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**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**POST-HEARING BRIEF OF STAFF  
OF PUBLIC UTILITIES COMMISSION OF OHIO**

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**Introduction**

The primary issue in this case from Staff's perspective is Columbia's erroneous treatment of the Transition Cost Recovery Pool (TCCRP) fund and off-system sales and capacity release (OSS/CR) revenues retained by Columbia. This issue presents two opposing versions of the Stipulation. One of those versions is consistent with the language of the Stipulation, the intent of the parties and the Commission's entries approving the Stipulation with modifications. That is the interpretation Staff advocates. The other interpretation is not consistent with the terms of the Stipulation, the intent of the parties and the Commission entries approving the Stipulation with modifications. This interpretation is followed by Columbia and results in a windfall for the Company.

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As the differences between the two interpretations suggest, Staff's interpretation is the only reasonable one and it is the only one leading to reasonable results. Accordingly, Staff requests the Commission find Columbia's treatment of the TCCRP fund and its retention of OSS/CR revenues to be erroneous. Staff also requests the Commission direct Columbia to replace erroneously removed funds to the TCCRP.

### **Statement of Facts**

Columbia contracts for enough pipeline and storage capacity to meet its GCR and Choice customer peak day requirements.<sup>1</sup> GCR customers are responsible for the portion of the costs incurred to serve the GCR portion of those capacity requirements.<sup>2</sup> The remaining costs are referred to as "Choice program costs" or "Choice program capacity costs."<sup>3</sup> Choice program costs for November 2004 through October 2005 totaled \$68,637,375.<sup>4</sup>

A stipulation approved and adopted, as modified, by the Commission provides specific revenue streams to fund Columbia's Choice program costs.<sup>5</sup> The Stipulation's section identifying and discussing *Revenues to Offset Choice Program Costs*, and appropriately titled as such, identifies and discusses three principal revenue streams: revenues Columbia receives from assigning Choice capacity to marketers; revenues Columbia receives from balancing services provided to marketers; and, Columbia's

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<sup>1</sup> Staff Ex. 1 (Puican Supp. Test.) at 3-4.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR *et.al.* (Fourth Amendment To Joint Stipulation And Recommendation, at paragraphs 10, 21) (October 9, 2003).

retained share of off-system sales and capacity release revenues (OSS/CR revenues).<sup>6</sup> The section also identifies and describes a rider that was abandoned.<sup>7</sup>

Those same revenue streams are used in the Stipulation to define Columbia's responsibility for Choice program costs.<sup>8</sup> The section titled *Treatment of Costs* provides that Columbia is responsible for Choice program costs less revenues it receives from marketers for assignment of capacity, less revenues it receives from marketers for balancing services, and less revenues it retains for its share of OSS/CR revenues.<sup>9</sup>

Under the stipulation, each marketer participating in the Choice program is responsible for no less than 75% of the design day capacity demand costs for that marketer's customers.<sup>10</sup> This 75% responsibility could be met through a combination of capacity and storage assignment from Columbia and purchase of balancing services.<sup>11</sup> The capacity assignment revenue for November 2004 through October 2005 totaled \$37,374,242.<sup>12</sup> For the same period, the balancing revenue totaled \$16,432,265.<sup>13</sup>

The stipulation, as modified by the Commission's orders, allows Columbia to keep the first \$25,000,000 of OSS/CR revenues annually.<sup>14</sup> After OSS/CR revenues exceed that \$25,000,000 threshold, Columbia must share them with its core customers, GCR and Choice customers, at a ratio based on Choice program participation.<sup>15</sup> In the

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<sup>6</sup> *Id.* at paragraphs 11-20.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at paragraph 21.

<sup>9</sup> *Id.*

<sup>10</sup> Staff Ex. 1 (Puican Supp. Test.) at 4.

