BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Commission's Investigation of the Customer Choice Program of The East Ohio Gas Company.	)))	Case No. 98-594-GA-COI
In the Matter of the Application of The East Ohio Gas Company for Approval of Certain Text and Language Changes Within Its Gas Tariff.	))))	Case No. 00-1370-GA-ATA

FINDING AND ORDER

The Commission finds:

(1) On September 25, 1996, The East Ohio Gas Company (now known as Dominion East Ohio) filed an application for approval of a new pooling agreement and a revised transportation migration rider that would be implemented in conjunction with a new Core Market Aggregation Service (Energy Choice program). In July 1997, the Commission approved, on a pilot basis subject to certain modifications, Dominion East Ohio's Energy Choice program. *In the Matter of the Application of The East Ohio Gas Company for Authority to Implement Two New Transportation Services, For Approval of a New Pooling Agreement, and for Approval of a Revised Transportation Migration Rider*, Case No. 96-1019-GA-ATA (July 2, 1997). Enrollment in the initial 18-month phase of the Energy Choice program began in October 1997. The program provided approximately 160,000 residential, commercial, and industrial customers in ten counties the opportunity to select their provider of gas service.

(2) In June 2000, the Commission approved, as part of a joint stipulation, the expansion of the Energy Choice Program to include all Dominion East Ohio customers by November 1, 2000. *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of The East Ohio Gas Company*, Case No. 99-219-GA-GCR (June 8, 2000).

(3) On July 26, 2000, Dominion East Ohio filed proposed tariffs to implement its choice program system-wide by November 1, 2000, and to incorporate door-to-door solicitation requirements. Filed as support for the proposed tariffs was a joint stipulation between Dominion East Ohio, Ohio Consumers' Counsel, and the Commission staff. Also filed were supporting statements from eight marketers that participated in the stakeholder discussions which developed the proposed tariffs.

(4) On August 10, 2000, the Ohio Oil & Gas Association (OOGA) filed a motion to intervene in Case No. 00-1370-GA-ATA. OOGA argued that certain aspects of the proposed Dominion East Ohio tariffs unfairly discriminate against local Ohio production. Those proposed provisions state that, if local production is part of a marketer's portfolio, for purposes of determining whether the comparable capacity requirements are being met, the associated design day contribution shall equal 75 percent of the average daily volume purchased by the marketer. If a marketer elects to use local production as part of its comparable capacity demonstration, Dominion East Ohio will apply only 75 percent of the actual contracted capacity toward the comparable capacity calculation. For example, if a marketer contracts for 100 units of local production, Dominion East Ohio will treat that as only 75 units for purposes of determining whether the marketer has sufficient capacity to meet its entire peak day demand. OOGA argued this term discriminates against local production and will make local Ohio production less attractive to marketers participating in the choice program.

(5) On August 11, 2000, Dominion East Ohio filed a memorandum contra OOGA's intervention. Dominion East Ohio argued that discounting local production is appropriate since it is based on its actual experience that a certain amount of freeze-off does occur and that 25 percent is its best estimate of that amount. Dominion East Ohio pointed out that the 25 percent figure was reviewed and found to be reasonable by the management/performance auditors in three separate gas cost recovery audits that were approved by the Commission. Dominion East Ohio believes that it is inappropriate to focus on only the discounting when evaluating the attractiveness of local production to marketers. For example, the amount of local production volumes identified for comparable capacity purposes does not need to be dedicated to the marketer's choice pool. Local production used to supply a large industrial customer, for example, can be applied to the comparable capacity calculation for the choice pool. Also, Dominion East Ohio argued that this type of flexibility will actually make local production more attractive to marketers.

(6) In OOGA's reply memorandum, it did not contest that there is a certain amount of freeze-off. However, OOGA argued it is nonetheless discriminatory to single out local production for discounting since "[a]ll gas production in peak periods faces deliverability issues, whether from 'freeze-offs,' Gulf of Mexico hurricanes, or other factors".

(7) On August 24, 2000, the Commission granted OOGA's motion to intervene in 00-1370-GA-ATA.[1] Also, the Commission concluded that the issue of whether it is appropriate to "de-rate" local production based on historical peak day non-deliveries merited further consideration. Until such time as the Commission ruled otherwise, Dominion East Ohio was instructed not to implement the provisions that de-rate local production by 25 percent for purposes of determining whether a marketer meets the comparable capacity requirements. Interested parties were given the opportunity to file further arguments with the Commission by September 29, 2000.[2] The Commission stated that it will determine by December 1, 2000, whether this tariff provision should be accepted.

(8) On October 3, 2000, Dominion East Ohio and OOGA both filed additional comments on this issue. In this filing, Dominion East Ohio states that the derating is based on a combination of factors, including freeze-offs at the wellhead or gathering system and increased on-site usage by well leaseholders. It cites a gas supply portfolio study prepared for Dominion East Ohio by R.J. Rudden Associates, Inc., dated September 11, 1997 (Rudden Study), as well as an internally produced study. Both of these studies are used to support the assertion that local production volumes decline at lower temperatures and that 25 percent is a reasonable estimate of the unavailable amount on peak day.

