FILE

(16)

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

DOMINION RETAIL, INC.
MEMORANDUM CONTRA APPLICATION FOR REHEARING
OF
HESS CORPORATION

Barth E. Royer (Counsel of Record)
BELL &, ROYER CO., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
(614) 228-0704 – Phone
(614) 228-0201 – Fax
BarthRoyer@aol.com – Email

Gary A. Jeffries
Assistant General Counsel
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817
(412) 237-4729 – Phone
(412) 237-4782 – Fax
Gary.A.Jeffries@dom.com -- Email

Attorneys for Dominion Retail, Inc.

Due: February 19, 2013
Filed: February 19, 2013

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

DOMINION RETAIL, INC.
MEMORANDUM CONTRA APPLICATION FOR REHEARING
OF
HESS CORPORATION

I. INTRODUCTION

By it January 9, 2013 opinion and order ("Order") in this proceeding, the Commission adopted the amended stipulation and recommendation ("Amended Stipulation") filed herein on November 21, 2012 by Columbia Gas of Ohio, Inc. ("COH"), the Commission staff, the Ohio Office of Consumers' Counsel, the Ohio Gas Marketers Group ("OGMG"), the Retail Energy Supply Association ("RESA"), and Dominion Retail, Inc. ("Dominion Retail") as its resolution of the matters raised by the above-styled joint motion to modify the COH exemption orders previously issued in Case No. 08-1344-GA-EXM. The Order drew four applications for rehearing. Three of the rehearing applications – the joint application for rehearing filed by the OGMG, RESA, and COH and the applications for rehearing filed by Dominion Retail and Hess Corporation ("Hess") – address aspects of the Commission-approved methodology for allocating the remaining non-residential SCO customers to MVR suppliers upon COH's exit from the non-residential merchant function, a matter which had been reserved for litigation under the Amended Stipulation.[1] The Hess rehearing application also contests the Commission's approval

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

of the stipulated security deposit to be charged SCO suppliers. The fourth rehearing application – that filed by Ohio Partners for Affordable Energy ("OPAE") – asserts that the Commission lacks the authority to modify its previous exemption orders in the context of this proceeding and also contests the Commission's approval of the Amended Stipulation upon the grounds that the Amended Stipulation does not meet the three-prong test employed by the Commission for evaluating stipulations.

Although Dominion Retail believes that the grounds for rehearing set forth by OPAE are without merit, Dominion Retail has confined its memorandum contra to the Hess application for rehearing, and, more specifically, to the issues relating to the methodology for allocating the remaining default SCO customers upon COH's exit from the non-residential merchant function. The order approved the following 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.
>
> (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.[2]

As a review of the rehearing applications will show, Dominion Retail and Hess agree that certain aspects to this methodology require clarification, but disagree as to what those clarifications should be designed to accomplish. However, before turning to those issues, Dominion Retail will first address a matter over which there is no dispute.

---

[2] Order, 36.

II. ARGUMENT

A. **<u>The Commission should grant rehearing for the purpose of eliminating the one percent minimum allocation set forth in paragraph (3) of the previously approved customer allocation methodology and should substitute, in lieu thereof, the language proposed by OGMG/RESA/COH</u>.**

As a review of their respective rehearing applications will show, Dominion Retail, OGMG/RESA/COH and Hess all agree that 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 as provided in paragraph (3) of the Commission-approved allocation methodology is problematic in several respects. In seeking rehearing on this ground, Dominion Retail argued that the one percent minimum allocation would reward MVR suppliers in a manner disproportionate to their investment and efforts to enroll customers, could result in certain MVR suppliers being assigned more customers than they have wherewithal to serve, and, as a matter of mathematics, could swallow up a sizeable portion of the pool 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.[3] OGMG/RESA/COH and Hess make these same points, and add that the one percent minimum allocation also provides an opportunity for gaming the system in that there is nothing to prevent an MVR supplier from creating a number of separate certificated affiliates as the exit date approaches, thereby significantly increasing the number of customers it would have been allocated as a single entity.[4] It is particularly noteworthy that COH has joined with OGMG and RESA in this assignment of error because it was COH witness Brown that originally proposed the one percent minimum allocation in his

---

[3] *See* Dominion Retail Memorandum In Support, 9-11.

