BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Columbia Gas of Ohio, Inc., and Related Matters.	))))	Case No. 05-221-GA-GCR
In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Columbia Gas of Ohio, Inc.	)))	Case No. 04-221-GA-GCR

MOTION OF COLUMBIA GAS OF OHIO, INC. TO STRIKE THE TESTIMONY OF THE OHIO OFFICE OF THE CONSUMERS' COUNSEL AND OF THE PUCO STAFF, AND TO LIMIT THE SCOPE OF CROSS-EXAMINATION

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Now comes Columbia Gas of Ohio, Inc. ("Columbia"), pursuant to Ohio Administrative Code § 4901-1-12, and moves that the Commission strike all of the testimony of the Ohio Office of Consumers' Counsel ("OCC") witness Bruce M. Hayes and portions of the testimony of OCC witness Michael P. Haugh[1] filed on December 8, 2006 in the above proceeding. Columbia also moves to strike the testimony of Commission Staff witness Puican filed on December 13, 2006.

In PUCO Case Nos. 94-987-GA-AIR, et al., Columbia and other parties filed a Stipulation[2] on October 9, 2003 ("2003 Stipulation"). The Commission approved the 2003 Stipulation, with modifications, by Entry dated March 11, 2004, and Entries on Rehearing dated May 5, 2004

[1] The portions to be stricken are page 3, lines 1 through 6 and lines 15 through 17; page 4, line 4 through page 9, line 8; page 5, lines 3-7; and, page 17, lines 7 through 15.

[2] Fourth Amendment to Joint Stipulation and Recommendation in Case No. 94-987-GA-AIR and Second Amendment to Joint Stipulation and Recommendation in Case No. 96-1113-GA-ATA and Stipulation and Recommendation

and June 9, 2004. In his testimony OCC witness Hayes argues that "the Commission should terminate the 2003 Stipulation." Prepared Testimony of Bruce M. Hayes at 21. Attacking the 2003 Stipulation, again, in this proceeding is untimely, unreasonable and unlawful. The testimony of OCC witness Hayes must be stricken because further litigation of the 2003 Stipulation is precluded by the doctrines of res judicata and collateral estoppel, as discussed in the attached Memorandum in Support. Other reasons to strike the testimony are also discussed in the Memorandum in Support.

Similarly, the testimony of OCC witness Haugh also recommends, in part, the revision of part of the 2003 Stipulation. Portions of the testimony of OCC witness Haugh must also be stricken because further litigation of the 2003 Stipulation is precluded by the doctrines of res judicata and collateral estoppel, as discussed in the Memorandum in Support. Other reasons to strike portions of the testimony are also discussed in the Memorandum in Support.

The testimony of Staff witness Puican also deals with an issue that has already been decided by the Commission and should not be subject to relitigation, as discussed in the Memorandum in Support.

For the same reasons that support striking the testimony of the Staff and OCC witnesses, the scope of cross-examination in this proceeding should be limited so that the Staff and OCC attorneys are prohibited from cross-examining witnesses about the all of the issues addressed in the testimony of Staff witness Puican and OCC witness Hayes and about the capacity cost allocation issue in the testimony of OCC witness Haugh, as discussed in the Memorandum in Support.

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in Case No. 03-1459-GA-ATA. In footnote number 2 of OCC witness Hayes' testimony he incorrectly refers to this Stipulation as having been filed on April 9, 2004.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. BACKGROUND

On June 3, 1994, Columbia filed a notice of intent to file an application for an increase in rates in its service area (PUCO Case No. 94-987-GA-AIR). In addition, a joint stipulation and recommendation signed by thirteen parties (collectively, "the Columbia Collaborative") was filed to support Columbia's request to increase rates and to implement a comprehensive package of new services. The Commission adopted the 1994 stipulation by Opinion and Order issued November 29, 1994. Thereafter, the members of the Columbia Collaborative proposed amendments to the 1994 stipulation on October 28, 1996, November 28, 1997, October 25, 1999, and October 9, 2003. The Commission approved the 1996, 1997, and 1999 amendments to the 1994 stipulation. As for the 2003 proposed amendments, the Commission issued an Entry on March 11, 2004, and Entries on Rehearing dated May 5, 2004 and June 9, 2004, that approved the 2003 Stipulation in part and modified it in part.