<sup>11</sup> *Id.*

<sup>12</sup> Staff Ex. 1 (Puican Supp. Test.) at 4, SEP-1.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.*

audit period capacity release revenues were \$13,615,618 and off-system sales revenues were \$26,460,816.<sup>16</sup> Columbia's retained share was \$36,813,839.<sup>17</sup>

The three revenue streams more than offset Choice program costs. The three revenue streams totaled \$90,620,346 [\$37,374,242 (capacity assignment revenues from marketers) + 16,432,265 (balancing services revenue from marketers) + 36,813,839 (Columbia's retained share of OSS/CR revenues)]. That means the revenues exceeded the costs by \$21,982,971 [\$90,620,346 – 68,637,375]. That profit means Columbia was not responsible for any Choice program costs in the audit period.<sup>18</sup>

The stipulation also provides for the disposition of monies remaining in an account containing funds when the previous stipulation expired, called the *Transition Capacity Cost Recovery Pool*.<sup>19</sup> The funds could be used to offset something called "net choice program costs," that were identified in another part of the stipulation as Choice program capacity costs less revenues attributable to marketers' capacity assignments and payment of balancing fees.<sup>20</sup> The stipulation also provides that funds remaining in the TCCRP when the current stipulation expires will be credited to Columbia's GCR and Choice customers.<sup>21</sup>

The TCCRP had a balance of approximately \$94,000,000 at the expiration of the preceding stipulation on October 31, 2004.<sup>22</sup> Columbia was allowed to retain 25% of

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<sup>16</sup> *Id.* at 10.

<sup>17</sup> *Id.*

<sup>18</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR *et.al.* (Fourth Amendment To Joint Stipulation And Recommendation, at paragraph 21) (October 9, 2003).

<sup>19</sup> *Id.* at paragraph 22.

<sup>20</sup> *Id.* at paragraphs 15, 22.

<sup>21</sup> *Id.* at paragraph 22.

<sup>22</sup> Tr. IV at [OCC cross of Martin].

those funds under the current stipulation's terms.<sup>23</sup> That left \$70,640,453 in the TCCRP.<sup>24</sup> Despite the complete offset of Choice program costs by the revenue streams the Stipulation provided for funding those costs, Columbia used the TCCRP funds to offset monthly Net Choice Program Costs through October 31, 2005, ending with a reduction in the TCCRP of \$14,830,898.<sup>25</sup> That amount exactly offset the Choice program costs that remained after offsets by revenues Columbia received for marketer capacity releases and revenues Columbia received from marketers for balancing services.<sup>26</sup>

That approach allows Columbia, in all likelihood, to retain all of its OSS/CR revenues (other than shared amounts) and instead fund any Choice program cost shortfall through the TCCRP.<sup>27</sup> Doing that enables Columbia to dissipate the TCCRP and, thereby, reduce or eliminate a credit to core customers by offsetting Choice program costs that should be offset by OSS/CR revenues with TCCRP funds.<sup>28</sup> The result shifts the burden of paying a portion of un-recovered Choice program costs from Columbia to core customers.<sup>29</sup> For example, GCR customers, particularly, are disadvantaged because they already pay all of the capacity costs associated with GCR service.<sup>30</sup> As a result of the procedure Columbia follows, GCR customers now pay a share of the Choice program

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<sup>23</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR et.al. (Fourth Amendment To Joint Stipulation And Recommendation, at paragraph 22) (October 9, 2003);

<sup>24</sup> Staff Ex. 1 (Puican Supp. Test.) at 7.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 9.

