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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 for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services.	)	Case No. 07-1224-GA-EXM

MOTION TO ORDER A SPECIAL MANAGEMENT PERFORMANCE AUDIT AND MOTION TO ORDER DOMINION TO PREPARE A LONG-TERM FORECAST REPORT PURSUANT TO THE REQUIREMENTS OF R.C. 4935.04 BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

The Office of the Ohio Consumers' Counsel ("OCC"), pursuant to Ohio Adm. Code 4901-1-12, on behalf of the 1.1 million residential consumers in the East Ohio Gas Company d/b/a Dominion East Ohio ("Dominion" or "Company") service territory, moves the Public Utilities Commission of Ohio ("PUCO" or "Commission") to order a Special Management Performance ("M/P") Audit. The Audit should be performed by an independent Auditor selected by the PUCO and paid for by the Company, similar to how M/P Auditors have been previously selected and paid for.[1] The Special M/P Audit should include review of whether it is reasonable and lawful for Dominion to lease Dominion's on-system storage capacity to its Interstate Pipeline affiliate, Dominion Transmission, Inc. ("DTI").. Furthermore, the Audit should determine how a proposed lease of 3-5 Bcf of its on-system storage capacity from Dominion to DTI, impacts (1) the

[1] For example, see: *In the Matter of the Regulation of the Purchased Gas Adjustment Clauses Contained within the Rate Schedules of: Duke Energy Ohio, Inc., The East Ohio Gas Company, d.b.a. Dominion East Ohio, Vectren Energy Delivery of Ohio, Inc., and Related Matters*, Case Nos. 07-218-GA-GCR, 07-219-GA-GCR, 070-220-GGCR, 07-221-GA-GCR, Entry (January 24, 2007).

quality and quantity of storage service available to Ohio residential customers; (2) the operation and vitality of the Dominion Choice Program; (3) the operation and least cost ability of the Standard Choice Offer ("SCO"); and (4) affects customers' rates through impacts on the revenues generates from Off-System Sales, Capacity Release, Park, Loan, and Exchange transactions that can offset some of the rates collected from residential customers.

In addition, pursuant to Ohio Adm. Code 4901-1-12, OCC moves the Commission to order DEO to prepare a Long-Term Forecast Report pursuant to the requirements of R.C. 4935.04(C). The PUCO should require Dominion to prepare a Long-Term Forecast Report to determine Dominion's longer-term on-system storage capacity needs.

The reasons for granting OCC's Motion for the Commission to Order a Special M/P Audit by an independent Auditor selected by the PUCO and paid for by the Company similar to how M/P Auditor were selected and paid for in prior M/P Audit proceedings, as well as, ordering Dominion to perform a Long Term Forecast Report pursuant to the requirements of R.C. 4935.04, are more fully explained in the Memorandum in Support.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. BACKGROUND

These Motions are prompted by the filing on March 26, 2010, by Dominion and DTI, its Interstate Pipeline affiliate, of a Joint Application ("Joint Application") seeking a Certificate of Public Convenience and Necessity for Authorization of a Lease Agreement at the Federal Energy Regulatory Commission ("FERC").[2] The Joint Application states that Dominion would lease approximately 3-5 Bcf of its on-system storage to its affiliate DTI ("Leased Capacity"). In turn, DTI plans to use the leased on-system storage capacity to serve customers in the interstate market.[3] The lease would begin with 3 Bcf (Phase 1) at the outset of the lease and grow to 5 Bcf (Phase 2) by 2014.[4] Dominion claims that the Leased Capacity is excess capacity that has only now suddenly become excess in the most recent years due to the economic downturn in the Cleveland, Ohio area and the surrounding industrial sector.[5] Because of the length of the proposed lease (15-20 years)[6]

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[2] This filing is pursuant to Rules 211, 212 and 214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 212 and 214 (2007).

[3] Joint Application at 2.

[4] Joint Application at 2.

[5] Joint Application at 5-6.

[6] Joint Application at 11.

Dominion is essentially writing off the need for this on-system storage capacity to serve the needs of the residential customers in North-East Ohio for the foreseeable future.

This also raises the question of whether the proposed lease is just the first step in a gradual erosion and overall plan to sell off more significant portions of the on-system storage capacity or other Dominion assets -- before Dominion itself might become an asset for sale. This is a question that must be evaluated in light of the fact that Dominion's parent Company recently sold one of Dominion's affiliate distribution companies, Dominion People's to Peoples Hope Gas Companies, and attempted to sell another distribution company affiliate, Dominion Hope.[7]

On May 3, 2010, OCC filed a Motion to Intervene and Protest at FERC to challenge the approval of the Joint Application. The Joint Application provides only superficial information, and thus the Joint Application raises many more questions than it answers and also raises significant legal and policy issues for Ohio's residential consumers.

The Joint Application was preceded by the following related events. On April 8, 2005, Dominion filed an application ("Phase I Application") requesting an exemption pursuant to R.C. 4929.04 seeking approval of Phase I of its plan to exit the merchant function.[8]

On May 26, 2006, the Commission approved Dominion's Phase I Application to implement its proposed alternative market-based pricing of natural gas commodity sales.

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[7] http://dom.com "Dominion Moves Forward With Pennsylvania Gas utility Sale" (January 4, 2010), and "Dominion Closes On Sale of Dominion peoples for $780 Million" (February 1, 2010).

