Opinion and Order, to achieve the directives in the Opinion and Order regarding the allocation methodology. Further, should the Commission grant Hess’s clarifications it will likely spawn even more questions and perhaps multiple rounds of rehearing requests, given the Hess interpretation of the Order would eliminate most of the value of the Amended Settlement for Choice suppliers and customers. The better path is to resolve the one percent issue universally identified by Columbia and suppliers and adopt the limited language requested by the Joint Application for Rehearing. The rest can be worked out by COH, Staff, and stakeholders.¹

Indeed, if Hess wants essentially to open up the initial allocation methodology, then Direct Energy and IGS recommend the Commission wholesale reconsider its decision on the initial allocation methodology. Direct Energy and IGS put forward an allocation methodology that properly incents suppliers to invest in serving retail customers. *See* Brief of Direct Energy and IGS at 1-7 (December 11, 2012). Since Hess has opened this door, Direct Energy and IGS

¹ For example, Direct Energy and IGS have a possible allocation methodology (included as Exhibit 1) that hews to the initial allocation methodology adopted by the current language of the Opinion and Order (excluding the minimum one percent threshold) to be considered as COH, Staff, and other stakeholders determine the parameters of the non-residential exit of the merchant function.

suggest the Commission revisit this issue in its entirety in order to send the proper market signals to market participants who want to make true investments in Ohio and for Ohio customers.

A. The Commission should deny Hess's rehearing request to calculate a supplier's market share solely on its non-residential Choice customer market share.

In its first request to clarify, Hess asks the Commission to adopt an initial allocation market share methodology that would exclusively look at a supplier's non-residential market share in calculating its initial allocation. In other words, the initial allocation calculation would be as follows:

$$\frac{\text{Supplier's number of non-residential Choice customers in COH territory}}{\text{Total number of non-residential Choice customers in COH territory}}$$

The Commission should deny Hess's request for the reasons shown below.

Hess first distorts the Commission's Order by framing its argument as consistent with the Opinion and Order, quoting only the parts of the Opinion and Order favorable to its position. Hess Application for Rehearing at 19. Of course, this quotation omits (because it hurts Hess's argument) the fact that the "non-residential customers" modifier is only inserted into the description of the allocation of non-residential SCO customers. The Opinion and Order contains no such modifier when describing how the proportional allocation will work for allocations to Choice suppliers. Such a balance is proper and reflects the Commission's balance in adopting its stated allocation methodology.

Hess also attempts to proactively head off the expected arguments against its proposed allocation methodology. Hess's arguments, while proactive, are wrong and should be denied.

Hess initially argues an initial allocation that recognizes a Choice supplier's residential and non-residential market share would "inappropriately dilute" a non-residential supplier's contributions to the market. Hess Application for Rehearing at 20. Hess contends a calculation

that recognizes a supplier's residential and non-residential market share is contrary to both the Opinion and Order and the Stipulation as well as undermines the spirit of a monthly variable rate ("MVR") allocation premised on non-residential market share. Hess Application for Rehearing at 20, FN 10. Hess further argues that adopting a methodology that recognizes the contribution of Choice suppliers serving residential customers would minimize and disincetivize the contributions of Choice suppliers serving primarily non-residential customers towards the goal of hitting the 70% shopping targets.

Hess's arguments again conveniently ignore several critical points. Hess's arguments pay no heed to the fact that the Stipulation also contained a 70% shopping target trigger for the opportunity to file an application to exit the merchant function for residential customers. While there is no automatic exit of the merchant function for residential customers, this fact does not diminish the importance of hitting the Choice targets for residential customers and properly incentivizing solicitation of residential customers. Adopting Hess's position would essentially send the market a signal that it is acceptable for suppliers to focus all of their efforts on non-residential customers at the expense of residential customers. Indeed, several of the billing system upgrades included in the Stipulation (see Opinion and Order at 37-38) that will allow for new, innovative products would likely provide more benefit to residential customers (such as flat bill) than to non-residential customers. The Commission should not adopt an allocation methodology that minimizes residential customers during the term of the Stipulation.

Further, Hess is the only supplier primarily focused on service to non-residential customers who actively participated in this case. The Commission should not completely tip the scales of its order towards incentivizing suppliers focused solely on non-residential customers on the basis of one company with such a business model. Of course, this all comes from a company

that repeatedly said it wasn't sure if it would even take an allocation of non-residential customers as an SCO bid winner if it were allocated non-residential customers upon an exit of the merchant function for non-residential customers. *See* Direct Energy/IGS Brief at 6. *See also* Hess Application for Rehearing at 24 ("Participation in the SCO market does not automatically mean that the supplier will actively participate, for business reasons, in Columbia's Choice market.")

