BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application to Modify in Accordance with Section 4929.08, Revised Code, the Exemption Granted Columbia Gas of Ohio, Inc., in Case No. 08-1344-GA-EXM	))))	Case No. 12-2637-GA-EXM

MEMORANDUM CONTRA OF THE OHIO GAS MARKETERS GROUP AND THE RETAIL ENERGY SUPPLY ASSOCIATION TO THE APPLICATION FOR REHEARING BY HESS CORPORATION

February 19, 2013

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I. Introduction

The Public Utilities Commission of Ohio ("Commission") granted the request in this matter to modify the exemption order that had been issued to Columbia Gas of Ohio, Inc., ("Columbia") in 2009[1] by implementing the Amended Stipulation sponsored by Columbia, the Ohio Gas Marketers Group ("OGMG"), the Retail Energy Supply Association ("RESA"), Dominion Retail Inc., Staff, and the Ohio Consumers' Counsel. The Amended Stipulation modifies the current exemption order mainly by having the balancing service fee for Choice customers directly billed by Columbia at a rate five cents below the previous charge, which was previously indirectly billed to the retail customer via the Competitive Retail Natural Gas Service ("CRNGS") supplier or the default auction supplier. Columbia's standard choice offer ("SCO") itself will continue, including the SCO auctions during which suppliers bid for the right to provide natural gas service to customers who have not selected a CRNGS supplier, until a threshold of 70% shopping is reached. At that time, non-residential Choice customers will receive default natural gas through a Monthly Variable Rate

[1] *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 08-1344-GA-EXM, Opinion and Order (December 2, 2009).

("MVR") plan served by certified CRNGS suppliers. The contemplated MVR service is similar to the MVR utilized in the Dominion East Ohio service area.[2]

The Amended Stipulation includes a provision, pursuant to which SCO suppliers in each SCO auction year will be required to provide initially a deposit ("SCO deposit") to Columbia in the amount of $0.06 per thousand cubic feet ("Mcf") multiplied by the initial estimated annual delivery requirements of the SCO program year of the tranches won by that SCO supplier. The SCO deposit will earn interest and be accounted for in a regulatory liability account. Any SCO deposit funds remaining at the end of the program year will then be transferred to all Choice-eligible customers, PIPP customers, and ineligible customers through the Choice/SCO Reconciliation Rider ("CSRR").

Hess Corporation ("Hess") filed a petition for rehearing of the January 9, 2013 Opinion and Order claiming the Opinion and Order is unlawful and unreasonable for several reasons including the rulings related to the SCO deposit.[3] Hess requests that the Commission either reject the SCO deposit or make the SCO deposit refundable, returning all unused balances to the SCO suppliers with interest. OGMG and RESA provide the following comments only as to the lawfulness and reasonableness of the Commission's Opinion and Order authorizing the SCO deposit.

II. The Commission adequately set forth its findings of fact and its reasoning when it approved the SCO deposit of $0.06 per Mcf.

Section 4903.09, Ohio Revised Code, states: "In all contested cases heard by the public utilities commission, a complete record of all the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of the cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based on said findings of fact."

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[2]See, the January 9, 2013 Opinion and Order in *In Re Dominion East Ohio Gas Company*, Case No. 12-1842-EL-EXM.

[3]Hess also raised allegations of error regarding the Commission's methodology of allocating customers, possibly in the future, to a monthly variable rate. In this memorandum contra, OGMG/RESA will not address those arguments. OGMG/RESA's silence should not be construed as support or opposition for those allegations of error by Hess.

The statute itself does not require the Commission to evaluate to every factual or legal allegation made in a case, let alone to explicitly weigh each fact presented and detail what part of the allegation was accepted and what part was rejected. The statute just states that the Commission must make findings of facts and the Court has interpreted that to mean the Commission's decision must provide "in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the [Commission] in reaching its conclusion." *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St.3d 87 at 89, quoting *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 312.

Hess does not question that the Commission made a complete record of the proceedings, that a hearing was held, that a transcript was made, and that the Commission filed a written opinion. Hess contends that, in the Commission's written opinion, it did not sufficiently set forth its findings of fact and its reasoning as to the SCO deposit issue. (Hess Rehearing Appl. at 5-7)

A review of the Opinion and Order reveals that the Commission did specifically make findings of fact as to the SCO deposit and used those findings to support its conclusion. In the Opinion and Order, on pages 12-15, the Commission summarized various aspects of the 6 cent deposit issue including:

