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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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PUCO

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

REPLY COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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September 17, 2010

TABLE OF CONTENTS

Page

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REPLY COMMENTS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. PROCEDURAL HISTORY

On May 18, 2010, the Office of the Ohio Consumers' Counsel ("OCC") filed a Motion to Order a Special Management Performance Audit and Motion to Order The East Ohio Gas Company d/b/a Dominion East Ohio ("Dominion") to Prepare a Long-Term Forecast Report Pursuant to the Requirements of R.C. 4935.04 ("OCC Motion"). OCC also served Discovery on Dominion pursuant to Ohio Admin. Code 4901:1-16 et seq. The OCC filed its Motion in response to action taken by Dominion and its affiliate interstate pipeline, Dominion Transmission Corporation ("DTI"), in a filing ("Joint Application") with the Federal Energy Regulatory Commission ("FERC").[1] In that filing, Dominion proposed to lease 3-5 Bcf of its on-system storage capacity to DTI ("Lease Agreement").[2] In proposing this transaction, Dominion made no formal filing to inform the PUCO and it would appear Dominion did not inform any customers or stakeholders that could be impacted by the lease. Instead, it appears that Dominion

[1] Joint Application at 2 (March 26, 2010).

[2] Joint Application at 2 (March 26, 2010).

hoped to have the proposed lease approved by the FERC without any review or scrutiny by the PUCO.

On May 19, 2010, Stand Energy Corporation ("Stand") filed a letter in support of OCC's Motion. On June 2, 2010, Dominion filed a Memorandum Contra the OCC Motion ("Dominion Memo Contra") and a Motion to Stay OCC discovery ("Motion to Stay Discovery").

On June 14, 2010, OCC filed a Reply to the Dominion Memo Contra and a Memo Contra the Motion to Stay Discovery. On June 21, 2010, Dominion filed its Reply.

On June 28, 2010, the Citizens Coalition[3] filed a pleading in support of OCC's Motion, as well as Motions for Additional and Further Relief to Protect and Safeguard the Customers of Dominion (Citizens Coalition Pleading").

On July 2, 2010, the Ohio Gas Marketers ("OGM")[4] filed Comments ("OGM Comments") on the OCC's Motion. On July 16, the Ohio Oil and Gas Association ("OGA") filed a Motion to Intervene in these proceedings ("OGA Motion").

On July 9, 2010, Dominion filed Comments in response to the OGM Comments ("Dominion Comments"). OCC hereby submits these Comments in response to all of the previously submitted comments.

[3] The Citizens Coalition is comprised of the Neighborhood Environmental Coalition ("Coalition"), The Consumers for Fair Utility Rates ("Consumers"), The Cleveland Housing Network ("Network"), and The Empowerment Center of Greater Cleveland ("Center").

[4] The OGM is an ad hoc coalition who at the time of intervention consisted of the following Commission-certified gas marketers: Constellation NewEnergy-Gas Division, LLC; Direct Energy Services, LLC; Hess Corporation; Interstate Gas Supply, Inc.; Just Energy LLC (formerly known as Commerce Energy); SouthStar Energy Services LLC; and Vectren Retail LLC dba Vectren Source.

The OCC raised the following questions or concerns in its Motion:

1. Is the proposed lease of 3-5 Bcf of on-system storage capacity the first step in a gradual sell off of more or even all of the on-system storage capacity from Dominion to its affiliate?[5]

2. For what customers -- current on-system or future off-system customers -- is Dominion spending millions of dollars in maintenance and expansion of the on-system storage facilities?[6]

3. How much on-system storage does Dominion actually have available and how much is excess?[7]

4. What storage-related facilities are being built and expanded, and who will pay the costs of those facilities?[8]

5. Who else besides DTI was offered the opportunity to lease the 3-5 Bcf of on-system storage?[9]

6. Does the proposed lease of 3-5 Bcf of on-system capacity create a subsidy, and how will the revenues be accounted for?[10]

7. Would the PUCO lose jurisdictional control over the 3-5 Bcf of on-system storage that is leased to DTI?[11]

Despite the attempts by Dominion to downplay OCC's concerns and obfuscate those issues, the above questions remain unanswered. Instead of providing information that would help respond to these questions, Dominion has pointed the PUCO to the FERC proceeding to answer these questions,[12] while pointing to the PUCO for answers in

[5] OCC Motion at 2 (May 18, 2010).

[6] OCC Motion at 2 (May 18, 2010).

[7] OCC Motion at 6-10 (May 18, 2010).

[8] OCC Motion at 10-11 (May 18, 2010).

[9] OCC Motion at 12-13 (May 18, 2010).

