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

ENTRY ON REHEARING

The Commission finds:

(1) Columbia Gas of Ohio, Inc. (Columbia), is a natural gas company as defined by Section 4905.03(A)(5), Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission.

(2) By opinion and order issued December 2, 2009, in *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 08-1344-GA-EXM (08-1344), the Commission approved a stipulation (08-1344 stipulation), which authorized Columbia to conduct an auction to secure natural gas supplies, initially through a standard service offer (SSO) structure, and subsequently through a standard choice offer (SCO) structure through March 31, 2012.

(3) On September 7, 2011, in 08-1344, the Commission issued a second opinion and order, which, *inter alia*, authorized the continuation of the stipulation approved on December 2, 2009, for the 12-month period beginning April 1, 2012.[1]

(4) Section 4929.08(A), Revised Code, provides for the modification of an exemption, in pertinent part, as follows:

> The public utilities commission has jurisdiction over every natural gas company that has been granted an exemption or alternative rate

[1] The December 2, 2009, order and the September 7, 2011, order shall be referred to, jointly, herein as the exemption orders.

regulation under section 4929.04 or 4929.05 of the Revised Code. As to any such company, the commission, upon its own motion or upon the motion of any person adversely affected by such exemption or alternative rate regulation authority, and after notice and hearing and subject to this division, may abrogate or modify any order granting such an exemption or authority only under both of the following conditions:

(a) The commission determines that the findings upon which the order was based are no longer valid and that the abrogation or modification is in the public interest;

(b) The abrogation or modification is not made more than eight years after the effective date of the order, unless the affected natural gas company consents.

(5) By opinion and order issued January 9, 2013, in the above-captioned case, the Commission, *inter alia*, granted the joint motion to modify[2] the exemption orders and approved an amended stipulation entered into between Columbia, Ohio Gas Marketers Group (OGMG), Retail Energy Supply Association (RESA), Dominion Retail, Inc. (Dominion), Ohio Consumers' Counsel, and Staff.[3] The amended stipulation, *inter alia*, modified the exemption approved by the Commission in 08-1344 for a five-year term commencing on April 1, 2013. The amended stipulation, as approved, also provided that nonresidential Choice customers would be moved from the SCO to a monthly variable rate (MVR) for default gas supplies once the level of shopping for nonresidential Choice customers reaches 70 percent for three consecutive months. In addition,

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2 The parties joining in the joint motion to modify, Columbia, Ohio Gas Marketers Group, Retail Energy Supply Association, Dominion Retail, Inc., and Staff, shall be referred to, jointly, herein as the joint movants.

3 The parties that signed the amended stipulation shall be referred to, jointly, herein as the signatory parties.

the Commission established the initial allocation process for the move to the MVR.

(6) Motions to intervene in this case were granted for the Ohio Partners for Affordable Energy (OPAE), Hess Corporation (Hess), Stand Energy Corporation, Northeast Ohio Public Energy Council, Ohio Schools Council, Volunteer Energy Services, Inc., Direct Energy Services, LLC and Direct Energy Business, LLC (Direct Energy), Interstate Gas Supply, Inc. (IGS), and Honda of America Manufacturing, Inc..

(7) Section 4903.10, Revised Code, provides that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days after the entry of the order upon the journal of the Commission.

(8) On February 8, 2013, applications for rehearing of the Commission's January 9, 2013, order were filed by: Columbia, OGMG, and RESA (Columbia/OGMG/RESA); OPAE; Hess; and Dominion.

(9) On February 19, 2013, memoranda contra the applications for rehearing were filed by: Columbia; OGMG and RESA (OGMG/RESA); Direct Energy and IGS (Direct Energy/IGS); Dominion; and Hess.

(10) On March 6, 2013, the Commission granted the applications for rehearing filed by Columbia/OGMG/RESA, OPAE, Hess, and Dominion for the limited purpose of providing the Commission more time to consider the applications.

<u>Motion to Strike</u>

(11) On February 19, 2013, Hess filed a motion to strike portions of the memorandum contra the application for rehearing filed by Direct Energy/IGS. Hess argues that Direct Energy/IGS set forth arguments in their memorandum contra which equate to an untimely application for rehearing. According to Hess, in their application for rehearing, Direct Energy/IGS accepted the Commission's decision, for the most part, to adopt Hess' initial allocation methodology. However, in their memorandum contra, Direct Energy/IGS advocate that the Commission reconsider its initial determination for the allocation

methodology. Hess contends that, if Direct Energy/IGS wanted the Commission to reconsider the methodology, they should have requested such reconsideration in their application for rehearing. Therefore, Hess requests that the Commission grant its motion to strike.

(12) Direct Energy/IGS filed a memorandum contra Hess' motion to strike their memorandum contra the application for rehearing agreeing that they had, for the most part, accepted the Commission initial allocation methodology. However, at the time, Direct Energy/IGS were not aware of what clarifications Hess was going to include in its application for rehearing. Direct Energy/IGS oppose the clarifications proposed by Hess in its application for rehearing, stating that such clarifications are actually attempts to skew the initial allocation methodology in Hess' favor. Direct Energy/IGS reason that such opposition is appropriate for inclusion in their memorandum contra; therefore, they assert that the motion to strike should be denied.

(13) Upon consideration of the pleadings regarding the motion to strike the memorandum contra filed by Direct Energy/IGS, it is evident that the arguments raised by Direct Energy/IGS in their memorandum contra are put forth to refute the application for rehearing filed by Hess. Therefore, the Commission finds that the memorandum contra the application for rehearing is appropriate and Hess' motion to strike should be denied.

