

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The East	)	
Ohio Gas Company d/b/a Dominion East Ohio	)	Case No. 17-0820-GA-ATA
for Approval of Changes in Rules and	)	
Regulations	)	

**INITIAL COMMENTS OF  
THE RETAIL ENERGY SUPPLY ASSOCIATION**

**I. INTRODUCTION**

The Retail Energy Supply Association (“RESA”)<sup>1</sup> appreciates the opportunity to submit comments on The East Ohio Gas Company’s (“DEO”) application for certain amendments to tariffs that DEO believes necessary to support the planned acquisition of additional contract pipeline capacity in the Ashtabula, Ohio area. RESA does not oppose increasing pipeline capacity to constrained areas but DEO’s proposed revisions to its tariffs are ambiguous and require additional clarification. RESA’s comments are intended to identify these ambiguities and issues that require further clarification. RESA also is willing to participate in any settlement conferences so that DEO, Staff and intervening parties can discuss the tariff revisions and hopefully come to an amicable resolution.

**II. RESA HAS EXPERIENCE IN NATURAL GAS SUPPLY THAT CAN ASSIST THE COMMISSION IN THIS PROCEEDING**

RESA is a trade association of suppliers that support the creation and advancement of competitive energy markets in Ohio and throughout the country. RESA’s members represent the interests of a broad and diverse group of retail energy suppliers who share the common vision

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<sup>1</sup> The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

that competitive retail energy markets deliver a more efficient, customer-oriented outcome than regulated utility structure. Many of RESA's members are certificated as competitive retail natural gas suppliers ("Suppliers"), are active in the Ohio retail natural gas markets, and provide service to residential, commercial, industrial and governmental customers served by DEO. The members of RESA are knowledgeable of competitive energy markets and how specific programs can influence the growth and development of the market. Important to this proceeding, RESA members are very familiar with the arrangement for and supply of gas for deliveries to local distribution companies that in turn make deliveries to retail customers.

### **III. BACKGROUND**

DEO has proposed tariff changes to support the planned acquisition of contract capacity on a new interstate pipeline under development to serve the Ashtabula area in northeastern Ohio.<sup>2</sup> The pipeline is being developed by R.H. Energytrans, LLC and will be called the "Risberg Line." DEO will reserve capacity on the FERC-regulated Risberg Line to relieve capacity constraints for gas flowing to the Ashtabula area.<sup>3</sup>

As noted in DEO's application in Exhibit C-2 & C-3, the proposed tariff changes regarding the Risberg Line are primarily intended to:

- Define the service area and customers subject to the tariff changes.
- Require transportation customers who increase consumption after the Risberg Line is placed into service to accept a release of firm transportation capacity on the Risberg Line as a condition of receiving service.
- Require Energy Choice Suppliers serving customers who increase consumption after the Risberg Line is placed into service to accept a release of firm transportation capacity on the Risberg Line as a condition of receiving service.

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<sup>2</sup> Application, Exhibit C-2 & C-3 at page 1.

<sup>3</sup> *Id.*

- Relieve affected customers of the obligation to pay, to the extent applicable, Transportation Migration Rider – Parts A or B (TMR-A or TMR-B).

DEO intends to file compliance tariffs on revisions related to updated Ohio Administrative Code references upon approval by the Public Utilities Commission of Ohio (“Commission”) of this application. DEO, however, would not file compliance tariffs for the Risberg Line revisions until approximately 9 to 12 months prior to the in-service date of the pipeline. DEO asks the Commission to issue an order setting the filing date for the Risberg Line-related tariffs on or around January 1, 2018 or alternatively, 12 months prior to the in-service date if later than December 31, 2018.<sup>4</sup>

#### **IV. RESA’S COMMENTS SEEK TO RESOLVE AMBIGUITIES AND SEEK CLARIFICATION**

RESA has reviewed DEO’s application and the revised tariffs. Parts of the revised tariffs are ambiguous and/or require further clarification by DEO. Moreover, certain provisions should not be implemented, such as putting a Supplier in default of its Supplier Agreement with DEO for failing to utilize released capacity on the Risberg Line. RESA’s initial comments are as follows:

##### **A. DEO should better define what constitutes the “Ashtabula Area.”**

Both the General Terms and Conditions of Transportation Service and the General Terms and Conditions of the Energy Choice Pooling Service define the “Ashtabula Area” as:<sup>5</sup>

Ashtabula Area – the portion of East Ohio’s service territory in and around Ashtabula County, Ohio where incremental consumption requires the use of Upstream Pipeline capacity from R.H. Energytrans, LLC or its successor companies.