- An overview of the SCO deposit provision of the Amended Stipulation, including how it will be recovered, retained, and the final disposition of the fee;
- Explanation of the lack of compulsion of any supplier to bid in the default SCO auction;
- The differing evidence presented by the parties about the SCO deposit, including: (a) the types of expenses and risks associated with SCO service; (b) the opinion testimony that an SCO supplier would incur more expenses than $0.06/Mcf if it covered the types of expenses of this SCO deposit; (c) the opinion testimony that the SCO deposit will offset current subsidies afforded to SCO customers; (d) based on 2012 figures, the SCO deposit is approximately a one-percent change for SCO costs; (e) the opinion testimony that the SCO deposit is a tax; (f) the SCO deposit will increase prices for

SCO customers; (g) Columbia performed no cost studies upon which to base this deposit; and (h) no evidence establishes that a SCO supplier's default would cost more than the letters of credit that SCO suppliers already provide to Columbia; and

- The differing arguments from the parties on the SCO deposit issue.

After describing the evidence and the arguments, the Commission stated its conclusions for this issue on page 15, as well as its overall findings and conclusions on page 47. First, the Commission expressly stated that it considered the arguments made by the parties which it had summarized. Second, the Commission concluded that the stipulation's SCO deposit requirement is reasonable. Third, the Commission expressly stated that it was persuaded by, and thus accepted, the arguments raised by OGMG/RESA, which it had detailed on the previous pages of the decision. Fourth, the Commission highlighted that adequate liquid accounts was an important factor in its decision-making. Fifth, the Commission expressly rejected Hess' argument that the lack of supplier default in Columbia's territory outweighed the importance of having adequate liquid accounts. Sixth, the Commission found the Amended Stipulation's transfer of remaining funds in the program year to the CSRR to be acceptable and reasonable. Seventh, the Commission concluded that the joint movants had "demonstrated that the amended joint motion to modify the exemption orders should be granted," and this included the SCO deposit. Eighth, the Commission determined that the Amended Stipulation complied with statutory and administrative requirements, met the criteria for evaluating stipulations, is reasonable, and should be adopted.

When one considers the above eight items, it is clear that the Commission did indeed hear all the arguments (both factual and legal), made a decision as to arguments presented, and definitively stated the basis for its decision. Hess may find fault with the Opinion and Order's style of listing the arguments presented and then indicating which version of the facts and arguments was accepted as the basis of the decision. The outcome would not be changed if, instead, the

Commission made a list of the specific facts it was accepting and detailed why it was rejecting the conflicting facts and arguments.

In stark contrast to the style of the opinion in this case, Hess cites to other cases as support for finding a violation of Section 4903.09, Revised Code. In the cited cases, however, the statute was violated because the Commission held no hearing(s), did not receive evidence, and thus relied on findings that were outside the record. *See*, *Tongren*, *supra*; and *Ideal Transp. Co. v. Pub. Util. Comm.* (1975), 42 Ohio St.2d 195. *See*, *also*, *Ohio Bell Tel. Co. v. Pub. Util. Comm.* Of Ohio (1937), 301 U.S. 292. In this instant proceeding, the Commission not only held a hearing, the Opinion and Order refers to the evidence established at that hearing. As such, the above cases hold no authoritative value in this instance.

In addition, the matter at bar is not just a contested case, it is one in which most of the parties have settled and presented the Commission with a stipulation. In a proceeding with a stipulation, it is clear that the Commission is entitled to "place substantial weight on the terms of the stipulation." *In re Application of Columbus S. Power Co.* (2011), 129 Ohio St.3d 46, citing *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126. The Commission must still determine, from the evidence, what is just and reasonable. In this case, the Commission did just that with respect to the SCO deposit, and it explained its reasoning sufficiently in its January 9, 2013 decision.

Hess may be dissatisfied with the Commission's conclusion regarding the SCO deposit, but the Commission did not fail to adequately set forth its findings of fact and its reasoning. For these reasons, Hess' first ground for rehearing should be rejected.

III. Approval of the SCO deposit is not against the manifest weight of the evidence and there was no improper reliance on the amended stipulation.