OPAE's Application for Rehearing

(14) OPAE sets forth five grounds for rehearing. In its first assignment of error, OPAE asserts that the Commission unlawfully disregarded the statutory requirements set forth in Section 4929.08(A), Revised Code, for a modification of an exemption order. OPAE notes that Section 4929.08(A), Revised Code, provides that the Commission may modify an order granting an exemption if it determines that the findings upon which the order was based are no longer valid and that the modification is in the public interest. However, OPAE states that the Commission made no citation or reference to the findings of the exemption orders issued in 08-1344, and it is impossible to satisfy Section 4929.08(A), Revised Code, without

referring to the findings of the order the motion requests to modify. OPAE asserts that none of the triggers for a modification under Section 4929.08(A), Revised Code, were met in this case, because the joint movants were not requesting a modification; rather, they were requesting a new exemption through a new alternative regulation plan for a new term commencing April 1, 2013.

(15) In its memorandum contra OPAE's first assignment of error, Columbia notes that OPAE's arguments on rehearing rehash arguments OPAE made on brief, mischaracterize the 08-1344 stipulation, misinterpret the Commissions authority, and disregard Commission precedent. According to Columbia, OPAE's argument that the only lawful way for the joint movants to achieve a new term is to file an alternative rate plan under Section 4929.04, Revised Code, is baseless and rests on a false premise. Columbia states that, contrary to the assertions of OPAE, the initial term of the 08-1344 stipulation expires on March 31, 2013, after which most of the provisions in the 08-1344 stipulation continue until they are modified by the Commission. The amended stipulation simply modified certain provisions of the 08-1344 stipulation for the next five years. Furthermore, Columbia points out that the Commission's decision in this case was consistent with other recent cases in which the Commission relied on Section 4929.08, Revised Code, in modifying a prior exemption order. Citing *In the Matter of the Application to Modify, in Accordance with Section 4929.08, Revised Code, the Exemption Granted to The East Ohio Gas Company d/b/a Dominion East Ohio in Case No. 07-1224-GA-EXM*, Case No. 11-6076-GA-EXM, Opinion and Order (February 14, 2012) and *In the Matter of the Application and Joint Stipulation and Recommendation of Vectren Energy Delivery of Ohio, Inc. for Approval of its Exemption Authority Granted in Case No. 07-1285-GA-EXM*, Case No. 12-483-GA-EXM, Opinion and Order (May 16, 2012). Moreover, Columbia advocates that Section 4929.08(A), Revised Code, the Commission's general powers, and the 08-1344 stipulation all gave the Commission the authority that it exercised to modify the 08-1344 stipulation.

(16) With regard to OPAE's first assignment of error, the Commission initially emphasizes that, as stated in our order, the record clearly reflects support for modification of the exemption orders in compliance with Section 4929.08(A),

Revised Code. While OPAE chooses to disregard the evidence presented by the joint movants, the evidence is, nonetheless, in the record and fully recounted in the Commission's order. The fact remains that OPAE provided no evidence on the record to discount the evidence presented by the joint movants that the exemption orders were no longer valid and a modification would be in the public interest. Accordingly, the Commission finds that OPAE's first assignment of error should be denied.

(17) OPAE asserts, in its second assignment of error, that the Commission unlawfully found that the current rules provide the necessary direction as to what an applicant must include in an application for modification of an exemption order, in accordance with Section 4929.08, Revised Code; however, the Commission ignored the failure of the joint movants to file an application for modification of an exemption order that comports with Rule 4901:1-19-12, Ohio Administrative Code (O.A.C.). For example, OPAE notes that Columbia did not provide details, as required by the rule, on how the code of conduct or the corporate separation plan are invalid.

(18) In its memorandum contra OPAE's second assignment of error, Columbia maintains that, contrary to OPAE's assertions, the joint movants met each of the requirements of both the statute and the Commission's rule, to the extent those requirements applied to this proceeding. Columbia explains that, since the joint movants did not assert that Columbia failed to comply with the corporate separations plan or the code of conduct, the rules requiring information on those issues are inapplicable in this case; thus, no further information on those issues is required.

(19) The Commission finds that OPAE has raised nothing new in its second assignment of error that was not already reviewed and considered in our order in this case. Contrary to OPAE's allegations, the support presented by the joint movants on the record in this case comports with the statutory dictates, as well as the applicable requirements set forth in the rules. While Columbia's corporate separations plan and the code of conduct are important, in light of the fact that neither of these items were affected by the joint motion and there was no allegation that Columbia failed to comply with either of these items, it was not necessary for the joint movants to describe how they

were invalid, as OPAE claims. Accordingly, the Commission finds that OPAE's second assignment of error is without merit and should be denied.

(20) In its third assignment of error, OPAE states that the order is in violation of Sections 4903.09 and 4929.08(A), Revised Code, because the Commission unlawfully and unreasonably found that the evidence supports a conclusion that certain findings of the previous exemption orders are no longer valid and that the joint movants may be adversely affected if the modification is not made. OPAE argues that there was no evidence in the record showing that any finding upon which the existing exemption orders were based was invalid. According to OPAE, the Commission's findings that there were changes from the 08-1344 stipulation, as well as changes to the program outline, and a request to modify the exemption orders for another five-year term, were not relevant for purposes of adhering to the requirements of Section 4929.08(A), Revised Code, because they point to no invalid finding in the exemption orders. While the Commission points to the advent of shale gas production in Ohio, the factual assumptions underlying Columbia's capacity contracts, Columbia's consideration to exit the merchant function, and adherence to the policies enunciated in Section 4929.02, Revised Code, OPAE asserts that none of this supports a finding that the previous exemption orders are no longer valid and adversely affect the joint movants. According to OPAE, none of these findings were made in the existing exemption orders. Therefore, OPAE argues that findings that were never made cannot be invalid.

