FILE

12

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Modify its Accounting Procedures to Provide for the Deferral of Expenses Related to the Commission's Investigation of the Installation, Use, and Performance of Natural Gas Service Risers.	)	Case No. 07-237-GA-AAM

MEMORANDUM CONTRA OF COLUMBIA GAS OF OHIO, INC. TO MOTION TO INTERVENE AND COMMENTS OF THE OFFICE OF CONSUMERS' COUNSEL

Pursuant to Ohio Administrative Code ("OAC") Rule 4901-1-12(B)(1), Columbia Gas of Ohio, Inc. ("Columbia" or "the Company") hereby submits its Memorandum Contra to the Motion to Intervene and Comments of the Office of Consumers' Counsel ("OCC"), filed on March 21, 2007.

I. Introduction

On April 13, 2005, the Commission issued an Entry in Case No. 05-463-GA-COI initiating a wide-ranging investigation into the types of gas service risers being installed in the State of Ohio, as well as their conditions of installation and overall performance. That investigation was prompted by a series of reportable incidents involving gas service risers, as well as a number of non-incident failures. In subsequent entries, the Commission retained an outside consultant and ordered the state's four largest gas utilities to undertake a number of actions, including the removal for testing and subsequent replacement of hundreds of gas service risers, at a substantial cost to the affected utilities.

In an entry issued on August 3, 2005, the Commission found that those investigatory measures were necessary to protect the public safety, but recognized that significant costs were being borne by the state's largest gas distribution companies, and expressed a willingness to entertain applications for accounting deferrals of those costs on a case-by-case basis. In response, Columbia filed the instant application on March 2, 2007, seeking authority, pursuant to Rev. Code § 4905.13, to defer nine specific categories of expenses, all of which are a direct result of the Commission's investigation in Case No. 05-463-GA-COI. Columbia also sought authority to defer other expenses incurred as a result of future orders in that docket.

On March 21, 2007, OCC filed a Motion to Intervene and Comments, urging the Commission to reject Columbia's application. Columbia does not oppose OCC's request to intervene, although the Commission may wish to consider whether intervention is either necessary or appropriate in a case which involves only a requested change in accounting practices. Columbia submits, however, that OCC's comments on the merits are inconsistent, confusing, misleading, or erroneous. They also appear to ignore the fact that the extraordinary expenses in question are being incurred for the sole purpose of protecting the public safety. These comments offer no justification whatsoever for rejecting Columbia's application to defer expenses associated with the Commission's riser investigation.

II. Argument

A. The costs which Columbia seeks to defer are not currently reflected in its Commission-approved rates for natural gas service.

At the outset, OCC argues that Columbia's customers are already paying for the expenses that Columbia seeks to defer. That contention is simply wrong.

OCC begins with a number of dubious claims about the "responsibilities" of local gas distribution companies with respect to natural gas risers.[1] The apparent purpose of these assertions is to suggest that because LDCs, such as Columbia, have always had these claimed responsibilities with respect to gas risers, the extraordinary costs of the Commission's riser investigation have already been incorporated in the Company's base rates, and none of those costs should be deferred. This argument ultimately fails, in part because the underlying premises are erroneous or irrelevant, and in part because the conclusion fails to follow from the premises.

To be specific, OCC's contentions concerning LDC "responsibilities" are fundamentally flawed, and fail to support its underlying argument. For example, OCC argues that an LDC is required to "provide a list of installers" that customers must use to install their service lines or risers, citing 49 C.F.R. § 192.805.[2] That section contains no such requirement. What it does require is that operators, such as Columbia, establish an operator qualification program and ensure that persons performing "covered tasks" are qualified to do so.[3] Columbia fulfills that requirement through a comprehensive program that includes the use of third-party qualifiers. The Company voluntarily furnishes a list of individuals who meet the necessary qualifications, but the regulation cited by OCC does not require it to do so.