Finally, the Commission's Order provides a balance between competing interests by allowing SCO suppliers access to customers in the allocation phase, if and when the triggers are achieved. Direct Energy and IGS opposed this position, favoring instead retail investment in serving the residential customer class should be considered a superior investment in the present and future of retail competition in Ohio. Although this particular issue was lost in favor, for the most part as the Commission stated, Hess' proposal, the Order specifically includes Choice customer, residential and non-residential, in calculating the allocation percentage for the non-SCO portion of the allocation of non-residential customers. Direct Energy and IGS view this language including both residential and non-residential Choice market share as a significant part of the balancing of interests in the initial allocation methodology. If only non-residential customer migration is considered for calculating the Choice supplier's proportional share of the market, then the balance achieved in the Order is tipped again away from those suppliers serving residential consumers. Hess has raised no new issues or legal arguments to support its request for this issue to be revisited and should be denied.

B. The Commission should reject Hess’s request to count the current SCO year’s bid winners in the calculation of the SCO market share for the initial allocation of non-residential customers.

Hess next requests the Commission explicitly state that historical SSO and SCO tranche ownership used for determination of the initial allocation of customers to auction bid winners begins this SCO program year. Hess Application for Rehearing at 22. The rhetorical question the Commission should ask is why such an explicit statement is necessary given that Hess itself says the “clear words of the order” demonstrate their interpretation of the Opinion and Order is correct, yet they are asking for rehearing to “clarify.”

The Commission did not adopt Hess’s proposed SCO initial allocation methodology that would have incorporated an auction bid winner’s entire historical tranche ownership, instead opting to measure historical tranche ownership “as of the date of this order going forward.” Opinion and Order at 36. The Opinion and Order also acknowledges that auction participants make investments in the SCO market. Opinion and Order at 36. Granting Hess’s Application for Rehearing would be inconsistent with the Opinion and Order’s desire to incent continued investments in the SCO *on a going forward basis*. The Commission knew that at a point in the future, when the various provisions of the Stipulation were met, is when the historical proportional SCO market shares would be calculated and any allocations would occur. Thus the use of the term “historical.”

The Joint Motion as well as the Stipulation were not filed until October 4, 2012, far after the auction for the April 1, 2012 – March 31, 2013 SCO program period was conducted. In fact, discussions that resulted in the Stipulation and subsequent filing were not commenced until after the 2012-2013 auction concluded. It is clear that no SCO auction participant could have based its auction strategy, even in part, on a belief that being a winning bidder would translate into a

higher allocation percentage in a non-residential exit given the timing of the discussions, filing, and Opinion and Order. However, all SCO auctions occurring on or after the date of the Opinion and Order (as stated at page 36) are capable of driving investment in the market and impacting SCO supplier behavior. Further, given the Order was not issued until January 9, 2013, only weeks prior to the February 2013 scheduled Columbia 2013-2014 auction, with the potential for rehearing and no time to revisit auction issues, the Order needed to clearly state that tranche ownership for only those auctions occurring on or after the date of the Order would be considered in the allocation methodology, so that there is certainty in the upcoming auctions.

Therefore, counting historical tranche ownership beginning with the April 1, 2013 – March 31, 2014 SCO program period would be the most consistent with the Opinion and Order. Finally, denying Hess’s Application for Rehearing would also properly prevent Hess from obtaining an unfair historical tranche ownership advantage as part of its acquisition of Delta Energy, since both Hess and Delta Energy (whom Hess acquired in the fall of 2012) won tranches in the current SCO program year.

C. The Commission should deny Hess’s proposed clarification that customers rejected by an SCO supplier should be allocated to other SCO suppliers.

Hess also requests the Commission clarify how customers will be reallocated should an MVR supplier choose not to accept the initial allocation of customers they may be entitled to under the initial allocation methodology adopted by the Commission. Specifically, Hess wants to ensure that any “rejected” customers of an SCO supplier entitled to an allocation of customers are re-allocated only to other SCO suppliers. Hess Application for Rehearing at 23-24. Hess states that such a clarification would be consistent with incenting investments in the SCO process as well as the Commission’s adoption of its allocation methodology. Hess Application for Rehearing at 23-24.