<sup>28</sup> *Id.* at 9-10.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

costs for which Columbia agreed to bear responsibility because Columbia funds them with TCCRP funds that would otherwise be credited to GCR and Choice customers.<sup>31</sup>

Staff recommends the Commission direct that the TCCRP revenues are not to be used to displace OSS/CR revenues in funding Choice program costs.<sup>32</sup>

### **Discussion**

This issue is about how Columbia may recoup its Choice program costs.<sup>33</sup> These costs result from Columbia's contracts for pipeline and storage capacity and represent the portion of those charges attributed to Columbia's Choice customers.<sup>34</sup> Under the Stipulation and the Commission's order adopting it, Columbia may keep all or part of certain revenue streams to offset those costs.<sup>35</sup> Under sections titled *Revenues to Offset Choice Program Costs* and *Treatment of Costs*, the Stipulation repeatedly identifies three revenue streams to offset Choice program costs: revenues Columbia receives from assignment of capacity to Choice marketers, revenues Columbia receives from Choice marketers for balancing services, and revenues retained by Columbia, after sharing, from OSS/CR.<sup>36</sup> Those revenue streams were more than sufficient to offset the Choice program costs during the audit period, exceeding Columbia's Choice program costs in excess of \$22 million.

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 10.

<sup>33</sup> *Choice program costs* are also referred to as *Choice program capacity costs*. Staff Ex. 1 (Puican Supp. Test.) at 4.

<sup>34</sup> Staff Ex. 1 (Puican Supp. Test.) at 4.

<sup>35</sup> *Id.* at 4-5.

<sup>36</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR et.al. (Fourth Amendment To Joint Stipulation And Recommendation, at paragraphs 11-20, 21) (October 9, 2003); Staff Ex. 1 (Puican Supp. Test.) at 4-5.

Despite that profit, Columbia sought to increase its revenues further by taking money from an account titled the *Transition Capacity Cost Recovery Pool* as an offset to the Choice program costs instead of using OSS/CR revenues.<sup>37</sup> Citing a provision in a paragraph titled *Balance of the Transition Capacity Cost Recovery Pool Under the 1999 Stipulation*, Columbia used funds from that account to offset its Choice program costs rather than OSS/CR revenues.<sup>38</sup> That enriched Columbia.<sup>39</sup> As Mr. Puican explained, “The impact is that the \$14,830,898 un-recovered balance of Columbia’s Choice program capacity costs after the Capacity Assignment and Balancing Revenues are applied is being covered with monies that would otherwise likely be credited to core customers.”<sup>40</sup>

The issue is whether Columbia can supplant the OSS/CR revenues with funds in the TCCRP when offsetting Choice program costs. Staff believes “Columbia should have used its OSS & CR revenues to fund this un-recovered balance as required by the Stipulation.”<sup>41</sup>

**I. Off-system sales and capacity release revenues are a principal source of funding Columbia’s Choice program costs under the Stipulation and Commission orders adopting it that the parties to that stipulation and the Commission intended Columbia to use to offset Choice program costs.**

Off-system sales and capacity release revenues are a principal source of funding Columbia’s Choice program costs under the 2003 stipulation and Commission orders

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<sup>37</sup> Staff Ex. 1 (Puican Supp. Test.) at 7, SEP-1.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 10

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

adopting it.<sup>42</sup> That is beyond question. The stipulation expressly makes OSS/CR revenues a principal source of funding for offsetting Choice program costs.<sup>43</sup> The comments of the parties express their intent that those revenues are such a principal source of funding and are to be used to offset Choice program costs.<sup>44</sup> The Commission identifies those revenues as an important source of funding for and offset to Columbia's choice program costs.<sup>45</sup>

**A. The Stipulation expressly provides off-system sales and capacity release revenues are a principal source of funding Columbia's Choice program costs.**

The Stipulation expressly and repeatedly identifies OSS/CR revenues as one of the principal revenue streams funding choice program costs.<sup>46</sup> The Stipulation could not be clearer in expressing OSS/CR revenues are a primary funding source offsetting Choice program costs. OSS/CR revenues are identified as such in a Stipulation section devoted entirely to identifying and describing revenues offsetting choice program costs that is

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<sup>42</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR *et.al.* (Fourth Amendment To Joint Stipulation and Recommendation, at paragraphs 10, 21); *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR *et.al.* (Entry on Rehearing, at 9) (May 5, 2004).