OCC next claims that LDCs are required to inspect the installation of gas risers, citing 49 C.F.R. §§ 192.287 and 192.307.[4] Neither of those sections offers any support for that proposition. Section 192.287 simply provides that no person may carry out an inspection of joints in plastic pipes without the necessary training and experience; it does not require LDCs to inspect

[1] OCC Comments at 4-5.
[2] OCC Comments at 5.
[3] The Operator Qualification program is a relatively new requirement. Columbia implemented its program in 2002, well after its existing base rates were established and well after many, if not most, of the existing customer-owned service lines were installed.
[4] OCC Comments at 5.

natural gas risers. Section 192.307 applies only to transmission lines and mains, and not to service lines.[5]

OCC then claims that LDCs are "required to instruct qualified installers how to install service lines or risers and choose which types of risers can be installed . . ." [6] OCC cites no authority for that proposition, and there is no such requirement.[7] OCC goes on to argue that LDCs are required to maintain manuals with instructions and identify the types of risers to install, citing 49 C.F.R. § 192.605.[8] What that section requires, in essence, is that each operator, including Columbia, prepare and follow a written O&M plan for use in its operations, maintenance, and emergency response. Section 192.605 contains no requirement that the O&M plan include the elements cited by OCC.

OCC then cites a pleading filed by Dominion East Ohio ("DEO") and a letter to the editor of the *Columbus Dispatch*, in yet another effort to show that LDCs have some sort of "responsibility" for customer service lines.[9] While Columbia questions whether OCC has correctly interpreted the language of the DEO pleading, it plainly has no effect on Columbia's legal responsibilities pertaining to natural gas risers or the appropriate treatment of the costs that Columbia seeks to defer. The letter to the editor obviously requires no response.

In making these arguments, moreover, OCC completely avoids citing the one document that truly bears upon the issue of responsibility – Columbia's Commission-approved tariff. Sec-

---

[5] 49 C.F.R.§ 192.273(c) requires an inspection of each joint after the riser is installed, but given the configuration of Type-A risers, such an inspection would not necessarily disclose whether the riser had been correctly assembled or installed.
[6] OCC Comments at 5.
[7] 49 C.F.R. § 805(h) requires that an Operator Qualification Program include training for individuals performing covered tasks, but it does not require the operator to conduct that training. Columbia fulfills that requirement through the use of third-party qualifiers.
[8] OCC Comments at 5.
[9] *Id.*

tion 23(b) of that tariff, which carries the force of law,[10] unequivocally provides that "[t]he *customer* shall own and maintain the customer service line." [11] (Emphasis supplied). The customer service line includes the gas service riser. As a result, the real responsibility for the installation, maintenance, and repair of gas service risers currently rests with the customer, and not with Columbia.

In any event, many of OCC's arguments are beside the point. Columbia readily concedes that the pipeline safety regulations impose certain duties upon LDCs with respect to customer service lines, including gas service risers.[12] The most significant of these duties is the requirement, set forth in 49 C.F.R. § 192.723, that the LDC – or "operator" – conduct periodic leakage surveys. In most areas (outside business districts), those surveys must be conducted once every three or five years, at intervals not to exceed 39 or 63 months, respectively.[13] If the expenses of these routine surveys were the only costs that Columbia was incurring in connection with gas service risers, the Company would not have filed an application to defer those expenses.

That, however, is clearly not the case. The Commission's investigation has required the state's largest gas distribution companies, including Columbia, to undertake a number of significant tasks which go well beyond the ongoing obligations imposed by existing law, at a substantial cost to those companies. For example, nothing in the current pipeline safety regulations requires an LDC to identify, remove, submit for testing, and replace hundreds of customer-owned risers. Nothing in those regulations requires an LDC to pay outside consultants for a statistical analysis of existing customer-owned risers. Nothing in those regulations requires an LDC, such as Columbia, to conduct a special, one-time inventory of more than 1.2 million service locations

[10] *Vorhees v. Jovingo*, 2005-Ohio-4948, 2005 Ohio App. LEXIS 4481, 2005 WL 2292796 (Ohio App. 2005) at {¶ 46}; *Barr v. Ohio Edison Co.*, 1995 Ohio App. LEXIS 753 (Ohio App. 1995).
[11] PUCO No. 2, Second Revised Sheet No. 6, Section 23(b).
[12] PUCO Case No. 05-463-GA-COI, Initial Comments of Columbia Gas of Ohio, Inc., at 4.
[13] 49 C.F.R. § 723.(b)(2).

in order to determine the types of customer-owned risers located on its system, as recommended in the Staff Report of Investigation filed in Case No. 05-463-GA-COI. The costs of these activities, which Columbia seeks to defer, are clearly incremental to its ongoing operations. As OCC acknowledges, Columbia's existing base rates were established several years ago,[14] and therefore, those rates do not – and cannot – reflect costs resulting from a Commission investigation initiated in 2005.