[4] OGMG/RESA/COH Memorandum In Support, 4-6; Hess Memorandum In Support, 16-18.

prefiled testimony.[5] Upon further consideration, COH has recognized that the one percent minimum allocation is inappropriate and unworkable and the Commission should do the same.

To remedy the problems the one percent minimum allocation would create, Dominion Retail and OGMG/RESA/COH suggest that the Commission modify this element of customer allocation methodology on rehearing by eliminating the one-percent minimum allocation so that all remaining SCO customers would be assigned to MVR suppliers based on the supplier's respective market share at the time of the allocation. OGMG/RESA/COH went on to propose language that would provide that the result of applying the market-share percentage to the SCO customer pool to be rounded to the nearest whole customer number.[6] On the other hand, Hess proposes that no SCO customers be assigned to MVR suppliers with market shares of less than .05 percent, and that SCO customers be allocated among MVR suppliers with a market share of .05 percent or greater based on the respective actual market share of the supplier in question.[7] Dominion Retail believes that the OGMG/RESA/COH proposal represents the better approach.

First, as a practical matter, the methodology recommended by Hess would result in less than 100 percent of the SCO customers being allocated because the market share percentages of MVR suppliers with less than .05 percent of the market would be excluded. Second, although Hess suggests that the purpose of the one-percent minimum allocation was "to ease the administrative burden on Columbia at the time of exit in assigning a very small amount of customers to those MVR suppliers with a very low percentage share of the non-residential Choice market,"[8] it is not apparent how the one-percent minimum allocation would reduce the burden on COH in view of the fact that the total number of participating MVR suppliers would

[5] *See* COH Exhibit 6 (Brown Direct), 16.
[6] *See* OGMG/RESA/COH Memorandum In Support, 5-6.
[7] *See* Hess Memorandum In Support, 18.
[8] *See* Hess Memorandum In Support, 17.

not change. In any event, as evidenced by the OGMG/RESA/COH application for rehearing, COH now supports allocating the remaining SCO customers to MVR suppliers based entirely on relative market share, which belies Hess's suggestion that the administrative burden associated with assigning a very small number of customers to some MVR suppliers – if, indeed, there is one – is a concern for COH. Finally, with the elimination of the one-percent minimum, the concern that an MVR supplier could game the system by divvying up its customers among a number of newly-created entities goes away. Thus, contrary to Hess's argument that its proposal strikes an appropriate balance between ease of administration and recognizing "each MVR supplier's proportional contribution to reaching the exit trigger,"[9] this proposal would totally ignore the contribution of new entrants to the COH's non-residential exit, thereby discouraging, rather than promoting, market entry. Accordingly, the Commission should reject the alternative proposed by Hess and should modify paragraph (3) of the approved customer allocation methodology as proposed by OGMG/RESA/COH.

B. The Commission should grant rehearing for the purpose of confirming that the results of the 2010 and 2011 SSO auctions should not be considered in determining the proportionate tranche ownership of winning auction bidders included in calculating the customer allocation ratio, and should find that the results of the 2012 SCO auction should also be excluded in calculating the customer allocation ratio.

As Dominion Retail pointed out in the memorandum accompanying its rehearing application, 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 Hess witness Magnani's proposal are actually embodied in the approved allocation methodology set forth in the Order.[10]

---

[9] *See* Hess Memorandum In Support, 18.
[10] *See* Dominion Retail Memorandum In Support, 7.