[8] *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a Plan to Restructure its Commodity Service Function*, Case No. 05-474-GA-ATA, Application (April 8, 2005).

On December 28, 2007, Dominion filed an application ("Phase II Application") for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services from Chapters 4905, 4909, and 4935 except Sections 4905.10, 4935.01, and 4935.03, and from specified sections of Chapter 4933 of the Revised Code. Dominion proposed to fundamentally change the way it purchases the natural gas it sells to Ohio residential customers.

On April 10, 2008, the Company, PUCO Staff, OCC, Integrys Energy Services, Inc. ("Integrys"), Dominion Retail, Inc. ("Dominion Retail"), Ohio Gas Marketers Group ("OGMG"), Northeast Ohio Public Energy Council ("NOPEC") filed a Stipulation and Recommendation ("Stipulation") in that case. On June 18, 2008, the Commission issued an Opinion and Order that approved the Phase II Application as modified by the Stipulation.

The Company's Phase I and Phase II Applications have brought an end to the gas cost recovery ("GCR") proceedings[9] and the bi-annual M/P Audits;[10] however, the Commission has retained authority to order special M/P Audits as it deems necessary.[11]

The operation and viability of both the Dominion Choice Program and the SCO are dependant on the availability of Dominion's on-system storage capacity which permits participating Marketers to physically hedge some gas supply so that they can offer residential customers a lower year-round price for service. Because of the nexus

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[9] R.C. 4905.302.

[10] Ohio Adm. Code 4901:1-14-07.

[11] *In re Dominion Phase I Application Case,* Case No. 05-474-GA-ATA, Opinion and Order at 8 (May 26, 2006).

between these programs and Dominion's on-system storage, it is important that the PUCO order a special M/P Audit.

II. ARGUMENT

A. The Special Management Performance Audit Should Be Scheduled In A Timely Manner.

Questions that surround the Joint Application require an independent review and assessment of this situation from the perspective of Ohio's jurisdictional customers. The Joint Applicants have sought FERC approval and authorization by September 1, 2010 in order to permit DTI to fill the storage with its own gas.[12] However, just because Dominion and DTI have requested FERC authorization by September 1, 2010, OCC has argued to FERC that there is absolutely no need for the FERC to rush to judgment on the Joint Application because the deadline is artificial and self-imposed.[13] Nonetheless, the PUCO should act in a timely manner, in this case, to ensure that it has answers to these legal and policy questions in time to make that information available to FERC for consideration in its proceeding. The PUCO also needs to ensure that the on-system storage is available to serve the needs of Ohio residential customers in the upcoming winter heating season, and for the next 15-20 years[14] -- the term of the proposed capacity lease arrangement in the Joint Application. In the interim, the PUCO should require Dominion to continue to operate its on-system storage facility for the benefit of Ohio customers and ratepayers.

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[12] Joint Application at 9.

[13] *Abbreviated Joint Application Of Dominion East Ohio and Dominion Transmission, Inc,* FERC Case No. CP10-107-000, OCC Motion to Intervene and Protest at 21-22 (May 3, 2010).

[14] Joint Application at 11.

B. The PUCO Has Authority To Order A Special Management Performance Audit.

In the Phase I Application Case, the PUCO issued an Opinion and Order in which the Commission discussed its oversight responsibilities in the post-GCR environment. The PUCO stated:

> While the proposal calls for an end to management performance audits, **the Commission also has the authority to order a special management performance audit at any time for any issues it deems necessary.**[15]

While the Commission has not exerted this authority up to this point in time, the issues that are raised by the Joint Application at FERC warrants that the PUCO exercise its authority in this case.

The PUCO should order an independent audit consistent with its rules. Ohio Admin Code 4901:1-14-07(C) states:

> Each gas or natural gas company, so designated by the commission, shall engage an independent auditor and/or consulting firm to conduct a management/performance audit of the company's compliance with the provisions of Chapter 4901:1-14 of the Administrative Code. The commission shall develop a request for proposal (RFP) designed to solicit responses for conducting a management/performance audit. The commission shall have the sole responsibility for sending out and accepting all responses to the RFP and shall select the company's management/performance auditor for the designated audit period. The management/performance audit report shall identify and evaluate the specific organizational structure, management policies, procedures, and reasoning of the company's existing or proposed procurement strategy. The report shall also contain management recommendations based on an evaluation of the company's performance during the audit period pertaining to those areas designated by the commission. The management/performance audit shall review any specific areas of investigation as designated

[15] *In re Dominion Phase I Application Case,* Case No. 05-474-GA-ATA, Opinion and Order at 8 (May 26, 2006). (Emphasis added).

> by the commission and selected aspects of the company's gas production and purchasing policies to ascertain whether:
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> (1) Company purchasing policies were designed to meet objectives of the company's service requirements;
>
> (2) Procurement planning is sufficient to ensure reliable service at optimal prices and is consistent with the company's long-term strategic supply plan submitted pursuant to paragraph (H) of rule 4901:5-7-02 or paragraph (H) of rule 4901:5-7-05 of the Administrative Code; and
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> (3) The company has reviewed existing and potential supply sources.