For those reasons, OCC's arguments must be rejected. Notwithstanding any obligations which the Company may have with respect to customer-owned risers, the costs which Columbia seeks to defer are not reflected in its current rates for gas service.

B. Columbia's proposed deferrals are not barred by the rule against retroactive ratemaking.

OCC next argues that Columbia's request to defer certain expenses is barred by the rule against retroactive ratemaking.[15] In support of that argument, OCC cites *Keco Industries, Inc. v. Cincinnati & Suburban Bell Tel. Co.,* 166 Ohio St. 254 (1957).[16] That argument should be rejected for several reasons.

"It is axiomatic that before there can be retroactive ratemaking, there must, at the very least, be ratemaking." *River Gas Co. v. Public Utilities Comm.,* 69 Ohio St.2d 509, 512 (1982). In its application in this case, Columbia has requested only authority to defer certain expenses. That represents an accounting change. "The inherent defect in OCC's argument is that it fails to recognize the distinction which exists between accounting practices under R. C. 4905.13 and the ratemaking provisions of R. C. Chapter 4909." *Office of Consumers' Counsel v. Public Utilities Comm.,* 6 Ohio St.3d 377, 378 (1983). Accounting practices and ratemaking are not equivalent,

---

[14] OCC Comments at 8.
[15] OCC Comments at 6.
[16] *Id.*

and the approval of an accounting change, in and of itself, does not constitute ratemaking, even if it affects the amounts which might ultimately be recovered in subsequent rate proceedings. *Id.* at 379. As a result, Columbia's request to defer certain expenses associated with work involving natural gas risers does not, and cannot, violate the rule against retroactive ratemaking.

Nor would the rule against retroactive ratemaking prevent Columbia from subsequently recovering these costs. Columbia has previously indicated, in its Initial Comments filed on February 2, 2007 in Case No. 05-463-GA-COI, that it may to seek authority to recover deferred expenses through an automatic adjustment mechanism to be approved by the Commission under Rev. Code § 4929.11.[17] Such mechanisms, by definition, are designed to allow the rates of a gas utility to fluctuate automatically, in accordance with changes in specified costs.[18] They are functionally equivalent to the gas cost recovery mechanism authorized by Rev. Code § 4905.302, and the adjustment of rates under such a mechanism – like the determination of appropriate accounting practices – does not constitute "ratemaking in its usual and customary sense." *River Gas Co.*, 69 Ohio St. 2d at 513. For that reason, such periodic adjustments, even if based upon events occurring in the past, neither constitute retroactive ratemaking nor violate the rule set forth in *Keco Industries*. *Id.* at 513-14.

The same result would obtain if Columbia were to seek recovery of the deferred amounts through the conventional ratemaking process. The recovery of amounts which a utility has previously deferred pursuant to Commission order – like the adjustment of rates under an automatic adjustment clause – neither constitutes retroactive ratemaking nor violates the rule set forth in *Keco Industries*. *Columbus Southern Power Company v. Public Utilities Comm.*, 67 Ohio St. 3d 535, 541 (1993). OCC's arguments on this point must therefore be rejected.

---

[17] PUCO Case No. 05-463-GA-COI, Initial Comments of Columbia Gas of Ohio, Inc., at 7.

[18] Rev. Code § 4929.11.

C. Columbia has not improperly requested "blanket" authority to defer unknown costs.

OCC further argues that Columbia is seeking "blanket authority" to defer unknown, future expenses, and contends that the application should be denied because Columbia has not clearly defined the costs which it seeks to defer.[19] In support of that argument, OCC cites FASB No. 71.

These arguments are unpersuasive. Even a cursory review of Columbia's application shows that the Company has carefully delineated nine specific categories of expenses which it proposes to defer. All of these costs relate specifically to Columbia's compliance with the Commission's directives issued in Case No. 05-463-GA-COI. While it is impossible to predict the precise magnitude of these costs, because the work has not yet been completed, and while there may be additional, unanticipated costs, as a result of future Commission orders in Case No. 05-463-GA-COI, those considerations provide no justification for rejecting Columbia's request for authority to defer these expenses.[20]

OCC's reliance on FASB No. 71, moreover, is plainly misplaced. FASB No. 71 governs the Company's treatment of deferrals for financial reporting purposes. It has no impact upon the Commission's authority, set forth in Rev. Code § 4905.13, to prescribe a utility's accounting practices for regulatory purposes.

[19] OCC Comments at 7.