Hess raises this same concern, and, like Dominion Retail, asks the Commission to clarify precisely what is contemplated by paragraphs (1) and (2) of the previously approved methodology.[11]

As its first ground for rehearing, Dominion Retail cited as error 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, noting that this determination, while consistent with Hess witness Magnani's recommendation, ignored 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.[12] In arguing that including the results of SSO auctions in calculating the customer allocation ratio was unreasonable, Dominion Retail acknowledged that the language in paragraph (2) of the approved methodology indicating that the a supplier's historical SSO and SCO tranche ownership should be measured "as of the date of this order going forward," might well mean that, contrary to Mr. Magnani's recommendation, the Commission agreed that the results of the 2010 and 2011 SSO auctions – the only SSO auctions ever held – should not be considered in determining the customer allocation ratio.[13] Hess also cites this ambiguity, and urges the Commission to clarify that the paragraph (2) "as of the date of this order going forward" language excludes consideration of the results of the 2010 and 2011 SSO auctions in determining tranche ownership.[14] Obviously, Dominion Retail is fine with that interpretation, and, if, indeed, despite its reference to historical SSO tranche ownership, the Commission did not intend that the results of the 2010 and 2011 SSO auctions be included in

[11] *See* Hess Memorandum In Support,
[12] *See* Dominion Retail Memorandum In Support, 4-6.
[13] *See* Dominion Retail Memorandum In Support, 5.
[14] *See* Hess Memorandum In Support, 22, n. 11.

determining the allocation ratio, Dominion Retail's first ground for rehearing is moot. Nonetheless, as Hess recommends, the Commission should clear up this ambiguity in its entry on rehearing by eliminating the references to historical SSO tranche ownership in paragraphs (1) and (2) of the approved allocation methodology.

Hess also asks the Commission to confirm that the "as of the date of this order going forward" language means that the results of the 2012 SCO auction are to be considered in determining the customer allocation ratio.[15] Dominion Retail agrees that the language can be so construed, but as argued in its second ground for rehearing, maintains that there is no rational basis 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.[16]

Although Dominion Retail initially opposed any recognition of SSO or SCO tranche ownership in determining the customer allocation ratio, Dominion Retail subsequently agreed that including SCO tranche ownership in the calculation would incentivize SCO auction participants to bid down the SCO auction clearing price, and, thus, would serve a legitimate public policy objective.[17] However, this incentive was obviously not in play in the 2012 SCO auction, which was held before there was any indication that COH was even considering proposing a non-residential merchant function exit. Thus, including the results of the 2012 SCO auction in determining relative tranche ownership cannot possibly further the underlying objective of influencing bidder behavior in future SCO auctions. Indeed, including the 2012 SCO auction results would do nothing more that to reward the winning bidders a second time for their success even though they made whatever investment was required to participate in the 2012

---

[15] *See* Hess Memorandum In Support, 22.
[16] *See* Dominion Retail Memorandum In Support, 6-7.
[17] *Id.*

SCO auction with no expectation that they would receive any future benefit beyond being awarded some number of tranches of non-shopping customers if they were a successful bidder. If, in fact, the Commission did intend that the 2012 SCO auction results would be included in the calculation, Dominion Retail urges the Commission to revisit this determination on rehearing and to find that only the results of SCO auctions conducted after the date of its order be considered in determining tranche ownership for the purposes of calculation the customer allocation ratio.

C. The Commission should grant rehearing for the purpose of revising the revising the previously approved allocation methodology to conform the allocation formula proposed by Hess witness Magnani, but should reject Hess's proposal for reallocating the tranche ownership share of an SCO auction winner that elects not to participate in the MVR program to other SCO tranche owners.

Paragraph (1) of the approved allocation methodology 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." In its third assignment of error, Dominion Retail noted that this language is not consistent with the methodology advocated by Hess witness Magnani, 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.[18] Dominion Retail also pointed out that the phrase "as compared to the MVR supplier's Choice enrollment" is particularly confusing because, under 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

[18] *See* Dominion Retail Memorandum In Support, 7-8.

customers to be allocated to the supplier in question.[19] Hess also cites this ambiguity in its rehearing application, and agrees with Dominion Retail that rehearing should be granted for the purpose of clarifying that the formula set out in Exhibit OM-2 to Mr. Magnani's testimony reflects the methodology that will be applied in determining the number of customers to be assigned to a particular SCO supplier.[20] However, Dominion Retail and Hess disagree sharply with respect to a related matter that the Commission failed to address in its Order.