A. No cost-of-service or test-year analysis is necessary because this matter is not a rate case.

Hess has argued that the Commission's approval of the SCO deposit is against the manifest weight of the evidence because no cost analysis was first conducted to determine what "costs Columbia may incur in the event of default, or the level of subsidization of SCO service, if any." (Hess Rehearing Appl. at 7-8) A cost-of-service or test-year analysis is not mandated in this situation. Sections 4929.07 and 4929.08, Ohio Revised Code, address proceedings after approval of an exemption plan. The Commission is permitted to modify an exemption plan; yet, the statutes do not require a cost-of-service or test-year analysis to be done before modifications to an exemption plan can occur. Even more specifically, those statutes do not require a cost-of-service or test-year analysis for establishing charges for SCO security deposits or Choice-related services. Moreover, Hess has not cited to any statute, regulation, or case precedent that requires a cost analysis in an Alternative Rate plan filed under Chapter 4929, Revised Code. A review of the Commission's rate regulations reveals that cost-of-service studies are required by the regulations in rate increase cases brought under Section 4909.18, Revised Code.[4] Section 4929.04, Revised Code, explicitly exempts utilities from Chapter 4909 requirements if an Alternative Plan is used. In sum, Hess has failed to show that a cost-of-service study was required before the proposed amendment to the existing Alternative Rate plan could be granted. Cost-of-service studies are a tool for cost-of-service rate-making. Chapter 4929 is designed as an alternative to cost-of-service rate-making, and once the Commission authorizes an alternative rate plan, the requirements of cost-of-service rate-making no longer apply. For these reasons, Hess' second request for rehearing should be denied.

B. The evidence of record demonstrates that, if a SCO supplier defaults, there is a unique and discrete risk <u>for Columbia</u> and a pool of liquid funds is a reasonable approach to address that risk.

[4] *See*, Rule 4901-7-01, Ohio Administrative Code, Appendix A (Standard Filing Requirements), Chapters II and III, Section E.

SCO suppliers must establish their creditworthiness in order to qualify to participate in Columbia's SCO auctions. Per Columbia's tariff and the Second Revised Program Outline, SCO suppliers must provide financial security to guard themselves against default by an SCO or Choice supplier. In particular, SCO bidders must establish the creditworthiness against exposures that include "150% of the tranches that they express the intent to bid on" to enable an SCO Supplier to accept an increase in its tranche volumes, in the event of an SCO Supplier's default, up to a level equal to 150% of the initial forecasted annual delivery requirements for the SCO Period of the tranches won by the SCO Supplier. (PUCO Tariff No. 2, Section VIII, Part 6.1 ¶4; Columbia Ex. 2 at 16-17). Various forms of financial security are possible: a guarantee of payment, mutually agreeable irrevocable letter of credit, a cash deposit, and other mutually agreeable security or arrangement. *Id.* at Part 6.2. In addition, SCO suppliers must provide a letter of credit each year in the amount of $0.50/Mcf times the estimated annual delivery requirements for the tranches won. This second financial security is exclusively for the benefit of other SCO suppliers and is distributed to them following a default. (Columbia Ex. 2 at 19; PUCO Tariff No. 2, Section VIII, Part 6.8 ¶11). Thus, the SCO suppliers are required to mitigate their own risk in the event one SCO supplier defaults because the defaulting supplier's customers will be re-assigned to the remaining SCO suppliers.

However, the evidence in the record also establishes that SCO suppliers' creditworthiness does not mitigate *all* of the financial risk that exists when a supplier defaults, nor does it address the immediate need for cash needs to instantly fill in for the defaulted SCO supplier. If an SCO supplier were to default, Columbia itself will also incur expenses because Columbia will supply the natural gas to the customers for a period of time, until the customers are re-assigned to the other SCO suppliers. That expense is not covered by the current financial security provided by SCO suppliers, nor is the instantaneous need for cash to cover costs immediately incurred.

(OGMG/RESA Ex. 3 at 18; Columbia Ex. 6 at 8; Columbia Ex. 2 at 19, 21) The Amended Stipulation expressly stated that the $0.06/Mcf security deposit will provide a *liquid* account to meet default expenses incurred by Columbia; it does not afford "compensation to the non-defaulting SCO Suppliers." (Amended Stipulation at 4.)

Hess argues that, because Columbia already imposes financial security obligations on SCO suppliers, including the possibility of a cash deposit, the Amended Stipulation's $0.06/Mcf deposit is unlawful, unreasonable, and against the manifest weight of the evidence. (Hess Rehearing Appl. at 8) Also, Hess stated that the existing credit arrangements "obviate" the need for the additional, separate SCO deposit. However, there is no requirement that SCO suppliers' deposits be combined into one deposit. In fact, there are already two different deposits. Moreover, Hess ignores the fact that not all security arrangements with SCO suppliers will be in the form of cash deposits. However, the Amended Stipulation's $0.06/Mcf deposit creates an upfront liquid pool of funds immediately available in the event of default, which provides an additional safeguard on a going-forward basis. Having liquid funds available, in the event of an SCO supplier default, is a reasonable option.