The Commission should similarly deny this clarification request. Hess's requested interpretation would provide a greater percentage to each SCO tranche winning supplier than the percentage they achieved through being a participant in the SCO supply process, which is inconsistent with the Commission's Order. The Opinion and Order at page 36 stated:

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.

All an SCO supplier is entitled to is its "average historical SSO and SCO tranche ownership for nonresidential customers", meaning its proportional share of tranches awarded from the 2013-2014 auction forward until the time of exit divided by the total number of SCO tranches awarded for that period. To provide an SCO supplier with a percentage greater than that would again unjustly enrich the SCO suppliers.

A better mechanism would be to allocate these customers (whether rejected by an SCO supplier or by a Choice supplier) equally among all supplier MVR participants who actually take their initial allocation of customers, regardless of whether the supplier receives its initial allocation because of its Choice market participation or because of its historical tranche ownership. While the first, initial allocation should be done based upon Choice market share or historical tranche ownership as defined in the Opinion and Order, once that step has been completed then all suppliers actually accepting their shares are in the same position going forward in an entirely restructured marketplace. The first proper and fair act demonstrating this new paradigm going forward would be to allocate customers equally amongst everyone, just as will be done on a rotational basis after the initial allocation. Opinion and Order at 36.

Finally, if the Commission does decide to clarify this part of its Opinion and Order in the manner suggested by Hess, then Direct Energy and IGS recommend that the Commission

make such a clarification also applicable to any rejected allocations entitled to suppliers due to their Choice market share.

III. CONCLUSION

For the reasons described above, Direct Energy and IGS respectfully request the Commission deny Hess's Application for Rehearing.

Respectfully Submitted,

/s/ Joseph M. Clark
Joseph M. Clark
Jennifer L. Lause
Direct Energy
21 East State Street, 19th Floor
Columbus, Ohio 43215
(614) 220-4369 (office)
(614) 220-4674 (fax)
joseph.clark@directenergy.com
jennifer.lause@directenergy.com

**Attorneys for Direct Energy Services, LLC and
Direct Energy Business, LLC**

/s/ Matthew S. White
Matthew S. White
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, Ohio 43016
(614) 659-5049
mswhite@igsenergy.com

Attorney for Interstate Gas Supply, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by electronic mail on the following persons this 19th day of February, 2013.

/s/ Joseph M. Clark

Joseph M. Clark

Stephen B. Seiple
Brooke E. Leslie
Columbia Gas of Ohio, Inc.
200 Civic Center Drive
P. O. Box 117
Columbus, Ohio 43216-0117
sseiple@nisource.com
bleslie@nisource.com

Larry S. Sauer
Joseph P. Serio
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
sauer@occ.state.oh.us
serio@occ.state.oh.us

Daniel R. Conway
Eric B. Gallon
Porter Wright Morris & Arthur LLP
Huntington Center
41 South High Street
Columbus, Ohio 43215
dconway@porterwright.com
egallon@porterwright.com

Matt Warnock
J. Thomas Siwo
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215
mwarnock@bricker.com
tsiwo@bricker.com

Stephen Reilly
Attorney General's Office
Public Utilities Commission Section
180 E. Broad Street, 9th Floor
Columbus, Ohio 43215-3793
Stephen.reilly@puc.state.oh.us

M. Howard Petricoff
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
mhpetricoff@vorys.com

Barth E. Royer
Bell & Royer Co. LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
barthroyer@aol.com

Dane Stinson
Bailey Cavalieri
10 West Broad Street
Columbus, Ohio 43215
Dane.Stinson@BaileyCavalieri.com

John L. Einstein
Volunteer Energy Services
7900 Windmill Drive
Pickerington, Ohio 43147
jeinstein@volunteerenergy.com

A. Brian McIntosh
McIntosh & McIntosh
1136 Saint Gregory Street
Cincinnati, Ohio 45202
brian@mcintoshlaw.com

M. Anthony Long
Honda of America Mfg.
24000 Honda Parkway
Marysville, Ohio 43040
Tony.long@honda.com

David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45840
drinebolt@ohiopartners.org
cmooney@ohiopartners.org

Glenn Krassen
Bricker & Eckler
1001 Lakeside Avenue East
Cleveland, Ohio 44114
gkrassen@bricker.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/19/2013 11:19:15 AM

in

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

Summary: Memorandum Contra Hess Corporation Application for Rehearing electronically filed by JOSEPH CLARK on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC and Interstate Gas Supply, Inc.