The OCC is a party in Case No. 94-987-GA-AIR, and is one of the original members of the Columbia Collaborative. The OCC actively participated in the discussions that resulted in the 1994, 1996, 1997 and 1999 stipulations, and signed each of those stipulations. The OCC also actively participated in the discussions that resulted in the 2003 Stipulation, but actively opposed the adoption of 2003 Stipulation.

The Staff also is an original member of the Columbia Collaborative and has participated in the discussions that resulted in the 1994, 1996, 1997, 1999 and 2003 stipulations. Staff signed the 1994, 1996 and 1997 stipulations, but opposed the 1999 and 2003 stipulations.

In opposing the 2003 Stipulation, the OCC filed Comments in which it objected to the proposed firm capacity allowances, the term of the 2003 Stipulation, the proposed migration cost rider, the post-in service carrying charge accounting and the Off-System Sales and Capacity Release revenue provisions[3]. After the Commission issued its Entry on March 11, 2004, the OCC filed applications for rehearing on April 9, 2004 and May 14, 2004. On April 19, 2004, the OCC also filed a Motion to Dismiss an application for rehearing filed by Columbia and other Columbia Collaborative members. By Entries on Rehearing dated May 5, 2004 and June 9, 2004 the Commission again rejected all of the OCC's objections to the 2003 Stipulation. Dissatisfied with the Commission's final order, the OCC appealed the Commission's entries on rehearing to the Supreme Court of Ohio. The Supreme Court of Ohio dismissed the OCC's appeal on March 23, 2005. *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2005), 105 Ohio St.3d 1211, 2005-Ohio-1023.

[3] See the Office of the Ohio Consumers' Counsel's Comments Regarding Columbia Gas of Ohio's October 9, 2003 Stipulation and Recommendation, PUCO Case Nos. 94-987-GA-AIR, et al. (filed December 8, 2003) and the Reply Comments of the Ohio Consumers' Counsel Regarding Columbia Gas of Ohio's October 9, 2003 Stipulation and Recommendation, PUCO Case Nos. 94-987-GA-AIR, et al. (filed December 22, 2003).

Staff also filed Comments and Reply Comments in which it opposed the 2003 Stipulation[4].

II. MOTION TO STRIKE OCC AND STAFF TESTIMONY

A. THE OCC AND STAFF HAVE ALREADY FULLY LITIGATED THE REASONABLENESS OF THE 2003 STIPULATION, AND THEREFORE THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL PRECLUDE RELITIGATION OF THE ISSUES IN THE INSTANT CASE

1. The Doctrines of Res Judicata and Collateral Estoppel

Under Ohio law, the doctrine of res judicata is that a final judgment rendered upon the merits by a competent tribunal is conclusive of rights, questions and facts in issue as to the parties in all other actions in the same tribunal. 63 O. Jur. 3d, *Judgments* §373 (2003). The policy basis of the doctrine is to assure an end to litigation. *Id.* The United States Supreme Court held that:

> The doctrine of res judicata rests at bottom upon the ground that the party to be affected..., has litigated or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction.

Postal Telegraph-Cable Company v. Newport (1917), 247 U.S. 464, 464, 62 L.Ed. 1215, 1221.

Similarly, the doctrine of collateral estoppel precludes the relitigation of a point of law or fact that was at issue in a former action between the same parties and was passed upon by a court of competent jurisdiction. *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St. 3d 300, 318, 856 N.E.2d 213, 2006-Ohio-5789.