(21) In response to OPAE's third assignment of error, Columbia states that joint movants demonstrated that some of the findings underlying the exemption orders in 08-1344 are out-of-date, including the fact that the SSO and SCO auctions were new and the shale gas boom had not yet begun. Furthermore, Columbia insists that the joint movants demonstrated that the 08-1344 stipulation adversely affected them, particularly by locking Columbia into a peak day capacity portfolio not geared to meet Columbia's needs after the initial term of the 08-1344 stipulation and by preventing Columbia from exiting the merchant function.

(22) With regard to OPAE's third assignment of error, the Commission agrees that the joint movants met the statutory requirements for modifying an exemption order by presenting evidence that supported the conclusion that the findings underlying the exemption order were no longer valid and that the joint movants would be adversely affected by continuation of the exemption orders. In support of its position, OPAE fails to acknowledge the breadth of the record in this matter as reflected in the order. In fact, it appears as though OPAE would have the Commission only review the evidence presented in 08-1344 and ignore the changes that have occurred in the natural gas market since the exemption orders were issued. To do as OPAE requests would clearly be inappropriate and contrary to the mandates of the statute and sound public policy. The Commission is tasked with the statutory responsibility to promote and encourage effective competition in the state of Ohio and to "[r]ecognize the continuing emergence of competitive natural gas markets." Therefore, in keeping with Section 4929.08(A), Revised Code, in conjunction with Section 4929.02, Revised Code, when determining whether the exemption orders are no longer valid, it is incumbent upon the Commission to consider not only the initial findings in the exemption orders, but the ongoing status of competition and the natural gas markets. Accordingly, the Commission finds that this assignment of error is without merit and should be denied.

(23) In its fourth assignment of error, OPAE states that the order is in violation of Sections 4903.09 and 4929.08(A), Revised Code, because the Commission unlawfully and unreasonably found that the joint movants had corroborated that the public interest objective set forth in Section 4929.02, Revised Code, will be advanced by modifying the exemption orders. According to OPAE, the Commission made this finding by ignoring both the public interest objectives in Section 4929.02, Revised Code, and the evidence in this case. OPAE believes that, since the joint motion sought to eliminate the availability of SCO service to nonresidential customers, the Commission's primary concern in considering the public interest should have been the impact on customers' bills if the SCO is eliminated. OPAE opines that the elimination of SCO service will reduce competition, increase prices consumers pay, and maximize suppliers' profits. In OPAE's view, promotion of the state policy requires

that an SCO option that gives consumers a reasonable price for natural gas service set by the competitive market be maintained.

(24) Columbia, in response to OPAE's fourth assignment of error, states that the joint movants established, on the record, that the amended stipulation would, among other benefits: extend Columbia's SCO for up to five years; ensure that customers will not be double billed for Columbia's balancing fee; provide greater off-systems sales/capacity release revenue to ratepayers, thus, lowering the Choice/SSO/SCO Reconciliation Rider (CSRR); direct net revenues from certain new billing services to the CSRR, thus, lowering the CSRR; create a new security deposit for SCO suppliers that, if not needed, would further reduce the CSRR; allow marketers to bring new products to the market; and provide greater transparency in customer billing. Columbia also notes that OPAE's arguments regarding cost savings under the SCO program are misleading and ultimately irrelevant. Columbia points out that OPAE's testimony in this case never established that the current state of successful competition would suffer or that prices would rise from discontinuance of the SCO. According to Columbia, OPAE's argument is based on the false premise that there is a state policy to ensure that customers get the lowest price; however, Columbia points out that the policy actually refers to the promotion of the availability to consumers of adequate, safe, and reasonably priced services. Moreover, Columbia argues that exiting the merchant function satisfies the state policy in Section 4929.02(A)(3), (6), and (7), Revised Code, by promoting diversity in supplies and giving consumers effective choices, recognizing the emergence of competitive markets, and promoting an expeditious transition to the provision of services that achieves effective competition.

(25) Upon consideration of OPAE's fourth assignment of error and Columbia's response, the Commission concludes that the order satisfies the requirements of Sections 4903.09 and 4929.08(A), Revised Code, and appropriately finds that the joint movants have shown that the public interest objective set forth in Section 4929.02, Revised Code, will be advanced by modifying the exemption orders. The Commission agrees that one of the most important policies espoused in the statute is that we must promote reasonably priced natural gas service; however, this

ideal cannot be considered in a vacuum and must be viewed together with the other important mandated policy objectives. Contrary to OPAE's assertions, the record clearly weighs all of the evidence presented and supports the determinations made by the Commission in this case. Therefore, the Commission finds that this ground for rehearing should be denied.

(26) In its fifth assignment of error, OPAE states that the order is in violation of Sections 4903.09 and 4929.08(A), Revised Code, because the Commission unlawfully and unreasonably found that the amended stipulation comports with Section 4929.08, Revised Code, and Rule 4901:1-19-12, O.A.C., meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted. OPAE notes that the stipulation is not the product of serious bargaining, pointing out that OPAE's member agencies are the only nonresidential customers in this case. OPAE states that, while it attended some collaborative meetings, being invited to settlement discussions where the outcome is not negotiable is the same as being excluded. Furthermore, OPAE contends that the amended stipulation fails to benefit ratepayers and the public interest because it reduces competition and eliminates competitive options available to consumers. OPAE believes that the MVR, to which SCO commercial customers will be assigned in the event of an exit of the merchant function, is inferior to the SCO in terms of price and conditions. Finally, OPAE asserts that the amended stipulation fails the third-prong of the test used by the Commission in considering stipulations, because it conflicts with the regulatory policy and practice set forth in the statute and the Commission's rules.