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<sup>4</sup> Application at Exhibit C-2 & C-3 at page 2.

<sup>5</sup> Second Revised Sheet No. F-GT&C 1; Third Revised Sheet No. ECPS 8.

This definition is unworkable because it fails to provide a clear geographic location. DEO, Suppliers and customers must be able to determine which customer locations will be subject to the Risberg Line tariff provisions. Simply saying the Ashtabula Area includes the service territory in and around Ashtabula County, Ohio will result in ongoing confusion and disputes over the application of the Risberg Line tariff provisions. DEO should submit revised tariff sheets with a precise definition for the Ashtabula Area so there is no confusion over which customer locations may be subject to the Risberg Line tariff provisions.

**B. DEO should include a minimum threshold so that customers with de minimis new or incremental load do not trigger a capacity release to the customer or a Supplier.**

DEO has written the Risberg Line tariff provisions so that any new service or increases in consumption will trigger a release of capacity on the new pipeline. For customers taking General Transportation Service, Section 8.4 of the proposed tariff states that:<sup>6</sup>

Any Customer in the Ashtabula Area that *initiates or increases consumption* after Upstream Pipeline facilities of R.H. Energytrans, LLC or its successor companies (“the Risberg Line”) are placed into service is required to accept a release of firm transportation capacity on the Risberg Line based on East Ohio’s estimate of the Customer’s incremental peak day usage. In the event Customer or its designated Supplier does not accept such capacity and utilize it to serve Customer’s incremental load in the Ashtabula Area, East Ohio shall have no obligation to serve such load.

Proposed Section 4.3 of the General Terms and Conditions of Energy Choice Pooling Service contains similar language for Suppliers serving customers that initiate or increase consumption:<sup>7</sup>

Notwithstanding any other provision of these General Terms and Conditions, Suppliers serving any Customer in the Ashtabula Area that *initiates or increases consumption* after Upstream Pipeline facilities of R.H. Energytrans, LLC or its successor companies (“the Risberg Line”) are placed into service are required to accept a release of firm transportation capacity on the Risberg Line based on East

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<sup>6</sup> Second Revised Sheet No. F-GT&C 6.

<sup>7</sup> Third Revised Sheet No. ECPS 14.

Ohio's estimate of their incremental peak day usage. In the event Supplier does not accept such capacity and utilize it to serve Customer's incremental load in the Ashtabula Area, East Ohio shall have no obligation to serve such load and may remove the Customers from the Supplier's Pool.

The issue with DEO's language in Section 8.4 is that as written, it will apply to every new transportation-only customer in the area no matter how large the customer's projected load. It will also apply to all transportation-only customers that increase consumption in any amount. Likewise, Suppliers under Section 4.3 will be subject to the capacity release no matter how de minimis the new or incremental load is of choice customers, including residential customers.

To solve this issue, DEO should propose a threshold for new or incremental load which will be subject to the Risberg Line tariff revisions. The threshold may vary between transportation-only customers and customers in the choice program, but at a minimum, DEO should put reasonable thresholds in place to avoid a de minimis increase in load triggering a release of capacity to customers or Suppliers.

**C. DEO should clarify whether a Supplier is taking capacity from DEO or directly from the new pipeline operator.**

DEO should also clarify in the tariff whether customers and Suppliers are taking capacity from DEO or directly from the Risberg Line operator. DEO states in its application that it intends to have contractual capacity on the Risberg Line that will be released to customers and Suppliers.<sup>8</sup> DEO, however, does not indicate whether DEO is releasing its capacity in a manner that will require the customer or Supplier to contract with the pipeline for capacity and if so, what rate the pipeline will charge the customer or Supplier. DEO's existing tariff (Section 4.1 of the General Terms and Conditions of Energy Choice Pooling Service) allows for assignment of DEO's contracted firm capacity to requesting Suppliers with the assignment set as a release of

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<sup>8</sup> Application, Exhibit C-2 & C-3 at page 1.

capacity at the full maximum rates paid by East Ohio.<sup>9</sup> This detail is not included in the new Section 4.3 which addresses the Risberg Line released capacity. DEO should clarify its tariff provisions as to the method of release and rates that customers and Suppliers must subscribe to when signing up for firm capacity on the Risberg Line.