C. The Joint Application Involves Significant Issues That Make A Special Management Performance Audit Necessary.

1. How Much Capacity Does Dominion Have Available, And How Much Is Excess?

The Joint Application claims that on-system storage capacity has become excess based on the "most recent years" of data which is limited to two years data at most. Despite this claim, the two most recent years of data contradict all of the data previously filed by Dominion with the PUCO regarding future sales and throughput volumes. Now with less than two full years of data available, Dominion is claiming that 3-5 Bcf (or 5-8 percent) of its on-system storage is excess and will remain so for at least the 15-20 years of the lease. The OCC is concerned that a long-term decision is being made without the benefit of sufficient data to support this claim. The Joint Application fails to address the issue of how Dominion would serve in-state customers if any of the recently lost demand were to return.

The claim of excess capacity is also seemingly contradicted by a filing that Dominion made less than two years ago -- during the time period when the economic downturn created excess on-system storage. In this filing before the Ohio Power Siting Board on September 26, 2008, Dominion claimed that it needed a "proposed 20-inch natural gas pipeline **to help secure current and future natural gas supplies for customers in Northern Ohio markets**, including the greater Cleveland and Akron regions."[16] Dominion explained that the net effect from adding the 20" pipeline would be to "**increase current gas storage capacity by 10 billion cubic feet (Bcf)** consequently securing gas storage **in the area** for the foreseeable future."[17] Now, less than one year after completing that pipeline -- and increasing on-system storage by 10 Bcf -- Dominion is looking to lease excess capacity to its affiliate. It is worth noting that Dominion's Ohio Power Siting Board Application DID NOT mention any apparent excess on-system storage. Thus the circumstances that gave rise to the alleged excess capacity have occurred after the September 15, 2008 date of the Power Siting application.

Finally, the Dominion Application went on to claim that Dominion's "existing natural gas pipelines in the project area are incapable of meeting projected demands within their design parameters."[18] To the extent that Dominion had excess on-system storage at the time of the Ohio Power Siting Board Application, this raises the question of whether the new pipeline was added for Dominion's Ohio customers or perhaps for later use by its affiliate for out of state customers. Dominion should be required to fully document and explain how in less than a two-year period, Dominion has gone from one extreme of claiming a need to add facilities to serve future markets to the other extreme of having excess capacity in the same market.

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[16] *Application for a Certificate of Environmental Compatibility and Public Need for the Franklin 20" Pipeline Project*, PUCO Case No. 08-289-GA-BTX Dominion Application (September 26, 2008) at 4906-15-01 Project Summary and Facility Overview, page 01-1. (Emphasis added).

[17] Id. (Emphasis added).

[18] Id.

The Joint Application also fails to explain why Dominion did not attempt to address its alleged excess capacity issue by reducing the volumes of off-system interstate storage capacity that it currently leases from DTI or other interstate pipelines.[19] Dominion currently has two contracts with DTI (Contract No. 300003 and No. 700002) to provide Firm Transportation No Notice Service with DTI.[20] These contracts were initially set to expire on March 31, 2006 but were extended through March 31, 2011.[21] If Dominion is able to actually demonstrate that it does have excess storage capacity, then it may be prudent to reduce the off-system storage it leases from DTI or other interstate pipelines, which would then enable DTI or other interstate pipelines to lease that capacity to other customers, thus addressing DTI's needs without the need to build any facilities, or to involve Dominion into DTI interstate affairs.

There is also the question of just how much on-system storage capacity Dominion actually has. In the 2005 M/P Audit case, the Liberty Consulting Group ("Liberty") reported that due to a storage migration problem and the abandonment of the Columbiana storage field, Dominion had only 55 MMcf (or approximately 55 Bcf) of on-system storage working gas.[22] Yet two years later, in the 2007 M/P Audit case, Exeter

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[19] See, *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of The East Ohio Gas Company d / b /a Dominion East Ohio Gas and Related Matters*, PUCO Case No. 07-219-GA-GCR, Report to the Public Utilities Commission of Ohio on the Management and Performance Audit of Gas Purchasing Practices and Policies of East Ohio Gas Company (November 30, 2007) at 4-17.

[20] Id.

[21] Id.

[22] *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of The East Ohio Gas Company d / b /a Dominion East Ohio Gas and Related Matters*, PUCO Case No. 05-219-GA-GCR, Final Report Management/Performance Audit East Ohio Gas Company (May 19, 2006) at page II-11, 12.

Associates, Inc. ("Exeter") reported that Dominion had approximately 60 Bcf of top or working gas and 82 Bcf of cushion gas.[23] There was no explanation for this apparent discrepancy of 5 Bcf of additional top gas. It is noteworthy that there is nothing on the record in either case indicating that Dominion questioned any of the on-system storage capacity volumes reported by either M/P Auditor.

Then less than one year after the 2007 M/P Audit report, in an Application with the Ohio Power Siting Board, Dominion claimed that it needed to construct a 20" pipeline would have the effect of increasing its current gas storage capacity by 10 Bcf.[24] Inasmuch as Dominion had 60 Bcf of top or working gas at the time of the Power Siting Board Application, the increase would presumably give Dominion a total of 70 Bcf of top gas. That pipeline is now completed.[25] Yet, in its Joint Application, Dominion indicated that it had on-system storage capacity of 60 Bcf of working gas and 80 Bcf of base gas, although Dominion claimed it was only turning over 54-55 Bcf of its on-system storage.[26]

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[23] *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of The East Ohio Gas Company d / b /a Dominion East Ohio Gas and Related Matters*, PUCO Case No. 07-219-GA-GCR, Report to the Public Utilities Commission of Ohio on the Management and Performance Audit of Gas Purchasing Practices and Policies of East Ohio Gas Company (November 30, 2007) at 4-19.