<sup>43</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR *et.al.* (Fourth Amendment To Joint Stipulation And Recommendation, at paragraphs 10, 21).

<sup>44</sup> *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.*, (Reply Comments of Columbia Gas of Ohio On The Stipulation Filed October 9, 2003), Case No. 94-987-GA-AIR, *et.al.* (December 22, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.* (Memorandum Contra of Columbia Gas of Ohio, Inc. The Second Application for Rehearing of the Office of the Ohio Consumers' Counsel) (May 24, 2004); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.*, (Comments In Support Of Stipulation To Assure Marketplace Certainty And Operational Stability of Interstate Gas Supply, Inc. and WPS Energy Services, Inc. dba FSG Energy Services) (December 8, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.* (Joint Application For Rehearing Or, In The Alternative, Application For Approval Of Modified Stipulation) (April 9, 2004).

<sup>45</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR *et.al.* (Entry on Rehearing, at 9-10) (May 5, 2004).

<sup>46</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR *et.al.* (Fourth Amendment To Joint Stipulation and Recommendation, at paragraphs 10 and 21).



labeled appropriately *Revenues to Offset Choice Program Costs*. OSS/CR revenues are not only identified as revenues to offset choice program costs in that section but also they are extensively described and discussed in a subsection devoted solely to OSS/CR revenues.<sup>47</sup>

The existence of that subsection devoted to OSS/CR revenues highlights they are a primary source of revenues to offset Choice program costs. Only two additional subsections exist in the *Revenues to Offset Choice Program Costs* section and they both deal with revenue streams: Choice Capacity Assigned to Marketers and Balancing Costs, and a Migration Cost Rider which was eventually abandoned as a revenue source.<sup>48</sup> The Stipulation devoted subsections to the revenue streams provided to offset choice program costs.<sup>49</sup> In doing so, the Stipulation identified those revenue streams, including OSS/CR revenues, as the primary revenue streams to fund and offset Choice program costs.<sup>50</sup>

Additionally, the Stipulation weaves Columbia's retention of OSS/CR revenues together with funding Choice program costs.<sup>51</sup> The Stipulation provides Columbia may retain a share of OSS/CR revenues solely because it is funding Choice program costs. The Stipulation states:

Because Columbia is responsible for all Choice program costs, the Signatory Parties agree that Columbia shall be entitled to retain Off-system Sales and Capacity Release revenues earned November 1, 2004 through October 31, 2008, subject to the sharing provisions described in the next paragraph.<sup>52</sup>

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<sup>47</sup> *Id.* at paragraphs 16-19.

<sup>48</sup> *Id.* at paragraphs 11-15, 20.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at paragraph 16, 21.

<sup>52</sup> *Id.*

The Stipulation further weaves Columbia's retention of OSS/CR revenues together with funding Choice program costs by defining Columbia's responsibility for Choice Program costs by OSS/CR revenues.<sup>53</sup> In a section appropriately labeled *Treatment of Costs*, the Stipulation describes Columbia's responsibility for Choice program costs.<sup>54</sup> The Stipulation makes Columbia responsible for Choice program costs *less* OSS/CR revenues, *less* revenues Columbia receives for assignment of capacity to Choice marketers, *less* revenues Columbia received from Choice marketers, and *less* revenues received from the rider that, ultimately, was not approved.<sup>55</sup> The Stipulation provides that:

21. The Signatory Parties agree that Columbia will assume full responsibility for all Choice Program capacity costs removed from the GCR, less revenues received for assignment of capacity to Choice marketers, less revenues received for balancing services provided to Choice marketers, *less Off-System Sales and Capacity Release revenue* (after sharing) retained by Columbia, less revenues generated by the rider, all as set forth above [in the section titled *Revenues to Offset Choice Program Costs*].