[20] OCC's arguments on the timing issue are, to say the least, contradictory. On the one hand, OCC argues that future expenses should not be deferred because they are unknown, while past expenses, on the other hand, should not be deferred because that would constitute retroactive ratemaking. OCC Comments at 6-8. If those arguments were accepted, no expenses could ever be deferred. Such a result is plainly inconsistent with the Commission's past practice, and clearly contrary to the public interest.

D. Columbia's proposed accounting deferrals are not prohibited as "single-issue rate-making."

OCC next argues, in essence, that Columbia's proposed deferral should be disallowed because permitting recovery of these expenses would constitute impermissible single-issue rate-making.[21] Once again, OCC has confused accounting with ratemaking. Columbia's application in this proceeding proposes to defer certain expenses for accounting purposes, not to recover those expenses.

Apparently recognizing that point, OCC then argues that a deferral should not be authorized where the costs to be deferred cannot ultimately be recovered, and that the costs which Columbia seeks to defer cannot ultimately be recovered because they are already incorporated in base rates.[22]

That argument, once again, is based on a false premise. As explained in Section II.A, *supra*, the costs which Columbia proposes to defer are incremental. They involve activities which the Company is not otherwise required to undertake, and those costs have *not* been incorporated in Columbia's existing rates. For those reasons, there is no reason why Columbia should not ultimately be authorized to recover those costs, either through the conventional ratemaking process or an automatic adjustment mechanism authorized under R. C. 4929.11. OCC's arguments provide no justification for rejecting Columbia's proposed deferrals.

E. The facts and circumstances surrounding the Commission's riser investigation are more than sufficient to justify the use of deferral accounting.

Finally, OCC questions whether Columbia has provided sufficient justification or "need" for the proposed deferrals.[23] As a general proposition, Columbia would agree that deferrals should be the exception, rather than the rule, but the facts and circumstances surrounding the

[21] OCC Comments at 8-9.
[22] *Id.*
[23] OCC Comments at 7-8.

Commission's riser investigation argue forcefully for the use of deferral accounting. This is true for several reasons:

- The expenses at issue here have been effectively mandated by the Commission. As a result, the affected utilities have little discretion over the timing or magnitude of those expenses.
- The Commission's investigation was initiated to address a significant statewide problem, and the expenses at issue are being incurred to enhance the public safety. As a matter of public policy, such expenditures should be encouraged.
- The expenses at issue are extraordinary and non-recurring. They are therefore ill-suited for recovery through the conventional ratemaking process, because it would be inappropriate to build such expenses into base rates on a permanent basis.
- By any objective measure, the expenses at issue are substantial. For example, Columbia estimates that its riser inventory alone will cost approximately $8 million. That represents a significant, incremental expenditure, even for a large utility such as Columbia. A failure to allow accounting deferrals or other specialized treatment could result in a series of rate case filings that could tax the resources of both the Commission and OCC.
- Columbia's application seeks only a change in accounting based upon the extraordinary nature of the expenses in question. The issue of recovery of these deferred costs will be addressed in a separate proceeding in which all parties will have the opportunity to be heard.

Taken together, the foregoing considerations are more than sufficient to justify the use of deferral accounting with respect to the costs resulting from the Commission's riser investigation.

III. Conclusion

For the reasons set forth herein, Columbia urges the Commission to reject the arguments contained in the comments of OCC, and approve the Company's March 2, 2007 application to defer certain expenses associated with the Commission's investigation in Case No. 05-463-GA-COI.

Respectfully submitted,

COLUMBIA GAS OF OHIO, INC.

Stephen B. Seiple, Trial Attorney

Mark R. Kempic, Assistant General Counsel
Kenneth W. Christman, Associate General Counsel
Stephen B. Seiple, Lead Counsel
NiSource Corporate Services Company
200 Civic Center Drive
Columbus, Ohio 43216-0117
Telephone: (614) 460-4648
Fax: (614) 460-6986
E-mail: sseiple@nisource.com

Attorneys for
COLUMBIA GAS OF OHIO, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra of Columbia Gas of Ohio, Inc. was served upon all parties of record by regular United States Mail this 9th day of April 2007.

Stephen B. Seiple
Attorney for
COLUMBIA GAS OF OHIO, INC.

SERVICE LIST

Joseph P. Serio
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad St., Suite 1800
Columbus, OH 43215-3485

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793

Duane W. Luckey
Chief, Public Utilities Section
Attorney General's Office
180 East Broad Street, 12th Floor
Columbus, OH 43215