[24] *Application for a Certificate of Environmental Compatibility and Public Need for the Franklin 20 Pipeline Project*, PUCO Case No. 08-289-GA-BTX, Dominion Application (September 26, 2008) at 4906-15-01 Project Summary and Facility Overview, page 01-1.

[25] *Application for a Certificate of Environmental Compatibility and Public Need for the Franklin 20" Pipeline Project*, PUCO Case No. 08-289-GA-BTX Dominion, Letter from Dominion's counsel to the PUCO informing the PUCO that the construction project was completed (December 15, 2009).

[26] Joint Application at 5.

In summary, this begs the question of what happened to the additional 10 Bcf of on-system storage?

	On-System Storage Working Gas	On-System Storage Base Gas
2005 M/P Audit Report (May 19, 2006)	55 Bcf	
2007 M/P Audit Report (November 30, 2007)	60 Bcf	82 Bcf
Pipeline Project Application (September 26, 2008)	Add 10 Bcf	
Lease Agreement Application (March 26, 2010)	60 Bcf	80 Bcf

There was no explanation for this apparent discrepancy of 5 Bcf of additional top gas, what became of the 10 Bcf of additional capacity from the pipeline project, and what became of the 2 Bcf of cushion gas.

2. What Facilities Are Being Built, And Who Will Be Asked To Pay The Associated Costs?

The Joint Application also notes that other facilities might be built or leased in the future.[27] Yet the Joint Application is not clear as to what facilities are contemplated, and who would be asked to pay the costs associated with those facilities. Dominion should be required to specifically identify such facilities so that any decision can be made with all of the pertinent data being considered. PUCO, the FERC, and Ohio customers -- who may ultimately be asked to pay the long-term costs associated with such facilities -- should have a clear understanding of what additional facilities will be expected to be built

[27] Joint Application at 6, 10, 13, 16.

or leased, the potential cost of those facilities, and what the additional facilities will do to the value of the Leased Capacity before the regulatory decision on such a long-term agreement.

The question of the additional facilities is of particular importance to Ohio residential customers inasmuch as Dominion is in the early stages of a 25-year Pipeline Infrastructure Replacement ("PIR") Program[28] designed to accelerate the replacement of bare steel, cast iron and wrought iron pipeline and to accelerate the cost recovery of such investment from Ohio customers. Dominion should explain what future demands the lease agreement would place on the Dominion capital budget to the extent that construction of facilities required by the lease agreement could impose limits on the amount of infrastructure pipeline that Dominion could replace. To the extent that the PIR Program was intended to be a safety driven program due to the age and leak rate of bare steel, cast iron, and wrought iron pipeline in Dominion's system. Therefore, any other construction projects that might divert money in Dominion's capital budget away from the PIR Program could slow down the rate of pipeline replacement and thus put Ohio residential customers at risk. The current Pipeline Infrastructure Replacement Program was estimated by Dominion to carry a cost of $2.662 Billion in 2007 dollars.[29]

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[28] *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Recover Certain Costs Associated With a Pipeline Infrastructure Replacement Program Through an Automatic Adjustment Clause and for Certain Accounting Treatment,* PUCO Case No. 08-169-GA-ALT, Opinion and Order, (October 15, 2008). The Infrastructure Replacement case was consolidated with Rate Case 07-829-GA-AIR pursuant to an Entry dated April 9, 2008.

[29] *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service,* PUCO Case No. 07-829-GA-AIR, Report by the Staff of the Public Utilities Commission of Ohio, (June 12, 2008) at 3.

3. Who Else Besides DTI, Dominion's Affiliate, Was Offered The Opportunity To Lease This Capacity?

It is also unclear in the Joint Application whether Dominion ever made the allegedly excess capacity available to any other customers or potential customers, including independent Marketers servicing Dominion's Choice program, or to other Industrial or Commercial customers, before entering into an agreement with its affiliate interstate pipeline.[30] The OCC has asked FERC to determine whether a transparent Open Season where the rate and contractual terms and conditions were clearly defined and made available to all interested parties was or should have been conducted.[31] OCC believes that the PUCO should also be interested in determining if the lease agreement was truly an arms-length transaction. To that end, the Joint Application is also silent as to whether Dominion ever made the allegedly excess capacity available to any other non-affiliate interstate pipeline. To the extent that no other non-affiliate interstate pipeline was even made aware of the potential lease agreement, then questions as to possible antitrust matters are raised. The Joint Application is also silent as to whether the total package included in the proposed lease was ever made available to any non-affiliate entity. Were non-affiliates given the opportunity to enter into a similar lease arrangement?

The above described potential anti-trust matters also involve the structure of the agreement because it would permit Dominion's affiliate pipeline to lease on-system storage from Dominion at cost, but then to be able to turn around and lease the capacity

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[30] Joint Application at 16.

[31] *Abbreviated Joint Application Of Dominion East Ohio and Dominion Transmission, Inc,* FERC Case No. CP10-107-000, OCC Motion to Intervene and Protest (May 3, 2010) at 20-21.

to other customers at (presumably greater) market-based rates.[32] This appears to be a situation where the lease agreement is putting Dominion's affiliate in a position where it can gain a windfall profit.