As both Dominion Retail and Hess observe, the Order fails to address how the calculation of relative tranche ownership will be affected if a winning SCO auction bidder elects not to register as an MVR supplier.[21] Dominion Retail anticipated that this omission would generate controversy because, although Hess witness Magnani had obviously not considered this possibility in his preparing his prefiled testimony, he opined on cross-examination 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,[22] a measure that would increase the number of customers that would otherwise be allocated to them under Mr. Magnani's formula. As expected, Hess picks up Mr. Magnani's cudgel in its rehearing application, urging the Commission to declare that, in the event a winning bidder in an SCO auction does not elect to participate as an MVR supplier, the bidder's tranche ownership share would come out of the equation and would, thereby, be reallocated among the remaining tranche owners.[23] Dominion Retail respectfully submits that there is no logical basis for creating this windfall for SCO tranche owners.

---

[19] *See* Dominion Retail Memorandum In Support, 8.
[20] *See* Hess Memorandum In Support, 22-23.
[21] *See* Dominion Retail Memorandum In Support, 8; Hess Memorandum In Support, 23-24.
[22] *See* Tr. III, 152.
[23] *See* Hess Memorandum In Support, 23-24.

Why should SCO auction tranche owners that elect to participate in the MVR program be allocated additional customers simply because of the happenstance that one or more other SCO tranche owners have elected not to participate? Not only does Hess not answer this question, but this methodology is inconsistent with the rationale advanced by Mr. Magnani to support including SCO tranche ownership as a factor in determining the customer allocation ratio in the first place. Although Mr. Magnani claimed that including historical SCO tranche ownership was appropriate because it recognized the investment the an SCO auction winner had made to participate in the SCO market,[24] that does not mean that one SCO auction winner should, in effect, be credited for the investment made by another SCO auction winner, which would be the case if Hess's proposal is adopted. As indicated above, Dominion Retail has no problem with utilizing an SCO supplier's proportionate share of historical tranche ownership in determining the percentage of the remaining SCO default service customers at the time of COH's exit that will be allocated to an SCO supplier, but that share is what it is, and there is no theoretical justification for permitting SCO suppliers that register to participate in the MVR program to lay claim to the share of an SCO supplier that elects not to participate. Further, limiting an SCO auction winner's share of the pie to its proportionate tranche ownership will in no way decrease the incentive for a participants in future SCO auctions to bid down the auction clearing price. Accordingly, the Commission should reject Hess's proposal and should find that Mr. Magnani's formula should be applied as written.

D. In the event the Commission grants rehearing for the purpose of considering Hess's proposal regarding the transfer of customers allocated to an SCO supplier to an affiliate, the Commission should schedule further proceedings to permit stakeholder input prior to acting on the proposal.

[24] *See* Hess Exhibit 1 (Magnani Direct), 7-8.

In seeking clarification of the Commission-approved allocation methodology through its third ground for rehearing, Dominion Retail suggested that, 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 SCO auctions.[25] As an example, Dominion Retail suggested a prohibition against such suppliers selling or assigning the former SCO customers to other suppliers for compensation, arguing that such a measure that would be at cross-purposes with the objective of promoting competition.[26] Hess, although specifically stating that it "is by no means advocating for an SCO supplier's ability to transfer to extend outside of an affiliate relationship," asks the Commission to "clarify" that an SCO supplier that receives an allocation of customers will be permitted to transfer those customers to a CRNGS affiliate immediately, noting that if the supplier were to assign the customers to the affiliate, it could result in a delay in the initiation of service.[27] Dominion Retail would offer the following observations.