While res judicata precludes the litigation of issues raised and decided in prior actions, it also precludes the litigation of other matters which could have been determined but were not. A

[4] See Comments of the Staff of the Public Utilities Commission of Ohio in Opposition to Columbia Gas of Ohio's Stipulation, PUCO Case Nos. 94-987-GA-AIR, et al. (filed December 8, 2003) and the Reply Comments to Columbia Gas of Ohio's Stipulation, PUCO Case Nos. 94-987-GA-AIR, et al. (filed December 22, 2003).

prior adjudication serves to settle all issues between parties that could have been raised and decided along with those that were decided. *Charles A. Burton, Inc, v. Durkee* (1988), 51 Ohio App. 3d 166, 555 N.E. 2d, 969, 974 (Ct. App.).

The fact that the doctrine of res judicata precludes the litigation of issues that parties could have raised in a prior proceeding, but did not, is well-established in Ohio law, and is best described in the following excerpt from a decision of the Supreme Court of Ohio:

> This principle of law [res judicata] extends still further in quieting litigation. A party can not re-litigate matters which he might have interposed, but failed to do in a prior action between the same parties or their privies, in reference to the same subject-matter. And *if one of the parties failed to introduce matters for the consideration of the court that he might have done, he will be presumed to have waived his right to do so.* [Citations omitted.]
>
> If a party fails to plead a fact he might have plead, or makes a mistake in the progress of an action, or fails to prove a fact he might have proven, the law can afford him no relief. When a party passes by his opportunity the law will not aid him. In *Ewing v. McNairy & Claffilin*, 20 Ohio St. 322, the judge says "By refusing to relieve parties against the consequences of their own neglect it seeks to make them vigilant and careful. On any other principle there would be no end to an action, and there would be an end to all vigilance and care in its *preparation and trial.*" [Citations omitted.]
>
> I can not better express this principle of law, than to use the words of Radcliff, J., in the case of *LeGuen v. Gouverneur & Kemble*, 1 Johns. Cas. 492: "The general principle, that *the judgment...is not only final as to the matter actually determined, but as to every other matter which the parties might litigate in the cause, and which they might have had decided.* The reasons in favor of this extent of the rules appear to me satisfactory; they are found in the expediency and propriety of silencing and contentions of parties, and of accomplishing the ends of justice, by a single and speedy decision of all their rights. It is evidently proper to prescribe some period of controversies of this sort; and what period can be more fit and proper than that which affords a full and fair opportunity to examine and decide all their claims? This extent of the rule can impose no hardship. It requires no more than a reasonable degree of vigilance and attention; a different course might be dangerous and often oppressive. It might tend to unsettle all the determinations of law, and open a door for infinite vexation.

* * * * *

> [I]n action where a party is called upon to make good his cause of action or defense, he must do so by all the lawful means within his control; and if he fails to do so, purposely or negligently, it will not afterward be permitted him to re-litigate the same matters between the same parties, nor to deny the correctness of the final determination.

Covington and Cincinnati Bridge Co. v. Sargent (1875), 27 Ohio St. 233, 237-39 (emphasis added).

The Supreme Court of Ohio further endorsed this aspect of the doctrine of res judicata in a subsequent case, holding that if a party,

> Fails to bring to the attention of the court all the reasons or grounds favorable to his contention, he should not be permitted, again, on that account, to harass and vex his opponent by bringing forward in a second action, the omitted reasons or grounds. That the plaintiff did not, in the first action advance all his grounds of relief, was his own fault, and the consequences of this omission, should be borne by him, and not by his opponent who was without fault in the matter. [Citation omitted.]

Cincinnati v. Emerson (1897), 57 Ohio St. 132, 140, 48 N.E. 667.