(27) In its memorandum contra OPAE's fifth assignment of error, Columbia notes that the Commission has already rejected this argument of OPAE in its order and OPAE has offered nothing to contradict the Commission's finding. According to Columbia, OPAE's argument is essentially that the meetings it was invited to were not real settlement negotiations and that the lack of serious bargaining is evident in the purportedly poor outcome achieved for nonresidential customers. Columbia references comments submitted in this case on December 11, 2012, by the Council of Smaller Enterprises, which states the organization's support for the amended stipulation. Furthermore, Columbia points out that OPAE's

argument regarding whether the amended stipulation, as a package, benefits ratepayers only considers the nonresidential exit and the security deposit, and does not look at the amended stipulation as a package. Finally, Columbia states that, while OPAE asserts that the amended stipulation will not benefit ratepayers and the public interest, OPAE never explains how ending the SCO program and moving to an MVR program would deprive consumers of effective choices in accordance with Section 4929.02(A)(3), Revised Code.

(28) The Commission finds OPAE's fifth assignment of error to be without merit. As we stated in our order, in contested case, the parties on the different sides provide conflicting arguments that must be weighed based upon the record evidence and the statutory constructs. While OPAE does not agree with Columbia's progression toward market-based commodity supply, a thorough review of the amended stipulation and the record, in light of the statute and the specific directives set forth herein, reveals a framework that, overall, provides benefits to all customer classes. In its application, OPAE raises nothing new on rehearing that was not thoroughly reviewed and considered in our order. Accordingly, this assignment of error should be denied.

Allocation Methodology

(29) In the January 9, 2013, order, the Commission set forth the framework for the initial allocation methodology to move nonresidential Choice customers from the SCO to the MVR once the level of shopping reaches 70 percent for three consecutive months and concluded that the initial allocation would follow a three-step process, as follows:

(a) 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.

(b) 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.

(c) 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.

In addition, the Commission directed Staff is to meet with Columbia and the stakeholders to discuss and determine the parameters of the nonresidential exit from the merchant function.

(30) In findings (31) through (46) of this entry on rehearing, the Commission delineates the parties' arguments on rehearing regarding the allocation methodology and rules on the specific requests. Subsequently, in findings (47) through (50), the Commission summarizes our conclusions and sets forth the specific directives regarding the allocation methodology and the process to be followed.

Step One of the Allocation Methodology

(31) In its first assignment of error, with regard to step one of the allocation process, Dominion asserts that the Commission erred in determining that tranches awarded in SSO auctions should be considered in calculating the ratio to be applied in allocating customers to MVR suppliers. Dominion argues the Commission is ignoring 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 competitive retail natural gas service (CRNGS) providers and are no longer active in Columbia's service area. However, Dominion notes that, when considering the language in both step one and step two of the methodology, if the Commission means that the tranches awarded in the 2010 and 2011 SSO auctions will not be considered in the methodology, this ground for rehearing is moot, because, going forward, all auctions will be SCO.

(32) In response to Dominion's first ground for rehearing, Hess states that it is moot, because the SSO auctions were not included in the Commission's allocation methodology.

(33) Upon consideration of Dominion's first ground for rehearing, the Commission agrees that it is moot and should be denied, as our reference in step one of the methodology is to historical tranche ownership that begins with the combined SSO/SCO auctions for the 2012/2013 program year.

Step Two of the Allocation Methodology

(34) In its second assignment of error, with regard to step two of the allocation process, Dominion contends that there is no rational basis for the Commission's determination that tranches awarded in the 2012 SCO auction should be considered in calculating the ratios to be applied in allocating customers to MVR suppliers. Dominion recognizes that Hess' proposal to allocate a portion of Columbia's remaining SCO customers to winning bidders in SCO auctions in order to incentivize SCO auction participants to bid down the SCO price is a legitimate objective. However, Dominion asserts that such incentive was not in play in the 2012 SCO auction. Therefore, Dominion argues the Commission erred in determining that a supplier's average historical SCO tranche ownership should be measured "as of the date of this order going forward." According to Dominion, 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. Dominion believes that the reference in the second step of the allocation process to "tranche ownership as of the date of the order" suggests that the 2012 auction results are to be included, which is unreasonable.

(35) In its memorandum contra, Hess disagrees with Dominion's second assignment of error stating that the purpose of allocating a portion of nonshopping customers to SCO suppliers is twofold: to incent continued SCO supplier participation in the auctions; and to recognize SCO suppliers' historical contribution and investment in reaching the 70 percent exit trigger. Hess argues the Commission's finding that historical SCO tranches are to be measured as of the date of the order plainly shows that the 2012 tranches being served on the date of the order are to be included in the MVR methodology.

(36) Upon review of Dominion's second ground for rehearing, the Commission finds that Dominion's application in this regard is without merit. Our clarification regarding step one of the allocation methodology also holds true for step two, in that tranche ownership should be measured for the period beginning on the date of the Commission's January 9, 2013, order, which includes the combined SSO/SCO auctions for the 2012/2013 program year, and ending on the date of nonresidential exit. Accordingly, we conclude that Dominion's second assignment of error should be denied.

(37) In its third assignment of error, Dominion asserts that the allocation methodology 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. Furthermore, Dominion notes that the order did not address how the calculation of relative tranche ownership will be affected if a winning bidder elects not to register as an MVR supplier. Dominion also points out that some winning bidders in SCO auctions, 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. Therefore, to prevent outcomes that are antithetical to the goal of market-based pricing, Dominion asserts the Commission should consider placing additional restrictions on suppliers that are allocated customers solely because they are winning bidders in auctions.