(emphasis added).<sup>56</sup> In other words, the Stipulation made Columbia responsible for Choice Program capacity costs that were not covered by OSS/CR revenues and the other revenue streams specifically identified in paragraph 21.<sup>57</sup>

That shows the Stipulation makes Columbia's share of OSS/CR revenues not only a primary source of Choice program funding but also an integral part of Columbia's

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<sup>53</sup> *Id.* at paragraph 21.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

responsibility for Choice program costs.<sup>58</sup> Accordingly, the Stipulation's express terms make OSS/CR revenues a primary source of funding Choice program costs and a central part of the Choice program.<sup>59</sup> That is beyond question.

**B. The parties to the Stipulation, including Columbia, expressly intended off-system sales and capacity release revenues to be a principal source of funding Columbia's Choice program costs.**

In addition to the Stipulation's express terms, Columbia's statements to the Commission as well as those of other Stipulation signatories show the parties' intent that OSS/CR revenues are a primary and necessary funding source for choice program costs. These statements also show the parties' intent that those revenues are retained by Columbia to offset choice program costs.

OSS/CR revenues' importance and necessity to offset choice program costs was a significant part of Columbia's rationale for asking the Commission to replace the formula proposed by the Commission for sharing OSS/CR revenues with the OSS/CR revenue sharing formula Columbia proposed.<sup>60</sup> The parties to the Stipulation originally proposed a formula for sharing OSS/CR revenues between Columbia and its core customers, who are its GCR and Choice customers.<sup>61</sup> That formula allowed Columbia to keep all such revenues up to \$35 million as well as sharing any revenues beyond that with core

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.* (Joint Application for Rehearing Or, In The Alternative, Application for Approval of Modified Stipulation at 9) (April 9, 2004).

<sup>61</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR *et.al.* (Fourth Amendment To Joint Stipulation And Recommendation, at paragraph 17) (October 9, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.* (Joint Application for Rehearing Or, In The Alternative, Application for Approval of Modified Stipulation at 9) (April 9, 2004).

customers on a sliding scale based on Choice program participation.<sup>62</sup> The Commission initially rejected that approach and proposed that the revenues should be shared between the GCR customers and Columbia with 80% going to GCR customers and 20% going to Columbia.<sup>63</sup> Columbia commented the Commission should not adopt the 80/20 formula but should adopt the approach Columbia originally proposed.<sup>64</sup>

In so commenting, Columbia identified the revenue streams the stipulation contained for the choice program.<sup>65</sup> In a section of Columbia's Reply Comments titled "The 2003 Stipulation Provides A Reasonable Opportunity For Columbia To Recover Choice Program Capacity Costs," Columbia essentially recited Stipulation paragraph 21 and expressly identified off-system sales and capacity release revenues as one of the primary revenue sources for choice program capacity costs.<sup>66</sup> Columbia stated:

The agreement [the 2003 Stipulation] then provides Columbia with several revenue sources with which to manage the CHOICE program capacity costs: (1) revenue from capacity assigned to CHOICE marketers; (2) revenue from CHOICE balancing services; (3) *Off-System Sales and Capacity Release revenue*; (4) and, revenue from the Migration Cost Rider. As discussed below, this package of revenue opportunities sets forth a reasonable method of dealing with CHOICE program capacity costs. (emphasis added).<sup>67</sup>

Here, Columbia identified how it and the other signatory parties to the 2003 stipulation intended to fund the Choice program costs. The "package of revenue opportunities" that set forth "a reasonable method of dealing with CHOICE program capacity costs"

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<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, et.al. (Reply Comments of Columbia Gas of Ohio on the Stipulation Filed October 9, 2003 at 9) (December 22, 2003).

<sup>65</sup> *Id.* at 15-16.

<sup>66</sup> *Id.* at 16.

