

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)	Case No. 12-2637-GA-EXM
September 7, 2011 Second Opinion and Order in)	
Case No. 08-1344-GA-EXM.)	

**HESS CORPORATION'S
MEMORANDUM CONTRA THE APPLICATIONS FOR REHEARING OF
DOMINION RETAIL, INC., AND
THE OHIO GAS MARKETERS GROUP/RETAIL ENERGY SUPPLY
ASSOCIATION/COLUMBIA GAS OF OHIO, INC.**

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1

jointly, filed applications for rehearing on the same date.¹ Neither Dominion nor OGMG/RESA/Columbia addresses the SCO security deposit issue raised by Hess. Significantly, neither opposes the framework of the MVR allocation methodology proposed by Hess witness Magnani and adopted by the Commission, which allocates non-shopping customers proportionately to Choice and SCO suppliers. Rather, Dominion seeks clarifications in the methodology's implementation. In addition, Dominion and OGMG/RESA/Columbia join with Hess in urging the Commission to reject the Order's minimum assignment of one percent of non-shopping customers to MVR suppliers.

In this memorandum contra, Hess opposes certain of Dominion's proposed clarifications to Hess witness Magnani's MVR allocation methodology and, while agreeing to eliminate the assignment of a minimum percentage of non-shopping customers to MVR suppliers, Hess opposes OGMG/RESA/Columbia request that Columbia develop an allocation algorithm for Staff's approval.

II. ARGUMENT

A. DOMINION'S PROPOSED CLARIFICATIONS TO HESS WITNESS MAGNANI'S MVR ALLOCATION METHODOLOGY ARE UNREASONABLE.

In its application for rehearing, Dominion makes three proposals related to Hess' MVR allocation methodology, as adopted by the Commission: (1) standard service option ("SSO")

¹ The Ohio Partners for Affordable Energy ("OPAE") also filed an application for rehearing alleging that approval of the joint motion and stipulation filed in this proceeding is unlawful in various respects and, thus, Columbia Gas of Ohio ("Columbia") should not be authorized to exit the merchant function for non-residential customers. Hess supports the non-residential exit. Hess Ex. 1, at 6-7. Hess did **NOT** support, and continues not to support, the framework for the residential exit, e.g., the Commission's approval of a 70% Choice enrollment threshold which, when met, would permit Columbia to file an application for residential exit. The framework unreasonably infers that 70% is a reasonable level at which to terminate low-cost SCO service. Hess continues to believe a residential exit should not occur until Choice enrollment is much, much higher. Hess Post Hearing Brief, at 4-10. However, considering the Commission's finding that the threshold is "by no means an indication" that 70% Choice enrollment warrants the residential exit (Order, at 31), and the Commission's promise of due process protections if a residential exit application is filed (Id.), Hess has chosen not to seek rehearing on this portion of the Order, but reserves its right to vigorously contest any future residential exit application.

auctions should not be included in the methodology, (2) the 2012 SCO auction should not be included in the methodology, and (3) the mechanics of the methodology should be clarified, including the re-allocation of an SCO supplier's customers when the SCO supplier chooses not to become an MVR supplier.

1. Dominion's First Ground for Rehearing is Moot, Because SSO Auctions were Not Included in the Commission's Allocation Methodology.

As its first ground for rehearing, Dominion argues that tranches awarded in SSO auctions should not be included in the MVR allocation methodology adopted by the Commission. However, Dominion acknowledges that this ground for rehearing is moot if the Commission did not intend to so include SSO tranches. Dominion Application for Rehearing, at 5. The Order's language to measure tranche ownership from "the date of this order going forward" shows that SSO tranches were not to be included, because the only tranches served as of that date (January 9, 2013) and going forward are from SCO auctions. Order, at 36. Accord: Hess Application for Rehearing, at 22, fn 11.² Thus, Dominion's first ground for rehearing should be rejected as moot.

2. The Tranches Awarded in the 2012 SCO Auction Must be Included in the MVR Allocation Methodology.

As its second ground for rehearing, Dominion argues that the purpose of allocating non-shopping customers to SCO suppliers is to incentivize SCO suppliers to continue to

² In its application for rehearing, Hess sought the following clarification:

Although the order seeks to measure tranche ownership "as of the date of the order going forward," it continues to cite historical "SSO" tranche ownership. Effective with the 2012-2013 Program Year, Columbia transitioned from an SSO auction to SCO auction, whereby SCO suppliers are awarded tranches to serve Choice-eligible customers who have not selected a Choice supplier and non-Choice-eligible customers (e.g., Default Sales Service ("DDS") customers). See Case No. 08-1344-GA-EXM (Opinion and Order, September 7, 2011). The Commission should clarify that the tranche ownership measured beginning January 9, 2013 (the date of the Order) will be such SCO tranche ownership.