[10] OCC Motion at 13 (May 18, 2010).

[11] OCC Motion at 13-15 (May 18, 2010).

[12] Dominion Memo Contra at 7 (June 2, 2010).

the FERC proceeding.[13] Both the PUCO and FERC should be concerned with this behavior and respond with greater and not less scrutiny.

II. REPLY COMMENTS

A. Is The Proposed Lease Of 3-5 Bcf Of On-System Storage Capacity The First Step In A Gradual Lease Or Sell Off Of More Or Even All Of The On-System Storage Capacity From Dominion To Its Affiliate?

Although OCC raised this question, neither Dominion nor the OGM made any attempt to respond to this concern. To the extent that OGM and Dominion only focus on 55 Bcf -- the current seasonal capacity -- they have avoided the question of how much total on-system storage capacity Dominion really has.

Instead, the OGM put much of its focus on maintaining the availability of 55 Bcf of the on-system storage for their use during Phase I of the proposed Lease Agreement.[14] The OGM Comments did not raise any concern regarding the long-term future of any remaining or additional on-system storage capacity, the status of which remains unknown. More importantly, there must be a clear understanding of what Dominion plans to do with the on-system storage, or what the on-system storage availability will be during the 15-20 year term of the Phase II term of the proposed Lease Agreement because Dominion's on-system storage is vital to the winter-heating needs of Ohio residential customers.

An accurate measurement of Dominion's on-system storage is necessary to understand if the proposed lease of 3-5 Bcf of capacity is the end point or just the beginning of a gradual lease or sell-off of the on-system storage from Dominion to its affiliate. An accurate accounting of the on-system storage capacity is also important so that the proposed

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[13] Joint Answer to OCC at 7, 14, 15, 17 (May 17, 2010).

[14] OGM Comments at 6-8 (July 2, 2010).

lease of 3-5 Bcf can be analyzed in the context of knowing how much of the on-system storage capacity remains for the use of Ohio customers. Finally, it is important that such an accounting be made by an independent M/P Auditor so that the public can have confidence in its findings. The question of the long-term stability and future of Dominion's on-system storage is of paramount importance to Ohio consumers.

B. For What Customers -- Current On-System Or Future Off-System Customers -- Is Dominion Spending Millions Of Dollars In Maintenance And Expansion Of The On-System Storage Facilities?

In its Motion, OCC questioned who would benefit from Dominion investing significant capital dollars for improvements to its on-system storage facilities. Dominion notes that it is currently spending millions of dollars to maintain and expand the on-system storage facilities.[15] However, it is not clear who the beneficiary of this work will be.

Arguably, this work should be done for the benefit of current on-system customers. However, with the Dominion claim that it now has excess on-system storage capacity available,[16] that connection may not be valid. In fact, spending capital to expand the on-system storage in the face of a claim of excess capacity casts doubt on the prudence of the investment. This action is even more questionable because it is possible that the maintenance and expansion work is actually being done in order to make the 3-5 Bcf of on-system storage available for lease to DTI. Finally, the capital improvements could lead to additional on-system storage capacity being made available only to DTI, at the expense of current on-system customers who have paid rates that included the cost of

[15] Dominion Memo Contra at 12-13 (June 2, 2010).

[16] Joint Application at 5-6 (May 17, 2010).

the on-system storage. Dominion's on-system customers should not bear the financial risk to fund the capital improvements, and then face the risk having the on-system capacity shifted away from their use to the use of off-system DTI customers.

C. How Much On-System Storage Does Dominion Actually Have Available And How Much Is Excess?

In its Motion, the OCC raised the question of just how much on-system storage capacity Dominion currently has. Dominion responded to this concern by claiming that the proposed lease would have no adverse impact on existing or future Ohio retail customers.[17] This claim does not address the question of how much on-system storage capacity Dominion currently has, or how much on-system capacity costs are built into the base rates that core customers are currently paying. The OGM Comments called for Dominion to commit to continuing to make available the current seasonal capacity of 55Bcf to serve core customers.[18] Although Dominion agreed to the OGM suggestion, Dominion declined to confirm such a commitment through either affidavit to supplement the record or tariff provision.[19]

While Dominion's non-commitment may be sufficient to address the OGM concern, it fundamentally fails to address the underlying question of just how much current on-system storage capacity Dominion has. It must also be noted that any concerns raised by OGM are Marketer concerns and not necessarily the same concerns that residential customers might have. To the extent that Dominion currently has 60 Bcf of on-system storage capacity as noted in the most recent Management/Performance

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[17] Dominion Memo Contra at 11-14 (June 2, 2010).

[18] OGM Comments at 2 (July 2, 2010).