First, the fact that Hess took pains to indicate that it was not suggesting that SCO suppliers should be permitted to transfer customers it is awarded upon COH's exit to a non-affiliated entity, confirms Dominion Retail's suggestion that such a maneuver would be inappropriate and should be prohibited. Plainly, the Commission should not foster a secondary market in which SCO auction winners can sell the customers allocated to them to the highest bidder. Second, the approved MVR model contemplates that suppliers that register for the MVR program will serve the customers allocated to them. Because Hess does not serve choice customers, it comes as no surprise that it is now seeking the Commission's blessing to hand these customers off to an affiliate. Dominion Retail would submit that this new proposal goes well

---

[25] *See* Dominion Retail Memorandum In Support, 9.
[26] *Id.*
[27] *See* Hess Memorandum In Support, 24-25.

beyond a "clarification," and that it should not be approved until all the possible ramifications have been fully explored. Thus, although Dominion Retail does not object to the Commission granting rehearing to consider Hess's proposal, the Commission should not authorize this without providing the opportunity for stakeholder input, either by scheduling this matter for hearing or by directing that it be included as topic for the discussions to be held determine the parameters of the nonresidential exit from the merchant function.[28]

III. CONCLUSION

Consistent with the foregoing discussion, Dominion Retail respectfully request that the Commission grant rehearing for the purpose of (1) eliminating the one percent minimum allocation set forth in the final paragraph of the previously approved allocation methodology and substituting, in lieu thereof, the language proposed by OGMG/RESA/COH; (2) confirming that the results of the 2010 and 2011 SSO auctions should not be considered in determining the proportionate tranche ownership of winning auction bidders included in calculating the customer allocation ratio; (3) finding that the results of the 2012 SCO auction should not be considered in determining the proportionate tranche ownership of winning auction bidders in calculating the customer allocation ratio; (4) revising the previously approved allocation methodology to conform the allocation formula proposed by Hess witness Magnani; (5) clarifying that, as proposed by Dominion Retail, SCO auction winners' percentage of tranche ownership will not be increased in the event an SCO auction winner elects not to participate in the MVR program; (6) establishing a prohibition against an SCO auction winner selling or assigning customers allocate to it to another entity for compensation; and (7) scheduling further proceedings to

[28] *See* Order, 46.

consider Hess's proposal that an SCO supplier be permitted to transfer customers allocated to it to an affiliated CRNGS provider.

Respectfully submitted,

Barth E. Royer (Counsel of Record)
BELL &, ROYER CO., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
(614) 228-0704 – Phone
(614) 228-0201 – Fax
BarthRoyer@aol.com – Email

Gary A. Jeffries
Assistant General Counsel
Dominion Resources Services, Inc.
501 Martindale Street, Suite 400
Pittsburgh, PA 15212-5817
(412) 237-4729 – Phone
(412) 237-4782 – Fax
Gary.A.Jeffries@dom.com -- Email

Attorneys for Dominion Retail, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by electronic mail this 19th day of February 2013.

Barth E. Royer

Stephen B. Seiple
Assistant General Counsel
Brooke E. Leslie, Counsel
200 Civic Center Drive
P. O. Box 117
Columbus, Ohio 43216-0117
sseiple@nisource.com
bleslie@nisource.com

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

Stephen Reilly
Assistant Attorney General,
Public Utilities Section
Ohio Attorney General Mike DeWine
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793
stephen.reilly@puc.state.oh.us

Matthew White
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, Ohio 43016
mswhite@igsenergy.com

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

Dane Stinson, Esq.
Bailey Cavalieri LLC
10 West Broad Street, Suite 2100
Columbus, Ohio 43215
Dane.Stinson@BaileyCavalieri.com

Larry S. Sauer
Joseph P. Serio
Assistant Consumers' Counsel
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

John L. Einstein, IV
790 Windmiller Drive
Pickerington, Ohio 43147
jeinstein@volunteerenergy.com

A. Brian McIntosh
McIntosh & McIntosh
1136 Saint Gregory Street, Suite 100
Cincinnati, Ohio 45202
brian@mcintoshlaw.com

David Reinbolt
Colleen Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
dreinbolt@ohiopartners.org
cmooney@ohiopartners.org

Joseph M. Clark
Jennifer Lause
6641 North High Street, Suite 200
Worthington, Ohio 43085
joseph.clark@directenergy.com
jennifer.lause@directenergy.com

M. Anthony Long
Honda of America Mfg., Inc.
24000 Honda Parkway
Marysville, Ohio 43040
tony_long@ham.honda.com