(38) In its application for rehearing, as well as its response to Dominion's third assignment of error, Hess agrees that the Commission should explicitly state how the allocation process is to work and what course should be taken if an SCO supplier awarded customers in the allocation process chooses not to serve as an MVR supplier. Specifically, Hess advocates that the Commission make the following clarifications:

(a) Hess recommends that, to determine an MVR supplier's proportional market share at the nonresidential exit, the supplier's allocation should be calculated based on its market share of nonresidential Choice-eligible customers. Hess asserts that any other market share calculation would undermine and inappropriately dilute a nonresidential-focused supplier's contributions to the market. For example, Hess states that, if the proportional market share for the initial nonresidential MVR allocation takes into account a Choice supplier's residential and nonresidential market share, those suppliers with a greater residential market share would benefit compared to those suppliers with a greater market share of nonresidential customers.

Direct Energy/IGS oppose this recommendation by Hess stating that adopting Hess' position would send the market signal that it is acceptable for suppliers to focus all of their efforts on nonresidential customers at the expense of residential customers. Direct Energy/IGS view the order as including both residential and nonresidential Choice market share as a significant part of the balancing of interests in the initial allocation methodology. According to Direct Energy/IGS, if only nonresidential customer migration is considered for calculating the Choice supplier's proportional share of the market, then the balance achieved in the order is tipped away from those suppliers serving residential consumers.

The Commission finds merit in Hess' recommendation that the allocation methodology be clarified to reflect that, for the nonresidential exit, the supplier's allocation should be calculated based on its market share of nonresidential Choice-eligible customers. Accordingly, Hess' request for rehearing on this issue should be granted.

(b) Hess states that the historical SSO and SCO tranche ownership accounting should begin this SCO program year, 2012/2013.

Direct Energy/IGS oppose Hess' proposal to count the current SCO year's bid winners in the calculation of the SCO market share for the initial allocation of nonresidential customers, stating that doing so would be inconsistent with the order's desire to incent continued investments in the SCO on a going-forward basis. They reason that, given the timing of the 2012/2013 auction and the timeline of the filings in this case, no auction participant could have based its auction strategy on the belief that being a winning bidder would translate into a higher allocation percentage in a nonresidential exit.

The Commission agrees with Hess that the accounting should commence with the advent of the first combined SCO auction. Accordingly, Hess' application for rehearing on this issue should be granted.

(c) Hess contends that Columbia must use Hess' proposed formula, which is based on dividing the number of tranches served by the SCO supplier by the total number of tranches beginning with the current program year and ending at the time of exit, to calculate the average historical SCO tranche ownership.

Upon consideration of Hess' request, the Commission finds that the proposal is reasonable and consistent with our order, therefore, the allocation methodology should be clarified and Hess' request for rehearing on this issue should be granted.

(d) Hess recommends that, if an SCO supplier rejects its initial MVR allocation, the rejected customers should be reallocated to the other SCO suppliers evenly.

In their memoranda contra, Dominion and Direct Energy/IGS oppose this proposed clarification by Hess. Dominion contends that there is no 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. Dominion asserts that limiting an SCO auction winner's share to its proportionate tranche ownership will in no way decrease the incentive for participants in future SCO auctions to bid down the auction clearing price. Direct Energy/IGS assert Hess' 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. According to Direct Energy/IGS, to provide an SCO supplier with a percentage greater than its proportional share of tranches awarded would unjustly enrich the SCO suppliers. If the Commission clarifies the order as Hess requests, then Direct Energy/IGS recommend the Commission make such clarification also applicable to any rejected allocations entitled to suppliers due to their Choice market share.

The allocation methodology set forth in our order, and clarified herein, is the framework for the process to be employed at the time of nonresidential exit; however, we acknowledge that, while our order determined that the initial allocation would be based on market share, it did not address the allocation of residual customers who were not allocated because their SCO or Choice suppliers chose not to be an MVR supplier. The Commission believes that the best course of action for resolving this issue is to require Staff to meet with Columbia and the stakeholders, in order to develop a proposal to be filed with the Commission for our consideration and approval. With this in mind, the Commission finds that Hess' proposal should be discussed in that forum and, therefore, Hess' specific proposal on rehearing should be denied.

(e) Hess states that an SCO supplier that is awarded an MVR allocation should be able to transfer its allocated customers to a properly registered Choice CRNGS supplier affiliate immediately. Hess explains that this clarification would mean that the SCO supplier would not have to assign the customers to its affiliate; therefore, Columbia would be prohibited from requiring the SCO supplier to comply with its tariff-mandated assignment requirements which could lead to a one to two billing cycle delay before the transfer is complete.

In response, Dominion states that, if the Commission considers Hess' proposal regarding the transfer of customers, the Commission should schedule further proceedings to permit stakeholder input on the proposal. Dominion states that selling or assigning the former SCO customers to other suppliers for compensation would be at cross-purposes with the objective of promoting competition. According to Dominion, the approved MVR model contemplates that suppliers that register for the MVR program will serve the customers allocated to them.

The Commission disagrees with Hess' recommendation on rehearing. If a supplier has elected to be an MVR supplier, it has agreed to take assignment of customers and, therefore, Columbia's tariff requirements should be followed. Accordingly, this assignment of error is without merit and should be denied.

(39) In their memorandum contra Hess' application for rehearing, Direct Energy/IGS assert that the application and suggested clarifications should be denied in order to allow Columbia and the stakeholders an opportunity to create a formula, consistent with the order, to achieve the directives in the order regarding the allocation methodology. According to Direct Energy/IGS, if the Commission grants Hess' clarifications, more questions could be raised, which could prompt further requests for rehearing.

(40) Upon consideration of Dominion's third assignment of error and Hess' application for rehearing requesting certain clarifications of our order, the Commission agrees that clarification is warranted. Through our order and clarifications set forth herein, the Commission has adopted a framework for the MVR allocation methodology to be used by Columbia for a nonresidential exit. However, there are still a couple of details of that methodology that need to be discussed and worked out amongst Staff, Columbia, and the stakeholders. Therefore, to the extent set forth above, the applications for rehearing of Dominion and Hess regarding the issues requiring clarification of the framework allocation methodology are granted and all other rehearing issues pertaining the details of the methodology are denied.