[19] Dominion Comments at 2 (July 19, 2010).

("M/P") Audit,[20] then Dominion's pledge of 55 Bcf for Ohio customers leaves 5Bcf of capacity that has been and is currently paid for by core customers, through base rates, available to be leased to its affiliate. Even more alarming is that if Dominion currently has 70 Bcf of on-system capacity,[21] then the pledge leaves 15 Bcf of capacity unaccounted for.

With Dominion now claiming in its Memo Contra that there is no contradiction between the September 26, 2008 Power Siting Board Application in Case No. 08-289-GA-BTX and information reported to prior M/P Auditors,[22] the question of the unaccounted for 10 Bcf remains unanswered.[23] In pleadings at the Commission, Dominion claimed that the 20" pipeline would add 10 Bcf of on-system storage, yet on the other hand, in this proceeding, Dominion is on the record claiming that it only has 55 Bcf of on-system storage. The Commission must determine Dominion's level of on-system storage capacity that currently exists, and an independent M/P Audit will best accomplish that objective.

D. What Storage-Related Facilities Are Being Built And Expanded, And Who Will Pay The Costs Of Those Facilities?

Dominion admits that it has made considerable investment in its storage infrastructure since the 2007 test year in its last rate case.[24] Dominion estimated this cost

[20] OCC Motion at 9-10 (May 18, 2010).

[21] As noted in the OCC Motion, Dominion previously claimed that construction of a 20" pipeline would increase its current gas storage capacity by 10 Bcf. OCC Motion at 9 (May 18, 2010).

[22] Dominion Memo Contra at 6 (June 2, 2010).

[23] OCC Motion at 9, citing 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.

[24] Dominion Memo Contra at 12 (June 2, 2010).

at $30 million for five new storage wells, installation of a new compressor unit, well bore cleanouts and acid cleaning, and installation of 60 ultrasonic meters.[25] While the actual work itself and the amount of money spent can be confirmed in future proceedings, what cannot be determined from any public record at this point is whether this investment is needed 1) to maintain the on-system storage capacity currently used by Dominion's core customers, or 2) to provide the 3-5 Bcf of on-system storage to DTI and its off-system customers, or 3) to expand Dominion's current on-system storage capacity.

Dominion's jurisdictional customers should not bear the financial risk associated with the Company engaging in extensive financial investments for the use of non-jurisdictional customers. This question must be addressed now so that the Commission can establish what capacity Dominion's jurisdictional customers are paying for. Dominion argues that OCC's concerns are premature. That is because Dominion contends that any decision regarding whether Ohio customers will be asked to pay for this investment will be determined in a future base rate filing.[26] That may be the general rule with regard to ordinary business expenses and investments. However, in this case it is not clear that the investment is necessary or will be used by Ohio customers.

Dominion should not be able to simply shift allocation of on-system storage from on-system Ohio customers to off-system DTI customers without answering the question of whether the revenues to be raised by the on-system storage service will exceed the costs being expended to upgrade the storage facilities. Such a result, if applicable, would deny on-system customers in Ohio the benefit of regulatory oversight by the PUCO. This

[25] Dominion Memo Contra at 12-13 (June 2, 2010).

[26] Dominion Memo Contra at 13 (June 2, 2010).

is especially true in light of Dominion's plan to book all Lease Agreement revenues to its bottom line, rather than sharing them with its customers.[27]

E. Who Else Besides DTI Was Offered The Opportunity To Lease The 3-5 Bcf Of On-System Storage?

OCC's Motion questioned whether Dominion had complied with all open season requirements prior to entering into the Lease Agreement with its affiliate. The question or issue here is not only the transparency of the Phase I term of the Lease Agreement, but more importantly the Phase II term of the Lease Agreement. There is no indication in any of the pleadings in this case to date that any party other than DTI was ever offered the opportunity to enter into an arrangement substantially similar to the Lease Agreement that is currently pending before the FERC.

Dominion did agree with OGM request for Dominion to make displacement storage service available until Phase II begins.[28] Although Dominion appears willing to commit to making the 3 Bcf of on-system storage capacity available on the open market during Phase I, Dominion was not willing to formalize its commitment as OGM requested -- sign an affidavit supplementing the record or make tariff provisions. As a result, the "commitment" must be viewed with skepticism. Dominion cast even more skepticism on its own assurance, by limiting the availability of such *non-discriminatory* service only until Phase II begins.[29] Dominion made no assurance that parties other than its affiliate would have access to the Phase II 5 Bcf of on-system storage. The Lease Agreement appears to be an exclusive arrangement offered only to Dominion's affiliate,

[27] Dominion Memo Contra at 14 (June 2, 2010).