participate in the auction and, thus, bid down the SCO price. Dominion Application for Rehearing, at 6-7. Dominion reasons that, because the 2012 SCO auction was conducted prior to the Order's issuance, the incentive is lost and the 2012 auction should not be included in the MVR allocation methodology adopted. *Id.*

Dominion conveniently ignores that the purpose of allocating a portion of non-shopping customers to SCO suppliers was twofold: (1) to incent continued SCO supplier participation in the auctions and (2) to recognize SCO suppliers' historical contribution and investment in reaching the 70% exit trigger. Hess witness Magnani testified:

Hess' proposed MVR assignment methodology strikes the appropriate balance between *properly recognizing each supplier's contribution and investment in reaching the 70% exit trigger*, while continuing to incent all suppliers ([Choice] and SCO) to offer customers competitive products.^[3] Incorporating historical tranche ownership is critical because the SCO auction has been the primary tool in transitioning from LDC-procured default service to providing a market-based benchmark price that Choice customer can use as a means of comparison. (Hess Ex. 1, at 7-8, emphasis supplied.)

The Commission recognized the dual rationale of including historical SCO tranche ownership in the MVR allocation methodology (to recognize past investment and to incent future investment) when it adopted Hess witness Magnani's proposal:

We acknowledge that the SSO/*SCO suppliers have had to make* and must continue to make *investments in order to stay competitive in the SCO market*. Furthermore, *SCO suppliers* are CRNGS providers; therefore, they have met the criteria to serve customers under Columbia's SCO program and *have invested in the SCO market* to do so. (Order, at 36, emphasis supplied.)

Based upon these finding the Commission concluded:

³ Notably, Hess witness Magnani also reasoned that non-shopping customers should be assigned to *Choice* suppliers to incent their continued participation in the Choice program. If Dominion's rationale were adopted, it would lead to the unreasonable result that a Choice supplier's customers enrolled prior to the issuance of the Commission's Order would be excluded in determining that Choice supplier's MVR allocation ratio.

A supplier's average *historical...SCO tranche ownership* for nonresidential customers shall be measured *as of the date of this order* going forward. Order, at 36, emphasis supplied.

The evidence of record and the Commission's Order are clear that historical SCO tranche ownership is to be included in the MVR allocation methodology. The Commission's finding that such historical SCO tranches are to be "measured as of the date of this order" plainly shows that the 2012 tranches being served on the date the Order was issued are to be included in the MVR methodology.

Dominion's second ground for rehearing must be rejected. As Hess requested in its own application for rehearing, the Commission should make explicit in its entry on rehearing that tranche ownership "as of the date of the order" includes tranches gained in the 2012 auction. Hess Application for Rehearing, at 22.

3. *The Mechanics of the MVR Allocation Methodology Should Be Clarified and Provide for the Re-Allocation of an SCO Supplier's Customers When the SCO Supplier Chooses Not to Become an MVR Supplier.*

In its third ground for rehearing, Dominion seeks clarification as to how "all of this is supposed to work" (Dominion Application for Rehearing, at 8), including what course to take if an SCO supplier awarded customers in the allocation process chose not to serve as an MVR supplier. Hess, too, has asked the Commission to make the process explicit in its entry on rehearing. Hess Application for Rehearing, at 18-25. The process is simple:

1. At the time of non-residential exit, non-residential customers who have not selected a supplier will be allocated to approved MVR suppliers. Hess Ex. 1, at 7.
2. Assuming that, at the time of exit, 70% of choice-eligible non-residential customers are enrolled with Choice suppliers, the remaining 30% of non-shopping, non-residential customers will be allocated as follows:

- a. Of this 30% of non-shopping customers, 70% would be allocated to Choice suppliers based on their proportionate share of enrolled non-residential, Choice customers at the time of exit. Hess Ex. 1, at 7; at Hess Ex. 1, Exhibit OM-2.
 - b. Of this 30% of non-shopping customers, 30% would be allocated to SCO suppliers based upon their average tranche ownership from the date of the Order (which includes tranche ownership from the 2012 auction) to the time of exit. Hess Ex. 1, at 7; Hess Ex. 1, at Exhibit OM-2.
 - i. Average tranche ownership would be calculated by determining the percentage of total tranches an SCO supplier served from the 2012 SCO auction to the time of exit. Hess Ex. 1, at Exhibit OM-2.
 - ii. This percentage would be applied to the SCO suppliers' 30% share of the remaining 30% of non-shopping, non-residential customers to obtain the number of customers allocated to each SCO supplier. Id.
 - c. An allocation ratio would then be developed for each supplier by combining the Choice allocation in paragraph 2(a) with the SCO allocation in paragraph 2(b), divided by the total number of non-residential customers to be assigned. Hess Ex. 1, at 7.
3. An SCO supplier entitled to an allocation of customers under the above process could opt to have its affiliate, if duly certificated and licensed as an MVR supplier, provide service to its allocated share of customers. See Hess Application for Rehearing, at 24-25. The transfer of customers to the affiliate would be seamless to customers, who would be notified as a part of the initial assignment process that their supplier would be the affiliated entity.⁴
 4. If an SCO supplier entitled to an allocation of customers under the above process did not wish to serve as an MVR supplier, or to have an affiliated entity serve as an MVR supplier, that SCO supplier's share would be reallocated to the other SCO suppliers