Step Three of the Allocation Methodology

(41) Referring to step three of the allocation process set forth in the Commission's January 9, 2013, order, Dominion states 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 of 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 providers to compete for market share.

(42) Likewise, in their application for rehearing, Columbia/OGMG/RESA request that the third step of the three-step initial allocation process be simplified to merely require rounding each assignment to the nearest whole customer account. Columbia/OGMG/RESA believe it may be mathematically impossible to implement the third step, i.e., if every supplier was awarded a minimum of one percent and there was more than 100 suppliers, implementation of step three would be impossible. In addition, they assert that the one percent minimum allocation enables a supplier to set up several different affiliated companies with gas supplier licenses for the purpose of gaming the system to receive more customers. Furthermore, Columbia/OGMG/RESA note that Columbia's current tariff allows a CRNGS provider to operate behind Columbia with as few as 100 customers. Once the 70 percent threshold is reached and the third step is implemented as set forth in the order, with over 100,000 nonresidential

Choice-eligible customers, it is possible that the number of customers to be allocated would be around 30,000 or 300 assigned customers for every one percent. Therefore, a CRNGS provider with as few as 100 customers could be assigned 300 customers, which is three times the number of customers it is serving at the time of allocation, which may be more than that provider is capable of serving. Columbia/OGMG/RESA propose that the solution to this problem is to amend the third step to read:

> 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. The Company shall develop an algorithm designed to carry out the allocation and present it to the Staff for approval in advance of any assignment.

According to Columbia/OGMG/RESA, this solution carries out the goals of the Commission's order, incents investment in the Choice market and the SCO market, and benefits customers. In its response to the applications for rehearing, Dominion supports the proposal set forth by Columbia/OGMG/RESA.

(43) In response to the application for rehearing filed by Columbia/OGMG/RESA, Hess states that, while it agrees that the assignment of a one percent minimum of nonshopping customers to MVR suppliers should be eliminated, it opposes their request that Columbia develop an allocation algorithm for Staff's approval. Hess believes that the Commission should clarify the algorithm for the allocation process on rehearing, because to defer resolution of the specific allocation mechanics at issue to Columbia's discretion, subject only to Staff approval, is not appropriate. According to Hess, the algorithm should be filed in this case for comment by all the parties and approval by the Commission.

(44) In its application for rehearing, Hess asserts that the one percent minimum rule in step three of the methodology is unreasonable because it undermines the contributions of those MVR suppliers with a very low percentage share of the nonresidential Choice market and it is impractical to

implement. Hess advocates that the Commission should implement a 0.5 percent allocation threshold and, if an MVR supplier has less than 0.5 percent of the nonresidential Choice market at exit, it will not be allocated a share of the nonshopping customers. However, if an MVR supplier has 0.5 percent or more of the nonresidential Choice market at exit, it will be allocated nonshopping customers based on actual market share.

(45) In their memoranda contra Hess' application for rehearing, Dominion and Direct Energy/IGS oppose the 0.5 percent allocation threshold. Dominion notes that this threshold would result in less than 100 percent of the SCO customers being allocated because the market share percentages of MVR suppliers with less than 0.5 percent of the market would be excluded. Contrary to Hess' assertions, Dominion does not believe a percentage minimum allocation would reduce the administrative burden on Columbia. Moreover, Dominion and Direct Energy/IGS state that, 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. According to Dominion, Hess' proposal would ignore the contribution of new entrants to the nonresidential exit.

(46) Upon consideration of the applications for rehearing regarding step three of the allocation methodology set forth in the order filed by Columbia/OGMG/RESA, Dominion, and Hess, the Commission agrees with these parties that step three of the allocation methodology, which included a minimum of one percent, should be modified. The Commission finds the recommendation filed by Columbia/OGMG/RESA to be the best practical solution to formulate the correct allocation methodology based on the record in this case and the framework provided by the Commission. Furthermore, the Commission finds that Staff should meet with Columbia and the stakeholders to discuss the specific algorithm that will be used for the allocation methodology approved in our order, as modified and clarified herein. Furthermore, the Commission finds that the algorithm should be filed in this docket for review and approval by the Commission once the collaborative has worked out the details. Accordingly, the applications for rehearing on this issue filed by Columbia/OGMG/RESA,

Dominion, and Hess should be granted, and step three should be clarified and modified consistent with this determination. The remaining rehearing issues raised by Hess should be denied.

Conclusion for Allocation Methodology

(47) As set forth in findings (31) through (46) above, the Commission has thoroughly considered the arguments raised by the parties and granted, in part, and denied, in part, the rehearing requests, regarding the allocation methodology for MVR suppliers. Specifically, the Commission finds that the following assignments of error should be denied:

(a) Dominion's first assignment of error, regarding step one of the methodology, is moot, because the tranches awarded in the 2010 and 2011 SSO auctions will not be considered in the methodology [finding (33)].

(b) Dominion's second assignment of error, regarding step two of the methodology, is without merit because tranche ownership will be measured for the period beginning on the date of the Commission's January 9, 2013, order, which includes the combined SSO/SCO auction for the 2012/2013 program year, and ending on the date of nonresidential exit [finding (36)].

(c) Hess' specific proposal on rehearing that, if an SCO supplier rejects its initial MVR allocation, the rejected customers should be reallocated to the other SCO suppliers evenly, should be denied, and Hess' proposal and others' proposals should be considered by Staff, Columbia, and the stakeholders in a collaborative meeting. Following the meeting, Staff should file a proposal for the Commission's consideration and approval [finding (38)(d)].