[28] Dominion Memo Contra at 2 (June 2, 2010).

[29] Dominion Memo Contra at 3 (June 2, 2010).

DTI, calling into question whether such an agreement is an arms length transaction raising long-term implications regarding the on-going regulation of Dominion's on-system storage, and as such should be rejected by the PUCO.

The PUCO should be concerned for several reasons. First, there is the question that because of the affiliate relationship between Dominion and DTI this transaction does not appear to have been made at arms length. Second, if the proposed Lease Agreement is approved by FERC, the PUCO loses jurisdiction over the on-system storage that is the subject of the lease. Third, the Lease Agreement involves a fundamental component of the Dominion distribution system that is vital to the well being of Ohio customers. Fourth, the long term nature of the proposed Lease Agreement (15-20 years) should be cause for close scrutiny by the PUCO.[30] The PUCO should not permit a transaction that has such serious and significant long-term implications without fully understanding all of the impacts and implications of the lease.

F. Does The Proposed Lease Of 3-5 Bcf Of On-System Capacity Create A Subsidy, And How Will The Revenues Be Accounted For?[31]

Neither the OGM nor Dominion in their Comments addressed the issue of the revenues to be produced from the proposed lease, and the subsidies that the proposed lease could create. As previously noted, in the OCC Motion, the revenues from the Phase I lease would go directly to Dominion's bottom line, until Dominion's next rate proceeding, despite the fact that all of the on-system storage costs are currently included in the base rates paid for by Dominion's customers.[32] Therefore, Dominion is paid twice

[30] Joint Application at 9 (March 26, 2010).

[31] OCC Motion at 13 (May 17, 2010).

[32] OCC Motion at 13 (May 17, 2010).

for the same capacity -- once by Dominion customers through base rates and once by DTI through the Lease Agreement payments. In addition to potentially providing a windfall for Dominion's shareholders from these revenues, the proposed lease also provides a second benefit to shareholders, because it permits DTI to lease on-system storage capacity from Dominion at cost and then turn around and lease it to customers at market rates. Essentially, DTI would assume minimal financial risk relative to the potential profit to be earned from the agreement. While Dominion customers continue to bear the cost of the on-system storage capacity investment, face the risk associated with the loss of on-system storage capacity availability, and do so without any benefit derived from the sharing of the revenues Dominion receives from DTI.

G. Would The PUCO Lose Jurisdictional Control Over The 3-5 Bcf Of On-System Storage That Is Leased To DTI?

Perhaps even more important than the short-term question of accounting for the revenues from the proposed lease, is the question of whether the PUCO would lose jurisdiction over the 3-5 Bcf associated with the proposed lease. Dominion has done nothing to alleviate this concern that OCC raised in its Motion.[33] Finally, the question of PUCO jurisdictional control over the remainder of the on-system storage capacity must be considered in light of the fact that it is problematic to segregate the 3-5 Bcf of on-system storage from the remainder of the on-system storage. As a result, FERC taking control of the 3-5 Bcf of on-system storage in the proposed lease could simply be a precursor to FERC taking jurisdiction over the entire on-system storage capacity. Such an outcome may be more likely, if the proposed lease is just the first of other similar

[33] OCC Motion at 13-15 (May 17, 2010).

transactions with Dominion looking to expand the on-system storage capacity its affiliate leases in the future.

III. CONCLUSION

Generally speaking, the on-system storage capacity is a vital component of Dominion's distribution system and is necessary in order for Dominion to meet the winter and peak day needs of Ohio customers, both residential and non-residential. Despite the importance of this asset, Dominion attempted to enter into the proposed lease, seeking only FERC approval, without the benefit of an appropriate process and review before the PUCO. Of further concern, Dominion appears willing to address OGM's concerns by committing to continue to make available the current seasonal capacity of 55Bcf to serve core customers in Phase I; however, Dominion will not formalize its commitment by signing an affidavit supplementing the record in this case or by implementing a tariff provision filed with the Commission. Furthermore, Dominion has only committed to address OGM's concerns through Phase I.

There are too many unknowns and uncertainties surrounding the Lease Agreement. OCC has raised the concern that with FERC approval the PUCO loses jurisdiction over this capacity, and this point has not been disputed by Dominion. Before the Commission risks loss of jurisdiction over part or all of the on-system storage, it should have a complete understanding of the on-system storage. The M/P Audit that OCC requests will provide the Commission with the opportunity to independently evaluate the status of Dominion's on-system storage capacity, so that any decision is a transparent and informed one.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Reply Comments by the Office of the Ohio Consumers' Counsel*, has been served upon the below-named counsel by First Class mail this 17th day of September 2010.

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