The principles of res judicata are also applicable in administrative proceedings. *Office of Consumers' Counsel v. Pub. Util. Comm.* (1985), 16 Ohio St. 3d 9, 475 N.E. 2d 782. Where an agency, operating in its quasi-judicial mode, makes an adjudicative determination of fact under a specific legal standpoint, the same policy considerations which support res judicata in the courts are at work in the administrative law setting. *In re Union Rural Electric Coop. v. Dayton Power & Light Co.*, PUCO Case No. 88-947-EL-CSS, Entry (August 16, 1988) at 4, citing *Set Products, Inc. v. Bainbridge Township Board of Zoning Appeals* (1987), 31 Ohio St. 3d 260, *Superior's Brand Meats v. Lindley* (1980), 62 Ohio St. 2d 133, and *Consumers' Counsel v. Pub. Util. Comm.*(1985), 16 Ohio St. 3d 9. *See also, In the Matter of the Regulation of the Purchased Gas Adjustment*

Clause Contained Within the Rate Schedules of Columbia Gas of Ohio, Inc. and Related Matters, PUCO Case No. 90-17-GA-GCR, Entry (January 9, 1991) (OCC precluded from attempting to litigate an issue in a Columbia GCR case where it had an opportunity to litigate the issue in a previous Columbia GCR case). The Supreme Court of Ohio has held that,

> ordinarily where an administrative proceeding is of a judicial nature and where the parties have had an adequate opportunity to litigate the issues involved in the proceeding, the doctrine of collateral estoppel may be used to bar litigation of issues in a second administrative proceeding.

Superior's Brand Meats, Inc. v. Lindley (1980), 62 Ohio St. 2d 133, 403 N.E. 2d 996, 999. This is so even in cases concluded by settlement, *Scott v. East Cleveland* (1984), 16 Ohio App. 3d 429, 476 N.E. 2d 710, 713 (Ct App.).

2. The Application of the Doctrines of Res Judicata and Collateral Estoppel to the Facts of This Case Precludes the OCC's and Staff's Attempt to Litigate Issues Related to the 2003 Stipulation

The sole purpose of OCC witness Hayes' testimony is to argue, once again, against the provisions of the 2003 Stipulation, and to attempt to persuade the Commission to terminate the 2003 Stipulation. OCC witness Hayes describes the purpose of his testimony as follows:

> I am testifying that the 2003 Stipulation is not providing the benefits that it was projected to provide to COH core customers, including both GCR and Choice customers, and thus the Commission should terminate the 2003 Stipulation. In approving the 2003 Stipulation, the Commission stated: 'We further reserve our right to terminate our approval of the [2003] stipulation if we discover that Columbia is not implementing the Stipulation as we have been informed it would.' Therefore, the Commission should consider terminating the 2003 Stipulation because it has not been implemented as originally projected.

Prepared Testimony of Bruce M. Hayes at 4.

OCC witness Hayes attempts to avoid arguing that the 2003 Stipulation itself is unreasonable. Instead, he has seized upon the Commission's statement in which the Commission reserved its rights to terminate the 2003 Stipulation should Columbia fail to implement the Stipulation as it should have. OCC witness Hayes thus argues that Columbia's *implementation* of selective provisions of the 2003 Stipulation was unreasonable. This argument is a sham, and the Commission should see through the argument for what it is – a disingenuous attempt on the part of the OCC to again attack the 2003 Stipulation.

Nowhere does OCC witness Hayes allege – because he cannot – that Columbia has not adhered to the terms of the 2003 Stipulation in its implementation of the agreement as approved by the Commission. Columbia has, in fact, complied with every provision of the 2003 Stipulation. Instead, OCC witness Hayes makes the tortured argument that some of the projections provided during settlement discussions have allegedly proved to be inaccurate with the passage of the time, and that because these projections were not accurate the 2003 Stipulation has not been properly implemented. The OCC is fully aware today, as it was during its participation in negotiations that preceded the 2003 Stipulation that projections are simply estimates. Projections are not guarantees as OCC witness Hayes would have others believe, and the reasonableness of projections must be judged based upon the circumstances that existed at the time the projections were made.

The remainder of OCC witness Hayes' testimony notes instances in which projected benefits associated with the 2003 Stipulation allegedly differ from those provided during settlement negotiations. The OCC's arguments about inequitable benefits are not new. The OCC's Second Application for Rehearing in this docket, filed on May 14, 2004, argued that the benefits

to Columbia exceeded those for customers under the 2003 Stipulation. Here, in OCC witness Hayes' testimony, the OCC is simply recycling those same arguments in different packaging. The Commission, however, should see through this subterfuge, and refuse to countenance repeated litigation of issues already litigated by the OCC and decided by the Commission and the Supreme Court of Ohio.