(d) Hess' proposal that, if a supplier has elected to be an MVR supplier, it has agreed to take assignment of customers and, therefore, Columbia's tariff requirements should not be followed is without merit [finding (38)(e)].

(48) Furthermore, upon consideration of the arguments of the parties, the Commission has concluded that rehearing on the following issues should be granted:

(a) Dominion's third assignment of error that the specifics of the calculation to be employed in determining the allocation ratio and that the calculation of relative tranche ownership, if a winning bidder elects not to register as an MVR supplier, need to be addressed has merit [finding (40)].

(b) Hess' assertion that the allocation methodology should be clarified to reflect that, for the nonresidential exit, the supplier's allocation should be calculated based on its market share of nonresidential Choice-eligible customers has merit [finding (38)(a)].

(c) Hess' request that the accounting should commence with the advent of the first combined SCO auction has merit [finding (38)(b)].

(d) Hess' proposed formula, which is based on dividing the number of tranches served by the SCO supplier by the total number of tranches beginning with the current program year and ending at the time of exit, to calculate the average historical SCO tranche ownership should be used for the allocation methodology [finding (38)(c)].

(e) The applications for rehearing filed by Columbia/OGMG/RESA, Dominion, and Hess requesting clarification of step three of the allocation methodology have merit [finding (46)].

(f) Columbia/OGMG/RESAs' proposal that step three of the allocation methodology be modified to provide that, for the initial allocation, each MVR supplier shall be assigned a number of customers based on the methodology rounded to the nearest whole customer account has merit [finding (46)].

(g) Hess' request that the algorithm to be used for the allocation methodology should be filed in this docket and approved by the Commission has merit [finding (46)].

(49) Given our determinations on the allocation methodology set forth previously in this entry on rehearing, the Commission agrees that clarification of the methodology adopted in our January 9, 2013, order, is necessary. Accordingly, the allocation methodology should be modified to read:

(a) The initial allocation will be implemented based on an MVR supplier's market share of nonresidential Choice enrollment at the time of Columbia's nonresidential exit and that MVR supplier's average historical share of SSO/SCO tranche ownership.

(b) A supplier's average historical share of SSO/SCO tranche ownership for nonresidential customers shall be measured for the period beginning on the date of the Commission's January 9, 2013, order, which includes the combined SSO/SCO auctions for the 2012/2013 program year, and ending on the date of nonresidential exit, and is based on dividing the number of tranches served by the SCO supplier by the total number of tranches beginning with the current program year, 2012/2013, and ending at the time of exit.

(c) 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. Staff shall work with Columbia and the stakeholders to develop an algorithm designed to carry out the allocation.

(50) The Commission recognizes that the following details regarding the initial allocation methodology must be discussed amongst the parties prior to implementation:

(a) The methodology that should be used to allocate residual customers who were not initially allocated because their SCO or Choice suppliers chose not to be an MVR supplier.

(b) The algorithm that should be used to carry out the allocation methodologies, which shall include:

(i) A formula to calculate each MVR Choice supplier's market share of nonresidential Choice customers, as described in finding (49)(a) above;

(ii) A formula to calculate each MVR SCO supplier's market share of nonresidential Choice customers, as described in finding (49)(a) and (b) above; and

(iii) A formula to calculate how the residual customers will be allocated under the methodology in finding (50)(a) above.

To address these details, the Commission directs Staff to meet with Columbia and the stakeholders to discuss and work out these details of the allocation process, in keeping with the framework established in our order, as clarified and modified in this entry on rehearing. Staff is directed to file, within 90 days from the date of this entry on rehearing, the detailed allocation methodology, including the resolution of the issues in (a) and (b) above, with the Commission for our review and approval.

SCO Security Deposit

(51) Pursuant to the amended stipulation adopted by the Commission in our January 9, 2013, order, in addition to the letter of credit previously required, SCO suppliers would be required to provide Columbia with a cash SCO security deposit, in the amount of $0.06 per thousand cubic feet (Mcf) multiplied by the initial estimated annual delivery requirements for the SCO program year of the tranches won by that SCO supplier. The amended stipulation also provided that

any funds remaining at the end of each program year will be transferred to customers through the CSRR commencing June 2014, for the 2013 program year, which commences on April 1, 2013.

(52) Hess, in its application for rehearing, submits that the Commission's order is unlawful and unreasonable because it: fails to set forth the findings of fact and reasoning for approving the SCO security deposit in contravention of Section 4903.09, Revised Code; is against the manifest weight of the evidence, as the evidence does not support the level of the charge, and unlawfully relies on the amended stipulation in lieu of the evidence of record; and violates Columbia's code of conduct and Section 4929.02, Revised Code, by unduly discriminating against SCO suppliers and SCO customers. Hess argues that, since the security deposit is not returned to the SCO suppliers if there is no SCO supplier default during the SCO program year, the charge is not a deposit, but is actually a tax. According to Hess, SCO providers will have to build this charge into their SCO bids, thus, subjecting SCO customers to higher prices, while Choice suppliers will not be assessed this charge and will not need to account for the charge in their offers to customers. Hess further notes that, even though SCO customers would be paying all costs associated with the SCO security charge, the unused funds would be returned to all customers through the CSRR. Thus, the SCO customers would be unduly disadvantaged compared to the Choice customers.