Dominion East Ohio again notes that the derating issue has been reviewed and found to be reasonable not only by each of its last three different management/performance auditors, but also by the Commission. In Dominion East Ohio's most recent m/p audit report, the Liberty Consulting Group concluded that "production declines attributable to freeze-offs and leasehold

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1 At this same time, the Commission adopted a comparable capacity requirement that requires marketers to hold primary, firm capacity that, along with storage and local production, will be sufficient to meet 100 percent of their choice customers' peak day demands. The marketers can secure capacity from any source, but it must, nevertheless, be primary, firm capacity. This provision was accepted for only this winter period (November 1, 2000 through April 30, 2001). The Commission found potential merit in the then-raised argument that a comparable capacity requirement should be limited to delivery points where actual physical delivery constraints exist. The Commission stated that requiring marketers to hold primary capacity on parts of Dominion East Ohio's system which have historically not experienced delivery constraints during peak day periods may be unnecessarily restrictive. On the other hand, the Commission noted that it also needs to balance this against concerns about potential reliability issues. The Commission stated the parties should work to identify specific constrained areas where a comparable capacity requirement is appropriate. The Commission instructed its staff to conduct an investigation (and file a report of its investigation by May 1, 2001) regarding whether specific areas of Dominion East Ohio's system can be identified where comparable capacity is appropriate, and those areas where such a requirement is unnecessary.

2 The examiner granted a small extension of time (to October 3, 2000) for interested parties to file their additional comments.

retention are key factors that must be incorporated into peak day supply planning."

Dominion East Ohio disagrees that derating local production is inconsistent with the treatment of interstate supplies since the issue is quantifying what supplies are available on peak day. Dominion East Ohio states that it knows exactly what interstate gas is being delivered on peak day, but does not know how much local production is being delivered. Interstate supplies are nominated, confirmed, and delivered on an intra-day basis and, therefore, Dominion East Ohio is able to verify the amount of interstate gas delivered to its system on an hour-by-hour and day-by-day basis. It cannot do that for local production because it is measured on only a monthly basis. For this reason, Dominion East Ohio argues that its tariff proposal does not create undue discrimination against local production relative to interstate deliveries.

(9) In the October 2000 *filing*, OOGA argues that it is discriminatory to only derate local Ohio production because there is no evidence that it is materially less reliable than flowing interstate supplies. OOGA cites the same Rudden study's conclusion that freeze-ups in the producing regions for Dominion East Ohio are a significant risk and, in particular, freezing temperatures in the producing regions of Louisiana, Kansas, and Appalachia occur with a high degree of certainty when temperatures are low in Ohio. The Rudden study pointed out that, at the time of the report, Dominion East Ohio used a 20 percent derating of interstate supplies to reflect this risk of nonperformance by the producers and pipelines that comprise interstate flowing supplies. OOGA further notes that the interstate pipeline performance illustrates that Ohio production is not materially less reliable than interstate supplies during peak periods. Since Dominion East Ohio no longer derates interstate supplies, OOGA contends that it is discriminatory to only derate local production.

OOGA also believes the 25 percent discount is not supported by objective evidence. Dominion East Ohio gathers information on local production deliveries on a monthly basis and nondelivery amounts on peak day are, in OOGA's view, based "...upon anecdotal guesses and unsupportable extrapolations from monthly averages." Likewise, OOGA argues that Dominion East Ohio does not have information on the increase in gas usage by leaseholders during peak periods.

Next, OOGA argues that, under the choice program, marketers should be able to determine for themselves how best to meet the needs of their customers. Derating makes local production a less attractive alternative to marketers and, thereby, skews the playing field in favor of interstate pipeline supplies. Finally, OOGA states that, if the Commission does not reject the derating proposal, a hearing must be held so that the parties can establish, through evidence, the factual basis for any derating, as well as the appropriate discount level.

(10) The Commission first notes that it does not believe that an evidentiary hearing is necessary before it can accept Dominion East Ohio's proposal. We have provided all interested parties ample opportunity to present arguments and information for our consideration on this issue. We, therefore, feel that due process has been provided and a hearing is not required before a ruling can be made.

(11) The Commission concludes, upon consideration of all comments on this issue, that Dominion East Ohio's derating proposal is unnecessary for comparable capacity purposes.[3] We agree with OOGA's claim that the derating of only Ohio production for comparable capacity purposes is discriminatory. We realize that no party denies that freeze-offs occur, however we are not convinced that Ohio production should be singled out (and treated differently for comparable capacity purposes) as Dominion East Ohio has proposed. Moreover, we believe that Dominion East Ohio's proposal will negatively impact the attractiveness of local production to marketers as the Energy Choice program expands. In our view, local production must remain an attractive option for marketers and Dominion East Ohio's proposal, even limited to the comparable capacity requirement, singles out Ohio-produced gas and, without sufficient justification, makes it less valuable. For these reasons, we do not accept Dominion East Ohio's derating proposal.

It is, therefore,

ORDERED, That the proposed amended tariffs filed by Dominion East Ohio on July 26, 2000, relative to the derating of Ohio production are denied. It is, further,

ORDERED, That Case Nos. 98-594-GA-COI and 00-1370-GA-ATA remain open until otherwise ordered by the Commission. It is, further,

ORDERED, That a copy of this Finding and Order be served on Dominion East Ohio, OOGA, and all other interested persons of record in both dockets.

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3 Dominion East Ohio has noted that the derating proposal only applies to the assessment of a supplier's ability to deliver gas to Dominion East Ohio under peak day conditions. The proposed tariff provisions do not affect the volume of local production credited to a supplier's pool. In the Energy Choice program, suppliers are credited with 100 percent of the actual local production volumes that are produced and delivered into East Ohio's system.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Gary E. Vigorito
Secretary