4. Does The Lease Arrangement Create A Subsidy, And How Are The Lease Revenues Accounted For?

The question of whether the lease agreement constitutes a subsidy to Dominion's affiliate is raised because the cost of the entire on-system storage is currently built into the base rates that were established less than two years ago.[33] As a result, absent PUCO intervention, Dominion will be collecting extra revenues from DTI which would constitute a windfall for its shareholders.

These issues establish the basis for the PUCO to order a special M/P Audit.

D. The PUCO Faces the Potential To Lose Jurisdiction Over This Capacity.

The structure of this lease arrangement will result in a transfer of jurisdiction over this capacity from the PUCO to FERC. FERC precedent holds that FERC treats capacity transfers under leases -- such as the proposed lease agreement -- as a transfer of the right to use the leased capacity:

> as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.*.*.* Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. **The lessor, while it may remain the operator of the pipeline system, no longer has any right to use the leased capacity.**[34]

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[32] Joint Application at 16.

[33] *In re Dominion Rate Case,* Case No. 07-829-GA-AIR, et al., Application at Schedules C-3.2, C-3.29, C-3.31 (August 30, 2007).

[34] *Gulf Crossing Pipeline Company, LLC, Gulf South Pipeline Company, LP, Enogex, Inc.*, Docket Nos. CP07-398-000; CP07-398-001; CP07-399-000; CP07-400-000; CP07-401-000; CP07-402-000; CP07-403-000, 123 F.E.R.C. P61,100, 2008 FERC LEXIS 832 at p110. (Emphasis added).

Dominion's current tariffs specifically provide Dominion with the ability to curtail deliveries to transportation customers, even if those customers have firm service.

> East Ohio shall have the right to restrict, limit, or halt its receipt or delivery of Firm Storage Service whenever, in East Ohio's sole discretion, it is necessary to do so due to Force Majeure or under circumstances requiring East Ohio to act to protect its ability to meet its core demand.[35]

Similar language appears throughout the Dominion tariffs.[36] It is apparent that this limitation on customers Firm Service was implemented in order to protect Dominion's system integrity and also to serve its core customers. To the extent that Dominion would lose control over the leased on-system storage capacity for the next 15-20 years, then both system integrity and core customers are placed at risk. The PUCO should fully review this fallout from the proposed lease, before Dominion is permitted to go forward with the lease agreement.

Because Dominion would no longer have any right to use the leased on-system storage capacity in question, it is imperative that the PUCO orders a Special M/P Audit to

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[35] Dominion Tariffs, Second Revised Sheet No. F-FSS 1 Superseding First Revised Sheet No. F-FSS 1, (Issued December 22, 2008 Effective with bills rendered on or after December 22, 2008.)

[36] See, Dominion Tariffs, Seventh Revised Sheet No. F-LVECTS 1 Superseding Sixth Revised Sheet No. F-LVECTS 1 (Issued December 22, 2008, Effective with bills rendered on or after December 22, 2008); Fifth Revised Sheet No. F-DTS 1 Superseding Fourth Revised Sheet No. F-DTS, (Issued December 22, 2008, Effective with bills rendered on or after December 22, 2008); First Revised Sheet No. F-GT&C 10 Superseding Original Sheet No. F-GT&C, (Issued December 22, 2008, Effective with bills rendered on or after December 22, 2008); First Revised Sheet No. F-GT&C 11 Superseding Original Sheet No. F-GT&C 11, Issued December 22, 2008, (Effective with bills rendered on or after December 22, 2008); First Revised Sheet No. F-GT&C 12 Superseding Original Sheet No. F-GT&C 12, (Issued December 22, 2008, Effective with bills rendered on or after December 22, 2008); First Revised Sheet F-ECPS 27 Superseding Original Sheet F-ECPS 27, Issued December 22, 2008, (Effective with bills rendered on or after December 22, 2008); First Revised Sheet F-ECPS 28 Superseding Original Sheet F-ECPS 28, (Issued December 22, 2008, Effective with bills rendered on or after December 22, 2008); First Revised Sheet F-ECPS 29 Superseding Original Sheet F-ECPS 29, (Issued December 22, 2008, Effective with bills rendered on or after December 22, 2008); Second Revised Sheet no. F-FSS 3 Superseding First Revised Sheet No. F-FSS 3, (Issued December 22, 2008, Effective with bills rendered on or after December 22, 2008); First Revised Sheet F-ECPS 48 Superseding Original Sheet F-ECPS, (Issued December 22, 2008, (Effective with bills rendered on or after December 22, 2008).

fully investigate the contradictory information filed by Dominion regarding its market needs, and actual on-system storage capability. It is also important for the PUCO to understand the long-term implications of the lease[37] -- as the PUCO would lose jurisdiction over a facility wholly located in the state of Ohio, that has been included in base rates and thus underwritten by Ohio customers, and that would impact the volume of storage capacity available for other Ohio customers.

A special M/P Audit would provide an independent assessment of status of the Dominion on-system storage and capacity requirements for Dominion's jurisdictional customers. The PUCO should order the special M/P Audit immediately.