The OCC fully exercised its right to litigate issues associated with its opposition to the 2003 Stipulation, both before the Commission and the Supreme Court of Ohio, and the doctrines of res judicata and collateral estoppel should be used to bar litigation of the same issues in a second administrative proceeding – i.e., the instant case. As succinctly stated by Honda in its motion to intervene in this proceeding, "enough is enough." Motion to Intervene and Comments of Honda of America Mfg., Inc., (filed December 11, 2006) at 7. The Commission should therefore strike all of OCC witness Hayes' testimony because it improperly attempts to relitigate issues associated with the OCC's opposition to the 2003 Stipulation.

Similarly, the testimony of OCC witness Haugh seeks to undo a provision of the 2003 Stipulation – i.e., the allocation of pipeline capacity costs. Prepared Testimony of Michael P. Haugh at 4-9. If the OCC did not agree with the allocation of pipeline capacity costs in the 2003 Stipulation it should have raised that issue in Case Nos. 94-987-GA-AIR. Having failed to do so, it is improper for the OCC to attempt to collaterally attack the resolution of that issue in separate administrative proceeding. As noted above, while res judicata precludes the litigation of issues raised and decided in prior actions, it also precludes the litigation of other matters which could have been determined but were not. A prior adjudication serves to settle all issues between parties that could have been raised and decided along with those that were decided.

OCC witness Haugh does not even purport to rest his arguments upon an argument of improper implementation as does OCC witness Hayes. Instead, OCC witness Haugh unabashedly seeks to subvert the 2003 Stipulation on grounds that the OCC could have raised in Case Nos. 94-987-GA-AIR, et al. However, the OCC failed to do so. The OCC has had an adequate opportunity to litigate the pipeline capacity cost issues associated with the 2003 Stipulation, and the doctrines of res judicata and collateral estoppel should be used to bar litigation of the same issues in the instant case. The Commission should therefore strike the following portions of OCC witness Haugh's testimony because it improperly attempts to relitigate issues that the OCC could have raised in Case Nos. 94-987-GA-AIR, et al.

Page 3, lines 1 through 6 and lines 15 through 17;
Page 4, line 4 through page 9, line 8; and,
Page 17, lines 7 through 15.

Staff witness Puican's testimony questions only one section of the 2003 Stipulation – the CHOICE Program sharing credit. Staff witness Puican notes that the Commission found that "Columbia may retain OSS and CR revenues earned from November 1, 2004 to November 1, 2008 up to $25 million in any *calendar year* in that period." Prepared Testimony of Stephen E. Puican on Behalf of the Staff of the Public Utilities Commission of Ohio at 4 (emphasis added). Staff witness Puican opines that the reference to the term "calendar year" was inadvertent and goes on to suggest that the Commission clarify its intent. However, there is nothing unclear about the term "calendar year" and to the extent that the Staff believed the term was unclear or unreasonable it could have and should have raised that issue during the comment and rehearing process in Case Nos. 94-987-GA-AIR et al. Having failed to do so, the Staff is now precluded from doing so by the doctrines of res judicata and collateral estoppel.

B. THE ISSUES THAT THE OCC IS ATTEMPTING TO RAISE ARE NOT APPROPRIATE FOR RESOLUTION IN A GAS COST RECOVERY PROCEEDING

The 2003 Stipulation covered a myriad of complex, interrelated issues – most of which are not appropriate for litigation in a GCR proceeding, which proceedings should be focused solely on gas cost issues. The 2003 Stipulation[5] dealt with base rate, financial and accounting issues. It also dealt with transportation issues, including banking and balancing issues – both for CHOICE customers and traditional transportation customers. While the doctrines of res judicata and collateral estoppel preclude the litigation of issues raised and decided in prior actions, even were the Commission to permit any relitigation of issues associated with the 2003 Stipulation, a GCR case is not the vehicle in which to address such issues. Given the multi-faceted nature of the 2003 Stipulation, any reexamination of issues or reopening of issues can only be effectively accomplished through a rate case or complaint case.