**D. DEO should not penalize customers and Suppliers for not utilizing capacity on the new pipeline.**

DEO's tariff proposal requires transportation-only customers and Suppliers to not only accept capacity on the Risberg Line but also to "utilize" the capacity. Under both the General Terms and Conditions of Transportation Service and the General Terms and Conditions of Energy Choice Pooling Service, DEO can refuse to serve the load if a customer or Supplier fails to "utilize" the released capacity.<sup>10</sup> DEO can also remove a customer from a Supplier's pool if the Supplier does not "utilize" the released capacity.<sup>11</sup>

DEO should not be allowed to punish customers and Suppliers for failure to utilize released capacity – especially as the customers and Suppliers are paying for firm capacity whether utilized or not. For example, if a customer experiences a load decrease after triggering the Risberg Line provisions, it or the Supplier may not utilize the released capacity triggering DEO's right to not serve the customer and possibly removing the customer from the Supplier's pool. This is not a reasonable or practical result, and DEO should modify its tariff to remove any requirement that customers and Suppliers "utilize" released capacity.<sup>12</sup>

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<sup>9</sup> Second Revised Sheet No. ECPS 13 - Second Revised Sheet No. ECPS 14.

<sup>10</sup> Second Revised Sheet No. F-GT&C 6; Third Revised Sheet No. ECPS 14.

<sup>11</sup> *Id.*

<sup>12</sup> RESA notes also that the term "Customers" in the last line of Section 4.3 of the General Terms and Conditions of Energy Choice Pooling Service should be changed to "Customer."

**E. DEO should provide for monthly releases to account for changing customer loads in a Supplier's pool.**

Section 4.8 of DEO's proposed General Terms and Conditions of Energy Choice Pooling Service states that "[t]he capacity released pursuant to Section 4 may be revised in the event of a material change in a Supplier's aggregate Customer demand."<sup>13</sup> The Supplier's ability to adjust released capacity should, however, also be specific as to released capacity on the Risberg Line and the new customer or incremental load served by that capacity. This avoids a Supplier from oversubscribing to firm capacity. Section 4.8 of the proposed tariff can be revised to read "[t]he capacity released pursuant to Section 4 may be revised in the event of a material change in a Supplier's aggregate Customer demand or a material change in incremental peak-day usage related to capacity released under Section 4.3." RESA also recommends that Section 4.8 be clarified to allow released capacity to be revised "monthly" to account for shifts in customers' loads and as customers come on and off contracts with Suppliers.

**F. DEO should clarify that only the Commission can suspend or rescind a Supplier's certification for failure to comply with the Commission's Minimum Service Standards.**

DEO has proposed to update Section 24.2 of its Supplier Standards of Conduct in the General Terms and Conditions of Energy Choice Pooling Service. The revised section states:<sup>14</sup>

... a Supplier's failure to comply with [the PUCO's Minimum Service Standards for Competitive Retail Natural Gas Service] may be grounds for suspension or rescission of its certification as set forth in OAC Rule 4901:1-27-13(E) and may be deemed to be a material default within the meaning of OAC Rule 4901:1-27-13(F) for which East Ohio could request suspension or termination of the Agreement pursuant to OAC Rule 4901:1-27-13(F)(2).

RESA recommends a minor clarification to this section to ensure no confusion over DEO's and the Commission's roles in any suspension or rescission of a Supplier's certification.

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<sup>13</sup> Third Revised Sheet No. ECPS 15.

<sup>14</sup> Third Revised Sheet No. ECPS 47.

Specifically, RESA recommends the following underlined revisions, which should not be controversial or disputed:

... a Supplier's failure to comply with [the PUCO's Minimum Service Standards for Competitive Retail Natural Gas Service] may be grounds for suspension or rescission of its certification by the PUCO as set forth in OAC Rule 4901:1-27-13(E) and may be deemed by East Ohio to be a material default within the meaning of OAC Rule 4901:1-27-13(F) for which East Ohio could request suspension or termination of the Agreement pursuant to OAC Rule 4901:1-27-13(F)(2).