Hess points out that no SCO suppliers in Columbia's territory have defaulted, while some Choice suppliers have defaulted. Hess further argues that the likelihood of SCO supplier default and its impact are not greater to Columbia than would be a default by a Choice supplier. (Hess Rehearing Appl. at 15-16) Hess' focus on comparing the greater/lesser risk between SCO and Choice supplier defaults misses the point. Unlike a Choice supplier who is only responsible for the actual retail customers it contracts for, the SCO must stand ready to serve any Choice eligible customer who wants service be they a coming back from PIPP service, government aggregation, another Choice supplier or new to the service area. Thus, the number of customers the SCO serves could be larger

midyear than at the start when the bond is set. Given this risk unique to SCO suppliers, an SCO deposit with liquid funds t immediately available to Columbia is reasonable.

C. The evidence of record also demonstrates that there are specific expenses associated with SCO service that will continue in the future, that those expenses are estimated to be well above $0.06/Mcf, and that those expenses are not covered by the existing credit arrangements between Columbia and the SCO suppliers.

The record identifies a number of SCO service-related expenses. OGMG/RESA witness Parisi testified that currently several expenses associated specifically with the SCO customers are not paid for by the SCO customers. (OGMG/RESA Ex. 3 at 17-18) He explained that those expenses include: (a) the SCO auction expenses and the related preparatory expenses, regulatory expenses, and internal expenses; (b) programming expenses associated with continuing to provide SCO service; (c) educational programs regarding SCO service and regarding available Choice alternatives; and (d) call center expenses for calls related to SCO service.[5] All of these expenses will continue to be incurred under the amended stipulation.

Mr. Parisi added that, as Columbia's SCO service continues in the future, several additional expenses will emerge: (a) educating SCO customers of the next steps related to the default service, (b) information-gathering from SCO customers related to information they will need to transition to MVR service, and (c) computer programming to ensure continuation of the default service. (OGMG/RESA Ex. 3 at 19)

Moreover, Mr. Parisi explained that all of these SCO expenses are not exclusively paid for by the SCO customers or the SCO suppliers even though the expenses are incurred for the benefit of SCO customers. (OGMG/RESA Ex. 3 at 18) Rather, many of these expenses are included in

[5]Mr. Parisi described the call center expenses as "manageable subsidies," although not optimal. (OGMG/RESA Ex. 3 at 18)

Columbia's base rates or in the CSRR, and as such are subsidized by non-SCO customers, namely, Choice customers. (*Id.* at 18-19)

Mr. Parisi further explained that his employer, Interstate Gas Supply ("IGS") is both an SCO supplier and a Choice supplier. As a result, IGS is in a unique position to assess the cross-subsidization that Choice customers provide for the SCO customers. Moreover, IGS acknowledged that SCO suppliers should contribute to the expenses for the SCO service that have been avoided thus far. (*Id.* at 20-21)

In addition, Mr. Parisi opined, based on his knowledge and experience, that altogether these SCO expenses are "significantly greater" than the $0.06/Mcf supplier deposit contained in the Amended Stipulation. (*Id.* at 20-21)

In its application for rehearing, Hess overlooks nearly all of the expense evidence described above. However, the Commission did not; it was persuaded by this evidence. As noted earlier, the Commission was permitted to place substantial weight on the Amended Stipulation, but the Commission did not improperly rely on the Amended Stipulation. The Commission evaluated the SCO deposit provision vis-à-vis the other evidence and arguments presented by the parties. After giving the evidence and the arguments their due consideration and appropriate weight, the Commission ultimately accepted the OGMG/RESA position. There was nothing improper in the Commission's analysis.

IV. The SCO deposit does not violate Columbia's code of conduct and it is not discriminatory.

Hess contends that the SCO deposit is unduly discriminatory, in violation of both Columbia's tariff and the State's policy as set forth in Section 4929.02, Ohio Revised Code. (Hess Rehearing Appl. 13-15) Hess correctly points out that SCO suppliers will provide the $0.06/Mcf deposit, and that it does not apply to Choice suppliers. Hess further alleges that SCO suppliers will "have to" include the deposit in their prices because the deposit will not be returned to the SCO

supplier at the end of the program year, while Choice suppliers will not be affected and have an undue advantage. However, the fact that the SCO deposit applies only to SCO suppliers does not make the deposit improper. Absolute uniformity among rates and charges is not required; utilities are permitted to charge different and unequal rates so long as there is some actual and measurable difference in the furnishing of services. *Mahoning Cty. Twps. v. Pub. Util. Comm.* (1979), 58 Ohio St.2d 40, 43-44. See, also, *Weiss v. Pub. Util. Comm.* (2000), 90 Ohio St. 3d 15 and *AK Steel Corp. v. Pub. Util. Comm.* (2002), 95 Ohio St. 3d 81, 86-87. The SCO deposit will be a part of doing business as an SCO supplier. However, a SCO supplier and a Choice supplier are not the same and they will not have the same risks and expenses. Further, as the Commission noted in the Opinion and Order, no supplier is required to be a bidder in the SCO auctions. If Hess' argument were accepted, then Choice suppliers equally would be able to allege undue discrimination because SCO suppliers have continued access to significant customer loads without the risks and expenses associated with engaging in the retail market or complying with administrative rules. This contention of undue discrimination does not hold water.