⁴ In its rehearing application at 9, Dominion objects only to the ability of SCO suppliers to assign customers to other suppliers for compensation (even though Choice suppliers are free to do so under the Commission's rules). Despite the constitutional ramifications of Dominion's proposal, Hess requests only that its affiliated MVR supplier be permitted to serve its allocated share of SCO customers. Hess Application for Rehearing, at 24-25.

evenly.⁵ Hess Application for Rehearing, at 23; Tr. III, at 145-147, 149-150.

B. THE ORDER'S MINIMUM MVR ALLOCATION OF ONE PERCENT TO EACH MVR SUPPLIER SHOULD BE REJECTED.

OGMG/RESA/Columbia's sole ground for rehearing is that the minimum MVR allocation of one percent to each MVR supplier is unreasonable and should be rejected. Dominion and Hess agree.⁶ Dominion Application for Rehearing, at 9; Hess Application for Rehearing, at 16. However, Hess opposes OGMG/RESA/Columbia's proposed modification to the third step of the Commission's MVR allocation methodology at page 36 of the Order. The three steps currently provide:

- (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.
- (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.

OGMG/RESA/Columbia proposes to modify the third step to provide:

- (3) For the initial allocation, each MVR supplier shall be assigned a number of customers *based on the above steps* rounded to the nearest whole customer account. *[Columbia] shall develop an*

⁵ In its rehearing application at 8, Dominion does not ask the Commission to reject this re-allocation process, but merely to "batten down" how the re-allocation process works. Nevertheless, Dominion appears to find fault with the fact that this "measure would increase the number of customers that would otherwise be allocated to [SCO suppliers] to the detriment of [Choice] suppliers that have actively competed for customers but did not participate in or did not win tranches in prior auction." Hess notes that the re-allocation process is consistent with Hess witness Magnani's testimony and the Commission's finding that recognition must be given to SCO suppliers' historical support of the SCO program. Choice suppliers who did not participate in the SCO program should not be included in the re-allocation process.

⁶ In its application for rehearing at 16, Hess proposed that customers be allocated to suppliers who had obtained a 0.5 percent market share, in part to simplify the allocation process for Columbia. Considering Columbia's position on rehearing to eliminate the one percent minimum allocation in its entirety, Hess will withdraw its proposal as it relates to the 0.5 percent threshold.

algorithm designed to carry out the allocation process and present it to the Staff for approval in advance of any assignment. (OGMG/RESA/Columbia Application for Rehearing, at 6, emphasis supplied.)

The difficulty with OGMG/RESA/Columbia's proposal is that the MVR allocation methodology adopted by the Commission (steps 1 and 2) must be clarified, as addressed in Hess' application for rehearing and this memorandum contra. Any algorithm developed for the allocation process must strictly adhere to the Commission's clarifications on rehearing. To adopt OGMG/RESA/Columbia's proposed modification to step 3 would defer resolution of the specific allocation mechanics at issue to Columbia's discretion, subject only to Staff approval. If Columbia is to develop an algorithm to carry out the allocation process, the algorithm must strictly adhere to the Commission's pending entry on rehearing in this case and be filed in this docket for scrutiny and comment by all parties and approval of the Commission. The Commission should so order.

III. CONCLUSION

Hess respectfully requests the Commission to grant rehearing in this proceeding consistent with Hess' Application for Rehearing filed February 8, 2013 and this Memorandum Contra. Specifically, Hess urges the Commission to grant rehearing and:

- Reject the \$0.06/Mcf SCO Security Deposit; or alternatively, make the \$0.06/Mcf SCO Security Deposit refundable and return to SCO suppliers, with interest, all balances not used for purposes of SCO supplier default during the course of the SCO Program Year.
- Clarify certain aspects of the Order consistent with Paragraph II.A.3 of this memorandum contra, and Hess' Application for Rehearing.
- Reject the minimum assignment of one percent of non-shopping customers to MVR suppliers, and order Columbia to prepare an algorithm to be used to assign non-residential, non-shopping

customers to MVR suppliers upon exit. The algorithm must strictly adhere to the Commission's entry on rehearing in this case and be filed in this docket for scrutiny and comment by all parties and approval of the Commission

Respectfully submitted,

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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 was served by email on the following parties of record this 19th day of February, 2013.

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