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BEFORE
THE PUBLIC UTILITES COMMISSION OF OHIO

In the Matter of the Application of)
The East Ohio Gas Company for) Case No. 00-1370-GA-ATA
Authority to Expand its Energy)
Choice Program System-wide))

MEMORANDUM CONTRA
APPLICATION FOR REHEARING BY
THE NEW POWER COMPANY

Now come The New Power Company ("New Power") and pursuant to OAC 4901-1-35 et. seq. submits the following memorandum contra to Dominion East Ohio's application for rehearing in the above styled docket.

Introduction

The matter at bar concerns the expanded East Ohio Gas Company Choice program. The expanded program, which opened this heating season, contained two controversial features that the Commission indicated would come under further examination. The first issue raised by New Power had to do with Dominion East Ohio's view that the "comparable capacity" standard in their tariff be interpreted to mean that only firm interstate transmission contracts with primary receipt points to their system may be used. The second issue was Dominion East Ohio's derating of local production by 25%. The restriction for participating marketers to use only firm capacity with primary receipt points was authorized only for this heating season, after which the Staff was to prepare a study by May 1, 2001 and the Commission would revisit the issue[1]. The local gas derating issue was held open for subsequent briefing. After considering those briefs, the Commission found the proposed derating discriminatory and ruled it be removed from the tariff.[2]

[1] In Re Dominion East Ohio Case No. 99-594-GA-COI Finding and Order August 24, 2000
[2] In Re Dominion East Ohio Case No. 00-1370-GA-ATA Finding and Order November 30, 2000

Dominion East Ohio petitioned for rehearing of the derating decision, and this memorandum addresses that petition.

The Commission Was Correct When It Found That The Proposed 25% Derating Would Make Local Production Less Valuable.

The most significant feature of Dominion East Ohio's application for rehearing is its failure to adequately address the Commission's principal reason for striking the 25% deliverability derating of local production. The Commission stated, "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"[3] The reason for that statement is simple and straight forward: if a marketer uses local gas, the marketer must either get the producer to commit 125% of anticipated peak deliveries to the supply contract or have an alternate source to make up for the derated volume. Either way, the derating adds to the cost of providing service, a cost that will be borne by the public[4].

Dominion East Ohio's response to the Commission's concern for the economic impact of derating was a semantic argument:

> The Commission found that "the derating of only Ohio production for comparable capacity purposes is discriminatory." That determination is based on the Commission's perception that the derating of Ohio production makes Ohio-produced gas "less valuable." It does not say less valuable than what, but presumably the comparison was to interstate supplies of gas."

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Dominion East Ohio then goes on to argue that there is no disadvantage to Ohio gas relative to the interstate gas which is not derated. This approach is flawed because it incorrectly measures whether local production is adversely impacted. Economic harm occurs if local

[3] Id. *Finding and Order par. 11.*
[4] Given the current tight supply of natural gas this winter, the lion's share is probably being paid by consumers.

production, because of the 25% derating, costs more to bring to market than local production without the 25% derating. Even a cursory examination of the issue reveals that the derating will indeed increase the cost of using local production.

To illustrate, a marketer with a Choice Program contract load with a peak of 100 Mcf could meet the requirement by contracting with a local producer for the output of four wells each producing 25 Mcf per day. However, if the Applicant obtains the relief requested, the marketer would have to have contract for not only the four wells producing 25 Mcf a day, but additional wells with daily deliveries of an extra 33 Mcf[5]. Requiring a peak day reservation of the additional 33 Mcf represents a dedication of capital and resources that must be made up in the sale price of the gas. The Commission was quite correct in identifying such a derating would lower the value of the local production. No similar derating exists for gas delivered from the interstate market.

Dominion's View Of Comparable Capacity Is Flawed

There is one way for an Ohio producer under the Dominion East Ohio plan to avoid the local gas derating. If the Ohio production plumbed directly into the East Ohio system were instead to be delivered to an interstate pipeline for subsequent redelivery into the East Ohio system, then only 100 Mcf would be needed to serve the load.

One would normally expect that gas delivered directly into a local distribution company to be more secure than gas delivered to an interstate pipeline and then redelivered to the local distribution company. In fact, the greater reliability of local gas was certainly East Ohio's experience during the curtailments of 1977 and 1978. While other local distribution companies like Columbia Gas of Ohio were suffering from curtailments on interstate deliveries to their

[5] 133 Mcf time 75% = 99.75 Mcf

system, East Ohio was able to avoid curtailing schools and factories in part due to its local gas supplies.