**G. A Supplier's failure to accept or utilize released capacity on the new pipeline should not constitute an event of Supplier Default.**

The conditions of a Supplier default are set out in Section 26 of DEO's General Terms and Conditions of Energy Choice Pooling Service.<sup>15</sup> These conditions range from failure to pay DEO for amounts due to bankruptcy of the Supplier. DEO, however, has added a "Supplier's failure to accept or utilize released Risberg Line capacity."<sup>16</sup>

DEO's revision in Section 26.3 should not be accepted. First, DEO has written Section 4.3 of the General Terms and Conditions to allow DEO to not serve incremental load if a Supplier does not accept released capacity. As noted and emphasized below, Section 4.3 states:<sup>17</sup>

Notwithstanding any other provision of these General Terms and Conditions, Suppliers serving any Customer in the Ashtabula Area that initiates or increases consumption after Upstream Pipeline facilities of R.H. Energytrans, LLC or its successor companies ("the Risberg Line") are placed into service are required to accept a release of firm transportation capacity on the Risberg Line based on East Ohio's estimate of their incremental peak day usage. *In the event Supplier does not accept such capacity and utilize it to serve Customer's incremental load in the Ashtabula Area, East Ohio shall have no obligation to serve such load and may remove the Customers from the Supplier's Pool.*

As DEO has a satisfactory remedy under Section 4.3, there is no reason for DEO to also be able to declare a Supplier Default under the Supplier's Agreement with DEO.

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<sup>15</sup> Second Revised Sheet No. ECPS 51 - Second Revised Sheet No. ECPS 52.

<sup>16</sup> Third Revised Sheet No. ECPS 51.

<sup>17</sup> Third Revised Sheet No. ECPS 14.



Second, as noted above, DEO should not be allowed to penalize a Supplier for failure to utilize firm capacity (which a Supplier pays for regardless of utilization). Customer volumes and pool volumes can and do shift, and a Supplier may not utilize firm capacity for reasons outside its control. Third, the ability to declare a Supplier Default could be an unreasonably harsh outcome, with additional impacts on other customers of the Supplier, when the Risberg Line capacity is not utilized for, for example, a small incremental increase in customer consumption.

For the above reasons, DEO should not be allowed to declare a Supplier default if a Supplier fails to accept or utilize released capacity. Section 26.3 of Third Revised Sheet No. ECPS 51 should be deleted.

**H. DEO should clarify the implementation date of these tariff changes.**

RESA understands the importance of DEO obtaining a certain degree of regulatory certainty as part of the development of the pipeline. RESA, however, also expects DEO to provide a certain degree of certainty as to the effective date of the Risberg Line tariff provisions. DEO asks the Commission to order the Risberg Line tariff provisions to be filed on or around January 1, 2018 or alternatively 12 months before the Risberg Line is expected to be in service if that service date is later than December 31, 2018.<sup>18</sup> This timing, however, would put into place tariff provisions well before the pipeline is in service and before Suppliers and customers can take firm capacity on the pipeline.

A better timing would be for DEO to file its compliance tariffs concurrently with written notice to this Commission that the pipeline has completed commissioning and is available for service. That ensures a date certain for when new load or incremental load will be subject to the Risberg Line tariff provisions. Additionally, the Commission should require DEO to file quarterly progress reports in this docket on the construction of the pipeline and the expected in-

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<sup>18</sup> Application, Exhibit C-2 & C-3 at page 2.

service date. The reports should also address any changes in existing demand and pressure limitations to the Ashtabula Area that may impact the need for and use of the Risberg Line.

## **V. CONCLUSION**

RESA respectfully submits the above comments to the Commission for consideration with the goal of removing ambiguities and/or clarifying sections of the proposed tariff changes. RESA also would be willing and interested in participating in a settlement conference with the parties and Staff to develop solutions to disputes on the tariff provisions.

Respectfully Submitted,

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### **CERTIFICATE OF SERVICE**

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**5/10/2017 5:09:22 PM**

**in**

**Case No(s). 17-0820-GA-ATA**

Summary: Comments -- Initial Comments of the Retail Energy Supply Association  
electronically filed by Mrs. Gretchen L. Petrucci on behalf of Retail Energy Supply Association