Hess further points out that, under Columbia's current program outline, Columbia already has the authority to impose refundable cash deposits on SCO suppliers and, therefore, the need for the nonrefundable security deposit proposed in the amended stipulation is obviated. Hess argues that any finding that Columbia needs the ability to impose a cash security deposit on SCO suppliers, an ability it already has, is unreasonable, unlawful, and against the manifest weight of the evidence. Hess points out that no cost-of-service study was done to determine what the deposit should be. Furthermore, Hess notes that the record reflects that Columbia's SCO-related costs are about $70,000 per year and the proposed SCO security deposit is estimated to collect approximately $4.8 million per year. Hess asserts that the Commission adopted the SCO security deposit based on the signatory parties' negotiated price, rather than the evidence of record as to what the level of the deposit should be. Hess notes that the Ohio Supreme Court has found that the Commission cannot merely defer to the price stipulated to by the parties, but must base its orders on the evidence of record. See *Columbus Southern Power Co. v. Pub. Util. Comm.*, 129 Ohio St.3d 46, 950 N.E.2d 164 (2011).

Therefore, Hess requests that the Commission grant rehearing and either reject the $0.06 per Mcf SCO security deposit or, alternatively, make the deposit refundable and return to the SCO suppliers, with interest, all balances not used for purposes of SCO supplier default during the course of the SCO program year.

(53) In their memorandum contra, OGMG/RESA assert that the Commission adequately set forth its findings of fact and reasoning when it approved the $0.06 per Mcf SCO security deposit. They point out that, contrary to the assertions by Hess, the statute does not require the Commission to evaluate every factual or legal allegation; rather, the Commission's decision must provide sufficient detail of the facts on the record upon which the order is based, and the reasoning followed to reach that decision. See *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87 at 89, 706 N.E.2d 1255 (1999). OGMG/RESA offer that the Commission did specifically make findings of fact as to the SCO deposit and used those findings to support its decision. Furthermore, after describing the evidence and arguments, the Commission stated its conclusion. Unlike the decisions cited by Hess in support of its allegation that the order violates Section 4903.09, Revised Code, wherein no hearings were held, no evidence was received, and the Commission relied on findings outside of the record, OGMG/RESA point out that a hearing was held in this case and the evidence submitted on the record was relied on by the Commission in reaching its decision.

Moreover, OGMG/RESA maintain that approval of the SCO deposit is not against the manifest weight of the evidence and there is no improper reliance on the amended stipulation. OGMG/RESA point out that there is no cost-of-service study or test year analysis for the SCO security deposit amount because this is not a rate case and the statute does not require such studies and analysis in an alternative regulation plan proceeding under Chapter 4929, Revised Code, or before modifications to an exemption plan can occur.

OGMG/RESA argue that the evidence of record demonstrates that, if an SCO supplier defaults, there is a unique and discrete risk for Columbia; therefore, a pool of liquid funds, created by the security deposit, is a reasonable approach to address that risk. They also assert that the evidence reveals that these are specific expenses associated with the SCO that will continue into the future, that those expenses are estimated well above the $0.06 per Mcf, and that such expenses are not covered by the existing credit arrangements. Finally, OGMG/RESA state that the deposit does not violate Columbia's code of conduct and is not discriminatory. OGMG/RESA point out that, while the SCO deposit applies only to SCO suppliers, absolute uniformity among rates and charges is not required and utilities are permitted to charge different and unequal rates, as long as there is some actual and measurable difference in the services furnished. OGMG/RESA emphasize that an SCO supplier and a Choice supplier are not the same and they do not have the same risks and expenses.

(54) The SCO security deposit issue was debated by the parties at the hearing and on brief and the Commission quite thoroughly summarized and reviewed those arguments in our order. However, Hess, somewhat disingenuously, maintains that the Commission failed to set forth the facts and reasoning behind approval of this provision as part of the amended stipulation. In its rehearing application, Hess simply reiterates the arguments it put forth on the record and raises no new argument that was not already comprehensively reviewed and considered in our order. As detailed by OGMG/RESA in their response, in the order, the Commission heard and reviewed all of the factual and legal arguments regarding this issue, made a decision as to the arguments pertaining to the security deposit, and definitively stated our basis for our decision. While Hess may not agree with the Commission's review and resolution of this issue, Hess' disagreement to the ultimate decision does not negate the point that the Commission appropriately weighed all of the evidence of record, including the amended stipulation and the arguments set forth by the parties, detailed the evidence and reasoning in the order, and arrived at its final

decision on the issue. Accordingly, the Commission finds that Hess' application for rehearing on the SCO security deposit is without merit and should be denied.

Motion for Tariff Approval

(55) As a final matter, the Commission notes that, on January 17, 2013, Columbia filed its final tariff sheets pursuant to the Commission's January 9, 2013, order in this case. Subsequently, on February 8, 2013, Columbia filed a motion requesting the Commission approve two corrected tariff sheets. In support of its motion, Columbia explains that, since the filing of its final tariff, Columbia discovered two errors that needed to be corrected, namely the inadvertent omission of one tariff sheet, and a numbering error. No one filed a memorandum contra Columbia's motion.

(56) The Commission finds that Columbia's motion for approval of the corrected tariff sheets is reasonable and should be approved

It is, therefore,

ORDERED, That Hess' motion to strike the memorandum contra filed by Direct Energy/IGS is denied. It is, further,

ORDERED, That OPAE's application for rehearing is denied. It is, further,

ORDERED, That the applications for rehearing filed by Columbia/OGMG/RESA, Dominion, and Hess are granted, in part, and denied, in part, as set forth herein. It is, further,

ORDERED, That, within 90 days from the date of this entry on rehearing, Staff file the detailed allocation methodology, including the resolution of the issues in finding (50)(a) and (b) above, with the Commission for our review and approval. It is, further,

ORDERED, That Columbia's motion for approval of the corrected tariff sheets be approved. It is, further, ORDERED, That a copy of this entry on rehearing be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Lynn Slaby

M. Beth Trombold

CMTP/vrm

Entered in the Journal

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Barcy F. McNeal

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Secretary