Next, Hess alleges undue discrimination on the ground that the SCO deposit will penalize SCO customers because they will be subjected to higher prices. As noted earlier, the SCO deposit is not as significant a change as Hess appears to be arguing. The SCO deposit will change the SCO supplier's costs by approximately one percent, based on 2012 prices. In turn, the SCO deposit may or may not impact SCO supplier rates. However, as argued earlier, the basis for establishing the SCO deposit is reasonable. Moreover, any remaining SCO deposit funds will be returned to customers at the end of the program year. Additionally, any amounts of the SCO deposit used during the program year will benefit the SCO customers directly because they will receive continuous natural gas service.

Finally, as to the State of Ohio policy, Hess contends that the SCO deposit violates multiple sections -- Section 4929.02(A)(1), (2), (3), (7), and (8), Ohio Revised Code. However, a review of those alleged violations readily will explain why the SCO deposit provision of the Amended Stipulation is not contrary to, but consistent with, Ohio's policies as set forth in Section 4929.02(A), Ohio Revised Code:

> (1) Promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods;
>
> (2) Promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs;
>
> (3) Promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers;
>
> * * *
>
> (7) Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. of the Revised Code;
>
> (8) Promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods;

The SCO deposit will not run contrary to promoting reasonably priced natural gas services [Section 4929.02(A)(1)], the availability of natural gas services [Section 4929.02(A)(2)], the diversity of supplies or suppliers [Section 4929.02(A)(3)], or effective competition [Section 4929.02(A)(8)]. In fact, the SCO deposit will not preclude SCO suppliers. The SCO deposit may impact SCO suppliers' prices, but it is not an unreasonable deposit and it will not render SCO suppliers' prices unreasonable. To the contrary, OGMG/RESA contend that the SCO deposit will avoid existing subsidies because non-SCO customers will cover less of the SCO expenses as a result of the crediting of SCO deposit funds to the CSRR at the end of the program year.

As to Section 4929.02(A)(7), Ohio Revised Code, OGMG/RESA will not repeat its earlier testimony and arguments that the Amended Stipulation, and the SCO deposit in particular, will promote an expeditious transition and achieve effective competition for natural gas services. *See, e.g.*, OGMG/RESA Ex. 4 at 2-3.

In summary, no *undue* preference is given to Choice suppliers. The SCO deposit is actually establishing a better balance between the expenses and risks unique to SCO service and the recovery of those expenses, than what has existed in the past two years. There is no violation of any of the provisions of the State natural gas policy cited by Hess, and there is improper analysis of the risks of SCO service.

V. Conclusion

The evidence demonstrates that the SCO deposit will target and mitigate a known, existing risk. Also, the evidence demonstrates that SCO expenses are being recovered through charges imposed on non-SCO customers, and those expenses will continue. The evidence further establishes that the SCO deposit will also lessen some of the subsidization of the SCO expenses that exists in the current charges because the portion of the SCO deposit remaining at the end of the program year will flow to customers via the CSRR. Moreover, the evidence establishes that this roughly one-percent change in the costs to SCO suppliers is a reasonable approach to addressing the issues related to SCO service. There was no improper reliance on the Amended Stipulation; rather, the Commission just was not persuaded by the evidence and arguments put forth by Hess and the other opposing party. Hess has not demonstrated any error in the Commission's January 9, 2013 decision on this point. Hess' SCO deposit arguments should be rejected and its corresponding relief requested (to either reject the $0.06/Mcf SCO deposit or make the SCO deposit refundable,

returning all unused balances to SCO suppliers with interest) should be likewise rejected. The Commission should affirm its January 9, 2013 decision on this issue.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served this 19th day of February 2013, via email on the parties listed below.

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Summary: Memorandum Memorandum Contra of the Ohio Gas Marketers Group and the Retail Energy Supply Association to the Application for Rehearing by Hess Corporation electronically filed by M HOWARD PETRICOFF on behalf of Ohio Gas Marketers Group and Retail Energy Supply Association