E. The PUCO Should Treat The Lease Agreement As An Abandonment Of Facilities.

FERC approval of the Joint Application would take away Dominion's right to use the leased capacity for the next 15 to 20 years.[38] The PUCO must therefore consider whether such loss of use constitutes an abandonment of facilities pursuant to Ohio law. R.C. 4905.20 states:

> no public utility as defined in section 4905.02 of the Revised Code furnishing service or facilities within this state, shall abandon or be required to abandon or withdraw any main track or depot of a railroad, or main pipe line, gas line, telegraph line, telephone toll line, electric light line, water line, sewer line, steam pipe line, or any portion thereof, pumping station, generating plant, power station, sewage treatment plant, or service station of a public utility, or the service rendered thereby, which has once been laid, constructed, opened, and used for public business, nor shall any such facility be closed for traffic or service thereon, therein, or thereover except as provided in section 4905.21 of the Revised Code.* * *.

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[37] This proposed lease of an in-state regulatory on-system storage facility to an out of state entity that would transfer usage rights is a matter of first impression for the Ohio PUCO.

[38] Joint Application at 11.

Furthermore, if the loss of use constitutes an abandonment of facilities pursuant to R.C. 4905.20, then it is incumbent upon Dominion to file an application with the PUCO seeking approval of such abandonment. R.C. 4905.21 states:

> any public utility or political subdivision desiring to abandon or close, or have abandoned, withdrawn, or closed for traffic or service all or any part of any line, pumping station, generating plant, power station, sewage treatment plant, or service station, referred to in section 4905.20 of the Revised Code, **shall make application to the public utilities commission in writing**. The commission shall thereupon cause **reasonable notice** of the application to be given, stating the time and place fixed by the commission for the **hearing of the application**. Upon the hearing of the application, the commission shall ascertain the facts and make its findings thereon, and if such facts satisfy the commission that the proposed abandonment, withdrawal, or closing for traffic or service is reasonable, having due regard for the welfare of the public and the cost of operating the service or facility, it may allow such abandonment, withdrawal, or closing; otherwise it shall be denied, or if the facts warrant, the application may be granted in a modified form. * * *.[39]

Dominion has filed no such application, and the PUCO should require strict compliance with these statutes to assure any abandonment is reasonable.

F. The PUCO Should Order Dominion To Prepare A Long-Term Forecast Report Pursuant To The Requirements Of R.C. 4935.04 To Assure The Loss Of On-System Storage Capacity Does Not Negatively Impact Dominion's Choice Program or the SCO Auction Process.

The approval of the auction process as replacement for the GCR, in Dominion's service territory, resulted in the PUCO exempting Dominion from the Long-Term Forecast Reporting requirements. In the Order approving the SCO auction, the PUCO stated:

> Section 4929.04, Revised Code, authorizes the Commission, upon the application of a natural gas company such as DEO, to exempt any commodity sales service or ancillary service from all

[39] R.C 4905.21. (Emphasis added).

> provisions of Chapter 4905, Revised Code (with the exception of Section 4905.10, Revised Code); all provisions of Chapter 4909, Revised Code; **all provisions of Chapter 4935, Revised Code (with the exception of Sections 4935.01 and 4935.03, Revised Code)**; Sections 4933.08, 4933.09, 4933.11, 4933.123, 4933.17, 4933.28, and 4933.32, Revised Code; and from any rule or order issued under those chapters or sections.[40]

However, such an exemption should not be done without reservation of rights to reinstate the reporting requirements if necessary.[41] The issues that have been raised in this case warrants the PUCO to require Dominion to prepare a Long-Term Forecast Report to assist the PUCO determine the future on-system storage capacity requirements before allowing Dominion to lease 3-5 Bcf to DTI for the next 15 to 20 years.

The Joint Applicants have stated that the lease arrangement will not adversely affect existing customers.[42] The Joint Applicants in support unreasonably argue as follows:

> The structure of the Lease Agreement enables [Dominion] to make this storage available to the interstate market while continuing to serve its traditional Ohio market and to satisfy all its Ohio intrastate commitments and regulatory requirements without any adverse impact on its existing customers.[43]

However, the Joint Application is devoid of any studies or analysis to bolster these claims. The Commission should; therefore, reinstate the long-term forecast requirement

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[40] *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services,* Case No. 07-1224-GA-EXM, Opinion and Order at 3 (June 18, 2008) (Emphasis added). See also *In the Matter of the Long-Term Gas Forecast Report of The East Ohio Gas Company d/b/a Dominion East Ohio,* Case No. 07-119-GA-FOR, Entry at 1 ("With regard to Case No. 07-119-GA-FOR, we note that [Dominion] is no longer subject to the long-term forecast report filing requirements.") (August 13, 2008).

[41] See PUCO reservation of rights to order a special M/P Audit if necessary discussed *supra.*

[42] Joint Application at 2.

[43] Joint Application at 6.

for Dominion consistent with R.C. 4935.04(C) to assure that the capacity Lease Agreement does not impact Dominion's jurisdictional customers.