This seeming contradiction of derating gas delivered directly into East Ohio system for lack of reliability is explained on pages 5 and 6 of the Applicant's rehearing petition. The argument goes that if local gas fails, there is no liquidity in the local gas market; so even though the capacity is there to bring the gas to East Ohio there will be no commodity. On the interstate system though Dominion feels that if the producer fails to deliver the commodity, the gas commodity market at the interstate level is sufficiently liquid that new commodity can be found so long as one has firm "primary" capacity. This last point about "primary firm" is punctuated with the observation ".....that when the secondary delivery is halted then the producers who were making sales to the marketers on secondary capacity will then turn to the primary capacity holders to sell their gas". [6] New Power agrees with Dominion East Ohio concerning their view as to the liquidity of natural gas on the interstate market. The difference of opinion rests in Dominion East Ohio's belief that transport of natural gas is constrained to its entire service area.

Dominion East Ohio's desire to impose restrictions on a marketers method of supply to the Choice program are based on two key facts, neither of which are documented in the petition for rehearing:

1) "..there is no market liquidity with respect to local production...."[7]
2) Only firm capacity with primary receipt points is reliable enough to ensure deliveries on peak day throughout the East Ohio system.

Dominion East Ohio offers no citation or documentation for these key assertions. If either of them are incorrect, then the costly restrictions Dominion East Ohio seeks are not

[6] Application for rehearing by Dominion East Ohio December 29, 2000 at p. 5 & 6
[7] Ibid., at 5

necessary. If there is no capacity shortage even on the coldest day going to most of the delivery points into East Ohio, then customers should not have to pay the premium for primary firm. Similarly, if the local gas market is liquid, then there is no reason to add to the cost of local gas. Further, if the local market is liquid that may be a suitable method of making peak day deliveries even if there were some delivery point constraints on the interstate market.

The restrictions sought by Dominion East Ohio will raise the cost of natural gas to a public now suffering from record high gas bills. Thus the Commission, in keeping with its role of protecting the consumer, needs to carefully weigh whether the cost of mandating primary receipt points is necessary.

One of the effects of requiring only the use of primary firm for use in the Choice program will be to force marketers to purchase additional or more expensive services from Dominion East Ohio's sister pipeline affiliate, Dominion Transmission, Inc. ("Dominion Transmission"). This is because most of the interstate delivery points into the East Ohio system are through Dominion Transmission. Further, the cost of primary firm purchased from Dominion Transmission or assigned by Dominion East Ohio under the Choice program is far more expensive than capacity purchased on the secondary market. The fact that there is a pecuniary interest for Dominion East Ohio's parent by imposing the requested restrictions is not a reason to reject the restrictions on their face. It is a reason, as President Reagan so eloquently phrased it "to trust but verify".

The Commission has already chosen this path by requiring the Staff by May 1st to prepare a report. New Power suggests that the Staff investigates both the above assertions and document the price difference between the use of primary firm versus secondary firm capacity. The liquidity of the Ohio gas market may be measured by surveys of producers and marketers. If a well freezes up, or otherwise goes off line on a given day, are replacements readily available?

The Staff should be able to confirm if a physical spot market exists to replace undelivered volumes.

Investigating the availability to transport natural gas under firm contracts will be an easier task. Interstate pipelines must keep records as to when they restrict transport on their systems. CNG Transmission which accounts for the lion share of all interstate transmission deliveries to East Ohio reported only 13 such instances in the last five years[8]. All of these "bottleneck" restrictions took place outside of the East Ohio service area.

When one holds firm transportation rights on an interstate pipeline, one is assigned primary receipt points (where gas can be injected) and a primary delivery point (where the gas is delivered). The shipper can also inject gas at different receipt points and have it delivered into different delivery points on the interstate pipeline if it so schedules. Such deliveries would have priority over interruptible shippers – who hold no firm rights in the pipeline's capacity - but if a selected secondary receipt and delivery point is completely filled by shippers with primary rights, then the secondary delivery may be deviated. Further, there is a significant secondary market where capacity is traded. Note, Dominion East Ohio, in its application, felt that the commodity market was liquid enough on the interstate pipeline that supply was not a concern. The Staff should investigate whether the same is true of capacity. Thus the Staff may want to review postings and sales of capacity on the coldest days of the year. It is a positive sign of liquidity in the capacity market if on a day when the temperature is below normal natural gas is available to the major East Ohio delivery points.

The Federal Energy Regulatory Commission and the consuming public have a deep interest in trying to make the interstate pipeline system as efficient as possible. Thus the Federal Energy Regulatory Commission issued Order 637 which was designed to encourage flexible use of interstate pipelines and to prevent regulatory classifications like primary and secondary from artificially preventing gas from flowing if there is physical capacity.