For example, OCC witness Haugh suggests that the Commission should order Columbia to conduct a full cost of service study to be filed in this docket. Prepared Testimony of Michael P. Haugh at 9. However, even were the Commission to accept this recommendation, there is little that any party can do with an allocation study in a GCR proceeding. Any reallocation of costs among different rate classes can only be accomplished through a base rate case, not a GCR case.

Were the OCC's recommendations to be adopted, Columbia's 2003 Stipulation would be vacated, leaving a huge regulatory void for Columbia and all of its stakeholders. The drastic recommendations of the OCC witnesses could only be implemented within the context of a multi-party collaborative process or rate case. A GCR proceeding simply is not the procedural vehicle

[5] See PUCO Case Nos. 94-987-GA-AIR, 96-1113-GA-ATA, 98-222-GA-GCR and 03-1459-GA-ATA.

in which to address the OCC issues, and the testimony of the OCC witnesses should therefore be stricken from the record in this proceeding.

C. TO THE EXTENT THE OCC TESTIMONY CONTAINS LEGAL CONCLUSIONS, SUCH TESTIMONY SHOULD BE STRICKEN

On page 4, lines 14-17 of the testimony of OCC witness Hayes, he opines:

> It is my understanding that Ohio Admin. Code 4901:1-14(07) and Ohio Admin. Code 4901:1-14(08) require that GCR prices be optimal and fair, just and reasonable. The 2003 Stipulation does not produce a GCR that is fair, just, and reasonable, because GCR customers are not receiving credits for off-system sales and capacity release transaction revenues.

Similarly, on page 5, lines 3-7 of the testimony of OCC witness Haugh, he offers the following opinion:

> It is my understanding that Ohio Admin. Code 4901:1-14(07) and Ohio Admin. Code 4901:1-14(08) require that GCR prices be optimal and fair, just and reasonable. I do not believe it is fair, just and reasonable to pass through excess capacity costs – costs in excess of actual GCR usage – to GCR customers.

In both instances cited above, the witnesses are offering legal opinions. Because neither witness is an attorney they are not competent to offer legal opinions and therefore the testimony cited above should be stricken.

III. MOTION TO LIMIT THE SCOPE OF CROSS-EXAMINATION

For the same reasons that the Staff and OCC's testimony should be stricken, Columbia files this Motion to Limit the Scope of Cross-Examination[6]. The scope of cross-examination in

[6] Were this a civil case, this pleading might have been styled as a Motion in Limine. Such motions avoid the injection into a trial of matters that are irrelevant, inadmissible and prejudicial. However, the Commission has questioned whether Motions in Limine are technically appropriate in Commission proceedings because there is no jury. *In the Matter of the Establishment of a Permanent Rate for the Sale of Energy from Montgomery County's Energy-From-Waste Facility to The Dayton Power & Light Company*, Case No. 88-359-EL-UNC, Entry (July 6, 1988) at 3. In a civil proceeding this motion might also have been styled as Motion to Exclude Evidence under Civil Rule 403, which permits a court to exclude evidence that confuses the issues or leads to undue delay. However, the Civil Rules are not applicable to Commission proceedings, but the Commission may look to them for guidance. *In Re Nenadal v. Cleve-*

this case should be limited so that counsel for the Staff and OCC are prohibited from questioning witnesses about the issues in the stricken testimony, and prohibited from asking any questions related to the OCC's argument that the 2003 Stipulation should be prematurely terminated. That is, the doctrines of res judicata and collateral estoppel should be applied to not only strike improper testimony, but should also be applied to prohibit improper cross-examination.

This request to limit the scope of testimony is not unprecedented in Columbia GCR cases. A similar issue arose in Columbia's 2002 GCR Case, PUCO Case No. 02-221-GA-GCR.