R.C. 4935.04(C) states:

> (C) Each person owning or operating a major utility facility within this state, or furnishing gas, natural gas, or electricity directly to more than fifteen thousand customers within this state annually shall furnish a report to the commission for its review. The report shall be termed the long-term forecast report and shall contain:
>
> (1) A year-by-year, ten-year forecast of annual energy demand, peak load, reserves, and a general description of the resource plan to meet demand;
>
> (2) A range of projected loads during the period;
>
> (3) A description of major utility facilities planned to be added or taken out of service in the next ten years, including, to the extent the information is available, prospective sites for transmission line locations;
>
> (4) For gas and natural gas, a projection of anticipated supply, supply prices, and sources of supply over the forecast period;
>
> (5) A description of proposed changes in the transmission system planned for the next five years;
>
> (6) A month-by-month forecast of both energy demand and peak load for electric utilities, and gas sendout for gas and natural gas utilities, for the next two years. The report shall describe the major utility facilities that, in the judgment of such person, will be required to supply system demands during the forecast period. The report from a gas or natural gas utility shall cover the ten- and five-year periods next succeeding the date of the report, and the report from an electric utility shall cover the twenty-, ten-, and five-year periods next succeeding the date of the report. Each report shall be made available to the public and furnished upon request to municipal corporations and governmental agencies charged with the duty of protecting the environment or of planning land use. The report shall be in such form and shall contain such information as may be prescribed by the commission. Each person not owning or operating a major utility facility within this state and serving fifteen thousand or fewer gas or natural gas, or electric customers within this state shall furnish such information as the commission requires.

The information reported in a long-term forecast report would be critical to the PUCO to determine whether the 3-5 Bcf of on-system storage capacity will be needed to serve Dominion's jurisdictional customers during the 15 to 20 year term of the lease.

The storage capacity which is the subject of the Lease Agreement has only recently been deemed excess because of declining base load and winter season usage on its system.[44] Yet Dominion proposes to lease this capacity to its affiliate for 15 to 20 years, and as argued *supra* if the Lease Agreement is approved by FERC, Dominion loses all rights to use this capacity, and the PUCO loses jurisdiction. The storage capacity has been, up until now, used exclusively for Dominion's in-state markets.[45] The concern involves a scenario in which the load determined to be excess at this time returns during the term of the Lease Agreement.

The on-system storage capacity is used by Dominion to serve its Choice and Sales customers. In the event the 3-5 Bcf of capacity leased to DTI, at some point in the future, is needed to serve Dominion's Ohio customers, that capacity would have to be acquired at market prices most likely during the peak winter season. The cost to replace the capacity that is proposed to be leased to DTI could potentially be significantly greater than the cost DTI is paying to lease the same capacity. The additional costs of replacing the storage capacity would be passed back to consumers, and thus harm the Choice and Sales customers who are dependent upon Dominion to provide this service at just and reasonable rates.

[44] Joint Application at 5.

[45] Joint Application at 2.

It cannot be predicted with certainty that the load Dominion alleges it has lost will ever return. However, Dominion cannot with certainty state that it won't. The issue the PUCO must come to grips with is should Dominion be allowed to gamble its system integrity and reliability for the next 15 to 20 years, for "the maximum cost-based rates approved by the PUCO for Dominion's intrastate storage service."[46] Under these terms, Dominion wins, DTI wins, and Dominion's customers are the backstop in case Dominion guesses wrong and the load returns and the capacity must be replaced at market prices not cost-based rates.

The PUCO should, in addition to requiring Dominion to prepare a Long-Term Forecast Report consistent with the requirements of R.C. 4935.04(C), also order a third-party independent M/P Audit by an auditor selected by the PUCO and paid for by Dominion to review the Company's capacity needs for Dominion's jurisdictional customers. These analyses are critical to understanding Dominion's longer term on-system capacity requirements before the storage capacity is relinquished for the benefit of intrastate customers.

G. The PUCO Has Previously Faced Controversy Involving Dominion's Capacity and Off-System Sales Revenue Issues.

Pursuant to Ohio Law, the Commission conducted periodic investigations relative to a natural gas utility's gas cost recovery ("GCR") policies and practices.[47] Since 2003, Dominion's M/P Audit cases have included issues regarding Dominion's capacity, and

[46] Joint Application at 11.

[47] R.C. 4905.302 (the Commission is directed to establish investigative procedures, including periodic reports, audits, and hearings to examine the arithmetic and accounting accuracy of the gas costs reflected in a company's gas cost recovery rates, and to review each company's production and purchasing policies and their effect upon these rates. Pursuant to such authority, Ohio Adm. Code 4901:1-17-07 requires that periodic financial and management performance audits of certain gas or natural gas company be conducted.)

revenues that were generated there from. In the 2003 M/P Audit Case, the M/P Auditor found the following:

> Many local distribution companies (LDCs) engaged in off-system sales activities during the MP audit period, Dominion's park[48] and loan[49] transactions resulted in revenue of $11.9 million, Dominion's exchange transactions[50] resulted in revenue of $1.63 million, and all of this revenue was retained by Dominion.[51]

OCC claimed that Dominion failed to provide natural gas at fair, just and reasonable rates because it retained $13.53 million in revenue from the Park, Loan and Exchange transactions rather than credit a portion of that revenue to GCR customers who paid for the facilities used to generate that revenue.[52]

Dominion argued that it does not use capacity paid for and therefore allocated to GCR customers for Park, Loan and Exchange transactions because it determines the total amount of capacity that has been paid for and allocated to non-GCR customers and uses only that amount of capacity to accommodate Park, Loan and Exchange transactions. [53] Essentially, Dominion argued that there was a separation of the facilities serving the different transactions. The Commission accepted Dominion's argument on rehearing and stated:

> We further note that that our March 5, 2005 Opinion and Order was based, in part, on the contention that Dominion's [Park, Loan

[48] *In re Dominion GCR Case,* Case No. 03-219-GA-GCR, Opinion and Order at 8 (March 2, 2005) (Park transactions involve Dominion accepting gas from a third party and returning the same quantity of gas to that customer at a later time.).