It is interesting that the Applicant described such market flexibility on page 6 of the petition, but with one glaring omission. The Applicant writes:

> Under those circumstances {inability to deliver to a contracted delivery point} sellers will look for holders of primary firm capacity rights to ensure that the gas is successfully pulled away from a pipeline receipt point rather than become stranded all over again.[9]

The glaring error in this scenario is that the sellers would not care if the capacity was primary or secondary, only whether it could flow that day to the prospective buyer. In other words, the example and inference in the Applicant's petition is based upon a premises of a system wide restriction to primary receipt points only. Factually, that situation has not is not likely to exist. What does exist and is likely to continue, is that once or twice a winter at the few bottlenecks on the CNG system deliveries will be constrained. For years industrial and commercial customers on East Ohio could transport without being subjected to a primary receipt requirement. Residential and small commercial customers in the Choice program should have the same opportunity for savings.

In sum, the Commission must seriously consider whether it wants to add to residential consumers' gas bills – especially in this period a high natural gas prices – by insisting on primary receipt points and 25% extra back up for local gas supplies if such not needed. The Staff, in conducting its May 1st study, should contact the Federal Energy Commission Staff and study the interruption records on upstream transmission pipeline coming into the East Ohio system to see if the use of firm capacity with secondary receipt points, especially under the Order 637, poses a

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[8] Part of CNG's Federal Energy Regulatory Commission Order 637 compliance filing is attached as appendix A.
[9] Application for Rehearing p. 6

reliability risk for every receipt point on East Ohio. If not, than this barrier to efficient service for residential and small commercial customers should be removed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served by regular U.S. mail, postage prepaid, upon Helen L. Liebman, Jones, Day, Reavis & Pogue, 41 S. High Street, Suite 1900, Columbus, Ohio 43215, attorney for The East Ohio Gas Company; Anne L. Hammerstein, Asst. Chief -- Public Utilities Section, 180 East Broad Street, 9th Floor, Columbus, Ohio 43215, attorney for the Staff of the Public Utilities Commission; and Jennifer Utter Heston, Ohio Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, attorney for The Ohio Consumers' Counsel; Kimberly J. Wile Bojko, McNees, Wallace & Nurick, Fifth Third Center, 21 E. State Street, Suite 1700, Columbus, Ohio 43215, attorney for Industrial Energy Users-Ohio; and Gregory D. Russell, counsel for the Ohio Oil And Gas Association, 52 East Gay Street Columbus, Ohio 43215 this 8th day of January, 2000.

M. Howard Petricoff
M. Howard Petricoff
by Stephen M. Howard

APPENDIX A

Appendix B
June 15, 2000,
Order No. 637 Compliance Filing

CNG Transmission OFO History 1993 - Present

	Effective Date	Date Rescinded	Type of OFO	Comments
Winter 93 – 94	Nov 1, 1993	Mar 31, 1994	Monthly Receipt Point Flowing Supply	"X-56" OFO
	Jan 28, 1994	Apr 27, 1994	Limiting From Customer's Balance Activity	
	Feb 13, 1994	Mar 31, 1994	Limitation of Wintertime Injections	Limited to receipts at Transco or Texas Eastern Leidy, to preserve high deliverability of Leidy, Greenlick storage pools.
Winter 94 – 95	Nov 1, 1994	Mar 31, 1995	Monthly Receipt Point Flowing Supply	"X-56" OFO. Waived Nov 4th – Nov 16th, due to warmer than normal temperatures.
Winter 95 – 96	Nov 3, 1995	Jan 31, 1996	Monthly Receipt Point Flowing Supply	"X-56" OFO. Waived until Dec 1st, due to warmer than normal winter. Rescinded Jan 31st due to warmer than normal temperatures.
Winter 96 – 97	Nov 1, 1996		Monthly Receipt Point Flowing Supply	"X-56" OFO.
Winter 97 – 98	Nov 1, 1997		Monthly Receipt Point Flowing Supply	"X-56" OFO.
	Jan 1, 1998	Feb 17, 1998	Monthly Receipt Point Flowing Supply	"X-56" OFO.
Winter 98 –99	Nov 1, 1998	Feb 08, 1999	Monthly Receipt Point Flowing Supply	"X-56" OFO. Waived Nov 1st – Nov 19th due to warmer than normal temperatures.
	Jan 14, 1999	Jan 15, 1999	FTNN Hourly Limit OFO	
Winter 99 – 00	Nov 1, 1999	Mar 31, 2000	Monthly Receipt Point Flowing Supply	"X-56" OFO. Waived Nov 1st – Nov 18th due to warmer than normal temperatures.
	Jan 13, 2000	Feb 8, 2000	FTNN Hourly Limit OFO	Multiple segments of system, due to cold temperatures.
	Feb 8, 2000	Feb 9, 2000	FTNN Hourly Limit OFO	Albany corridor only.