In Columbia's 2002 GCR Case, the management/performance audit was docketed on July 25, 2003. Subsequent to the docketing of the audit report, the 2003 Stipulation was filed on October 9, 2003. The final order in Case Nos. 94-987-GA-AIR was the Entry on Rehearing issued June 9, 2004, and the Commission approved the 2003 Stipulation with modifications.

The Commission orders effectively resolved several of the audit report recommendations. Nonetheless, during a prehearing conference the OCC indicated that it did not agree that the orders resolved the audit report recommendations. Therefore, on July 19, 2004, Columbia filed a motion to limit the scope of testimony so that the Commission and parties would not waste resources litigating issues already decided in Commission orders.

By Attorney Examiner's Entry dated September 3, 2004, the Commission granted Columbia's motion to limit the scope of testimony on all but one issue. On September 8, 2004, Columbia and other parties filed a motion for certification of interlocutory appeal of the Attorney

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land Electric Illuminating Co., Case No. 84-1293-El-CSS, Entry (July 8, 1986) at 5. Given the unique nature of Commission proceedings in which direct testimony is pre-filed, Columbia has chosen to style this pleading as a Motion to Limit the Scope of Cross-Examination, but the Commission should look to the Civil Rules for guidance and consider this motion in the same manner that a court would consider a Motion in Limine or a Motion to Exclude Evidence.

Examiner's Entry, in which Columbia argued that the motion to limit the scope of testimony should also have been granted with respect to the issue for which the scope of testimony was not limited by the September 3 Entry. In an Entry dated September 15, 2004, the Attorney Examiner denied the motion to certify the interlocutory appeal on the grounds that the September 3 Entry had been incorrectly decided. The Examiner reversed the earlier ruling and granted Columbia's motion to limit the scope of testimony for all the issues addressed in Columbia's motion.

In the September 15, 2004 Entry, the Examiner explained:

> the applicants contend that a ruling on the interlocutory appeal is needed to prevent the likelihood of undue prejudice or expense. They point out that, without a reversal of the interlocutory appeal, opponents of the 94-987 et al. decision could collaterally attack that aspect of the decision. Likewise, the applicants state that allowing testimony on issue four will materially and adversely alter the bargain struck in the 94-987 et al. stipulation. More practically, the applicants note that the hearing is arriving quickly and, absent a reversal of the examiner's ruling, all parties will incur additional expenses and the hearing could possibly be prolonged unnecessarily.

In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained with the Rate Schedules of Columbia Gas of Ohio, Inc., and Related Matters, PUCO Case Nos. 02-221-GA-GCR et al., Entry (September 15, 2004) at 2-3.

The same rationale applies here. The Commission should strike the Staff and OCC testimony referenced herein, and limit the scope of cross-examination, in order to prevent the likelihood of undue prejudice or expense. The Commission should not permit any counsel to improperly attack the 2003 Stipulation by means of direct testimony or cross-examination.

WHEREFORE, for the reasons discussed above Columbia respectfully requests that the Commission strike all of the testimony of Staff witness Puican and OCC witness Bruce M. Hayes and the following portions of the testimony of OCC witness Michael P. Haugh – page 3, lines 1

through 6 and lines 15 through 17; page 4, line 4 through page 9, line 8; page 5, lines 3-7; and, page 17, lines 7 through 15. Columbia further requests that the scope of cross-examination be limited so that counsel may not cross-exam witnesses about the matters addressed in the testimony references above, nor about any issue related to Staff or OCC's attempt to collaterally attack the 2003 Stipulation.

Respectfully submitted,

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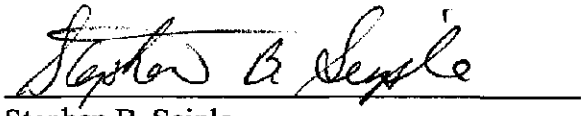
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of Columbia Gas of Ohio, Inc. to Strike the Testimony of the Ohio Office of Consumers' Counsel and of the PUCO Staff, and to Limit the Scope of Cross-Examination was served upon all parties of record by regular U.S. Mail or by hand delivery this 14th day of December, 2006.



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