[49] Id. (Loan transactions involve Dominion delivering gas to a third party, at one point in time, and accepting the return of the same amount of gas at a later point in time.)

[50] Id. (Exchange transactions involve Dominion accepting gas from a third party at one location and that customer taking gas from Dominion at another location.).

[51] *In re Dominion 2003 MP Audit Case,* Case No. 03-219-GA-GCR, Opinion and Order at 8 March 2, 2005).

[52] Id.

[53] Id at 9.

> and Exchange] transactions are dependent upon the use of jurisdictional assets. * * * On these issues, Dominion and the auditor both presented sufficient evidence demonstrating that the capacity used for [Park, Loan and Exchange] transactions did not impact GCR customers.[54] * * *
>
> Upon further review of the evidence, we are now convinced that Dominion did not use GCR-funded capacity when it engaged in [Park, Loan and Exchange] transactions because the capacity used for Dominion's [park, loan and exchange] transactions during the audit period did not exceed the amount of capacity allocated to non-GCR customers, and Dominion ensured that GCR customers had available to them at all times during the audit period the capacity they had paid for and that was purchased to serve them.[55]

In making this decision, the Commission concluded that the capacity assets to serve GCR and non-GCR customers were not commingled.

In the 2005 M/P Audit case, OCC made the argument that Dominion was incorrect in asserting that capacity releases, off-system sales, and park, loan and exchange transactions were not all made using the same pool Dominion assets used to provide sales and transportation service to Dominion customers. Dominion argued "it had an incentive to engage in both park, loan and exchange transactions and capacity release transactions because it obtained revenue from both; however, the choice to engage in one type of transaction over another was dependent on the available capacity."[56]

The M/P Auditor in the 2005 MP Audit Case had recommended that Dominion consider the use of an outside asset manager. Dominion rejected that recommendation and the Commission accepted Dominion's rationale by stating:

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[54] Id. at Entry on Rehearing at 3 (June 29, 2005).

[55] Id.

[56] *In re Dominion GCR Case,* Case No. 05-219-GA-GCR, Opinion and Order at 16 (January 31, 2007).

> The evidence shows that, once Dominion's SSO goes into effect, Dominion's pipeline capacity assets will largely be assigned to the SSO suppliers and Dominion will not have the level of capacity to participate in off-system sales. As noted by Mr. Murphy, while some capacity will be available, it will primarily be held for operational balancing for the system (Tr. I at 127). **Thus, because most of Dominion's pipeline capacity assets will be assigned to the SSO suppliers, those assets, which previously were used for [Park, Loan and Exchange] and capacity release transactions, will largely be unavailable for an asset manager to manage.** Therefore, we decline to adopt this recommendation. Nevertheless, we would consider revisiting this recommendation if Dominion's SSO Program is terminated and Dominion returns to GCR pricing.[57]

According to Dominion it was these remaining capacity assets that were used to operate and balance the system.[58] Supposedly the same assets that the Company used to generate the Park, Loan and Exchange transaction -- $13.53 million -- in the 2003 M/P Audit case.[59] Now that the GCR has been replaced by an auction process Dominion has determined that the capacity assets "are largely unavailable."[60] Again the Company position is inconsistent. Either the separate capacity remains available -- to operate and balance the system (a function unchanged by the replacement of the GCR) -- as well as to do the Park, Loan and Exchange transactions as stated by Dominion,[61] or Dominion was commingling assets to generate those revenues. Inasmuch as Dominion stated that it would continue to operate its on-system storage on an integrated basis,[62] it now appears that Dominion claims separation when convenient and acknowledges co-mingling at

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[57] *In re 2005 MP Audit Case,* Case No. 05-219-GA-GCR, Opinion and Order at 19 (January 31, 2007). (Emphasis added).

[58] *In re 2005 MP Audit Case,* Case No. 05-219-GA-GCR, Opinion and Order at 16 (January 31, 2007).

[59] *In re Dominion GCR Case,* Case No. 03-219-GA-GCR, Opinion and Order at 8 (March 2, 2005).

[60] *In re 2005 MP Audit Case,* Case No. 05-219-GA-GCR, Opinion and Order at 19 (January 31, 2007).

[61] *In re 2005 MP Audit Case,* Case No. 05-219-GA-GCR, Opinion and Order at 16 (January 31, 2007).

[62] Joint Application at 2 and 6.

other times. An M/P Audit should investigate this inconsistency to determine if Dominion accurately presented how the facilities were operated in the past, and understand the system operational requirements going forward. Dominion should not be able to argue one position -- that there was no co-mingling of assets -- when that explanation would benefit the Company -- and then argue it is acceptable to co-mingle assets -- when the Company would benefit from the opposite position. The Commission should investigate this inconsistency through an independent special M/P Audit.

IV. CONCLUSION

For all the reasons stated above, OCC's Motions to Order a Special M/P Audit and Order Dominion to Prepare a Long-Term Forecast Report Pursuant to the Requirements of R.C. 4935.04 should be granted. In addition, the PUCO should establish a procedural schedule that provides Parties ample discovery opportunities and an evidentiary hearing. The PUCO should then issue a ruling to mitigate any harm the lease arrangement could cause Dominion's residential customers as a result of the Joint Application at FERC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Motion* has been served upon the below-named counsel via electronic mail this 18th day of May 2010.

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