<sup>67</sup> *Id.*

included just four revenue streams.<sup>68</sup> Off-system sales and capacity release revenues, after sharing, were one of those revenue sources.<sup>69</sup> The TCCRP funds were not.<sup>70</sup>

Columbia further emphasized the importance of the OSS/CR revenues as a principal source of Choice program funding. Columbia warned that this revenue stream was so important to funding the Choice program that “a new method of funding CHOICE program capacity costs will have to be devised” if the OSS/CR revenue sharing method Columbia proposed was not adopted.<sup>71</sup> In other words, OSS/CR revenues are more than a principal source of funding the Choice program; they are a linchpin of the funding mechanism.

The foregoing shows Columbia recognized OSS/CR revenues are a primary source of funding for Choice program costs and that Columbia intended those revenues to be a primary source of funding for Choice program costs. Columbia was not the only party to the 2003 Stipulation that expressed the intent that OSS/CR revenues were to offset choice program costs. All parties to that Stipulation believed OSS/CR revenues were to offset choice program costs and that is beyond question.

The parties to that Stipulation, in addition to Columbia, represented to the Commission that OSS/CR revenues were to offset choice program costs. For example, Interstate Gas Supply, Inc., and WPS Energy Services, Inc. stated their belief that OSS/CR revenues would be used along with marketer capacity and balancing cost

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* at 21.

revenues and the rider which was later removed, to fund Choice program capacity costs.<sup>72</sup> In fact, they correctly noted that OSS/CR revenues define Columbia's responsibility for Choice program capacity costs.<sup>73</sup> They told the Commission that "the Stipulation makes Columbia responsible and at risk for all Choice program capacity costs removed from the GCR, *after* marketer capacity and balancing cost revenues, shared OSS revenues, and Migration Cost Rider revenues," (emphasis added), citing Stipulation paragraphs 10 and 21.<sup>74</sup> These two marketers describe how intertwined the Stipulation makes OSS/CR revenues and Choice program capacity costs.<sup>75</sup> Columbia *is not responsible* for all Choice program costs.<sup>76</sup> It *is responsible* for Choice program capacity costs that remain *after* being offset by marketer capacity and balancing cost revenues, and shared OSS/CR revenues.<sup>77</sup>

Additionally, all signatories to the Stipulation, and some supporters of the Stipulation that were not signatories, represented to the Commission their intent and belief that OSS/CR revenues would be used to offset Choice program costs.<sup>78</sup> They told the Commission that OSS/CR revenues would allow Columbia to provide "sufficient amounts of capacity...to provide firm service."<sup>79</sup> They told the Commission that it should approve the OSS/CR sharing mechanism proposed in the 2003 Stipulation rather than the

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<sup>72</sup> *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.* (Comments In Support Of Stipulation To Assure Marketplace Certainty And Operational Stability Of Interstate Gas Supply, Inc. and WPS Energy Services, Inc. dba FSG Energy Services at 11) (December 8, 2003).

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*; *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR *et.al.* (Fourth Amendment To Joint Stipulation And Recommendation, at paragraphs 21).

<sup>77</sup> *Id.*

<sup>78</sup> *In re Columbia Gas of Ohio, Inc.*, 94-987-GA-AIR, *et.al.*, (Joint Application For Rehearing Or, In The Alternative, Application For Approval Of Modified Stipulation at 9-10) (April 9, 2004).

<sup>79</sup> *Id.* at 9.

80/20 sharing the Commission proposed because “approving the originally proposed off-system sales revenue sharing and the Choice Program Sharing Credit would enable Columbia to fund sufficient amounts of capacity for Columbia to provide firm service.”<sup>80</sup>

Mr. Arnold, the representative of The Farm Bureau, testified consistent with that intent. The Farm Bureau was a signatory to the Stipulation and Mr. Arnold testified on the Farm Bureau’s behalf. He reiterated the understanding that the Stipulation required Columbia to use its retained share of OSS/CR revenues to offset Choice program costs.<sup>81</sup> He also testified that he did not believe that offsetting Choice program costs with TCCRP funds before offsetting them with OSS/CR revenues was appropriate.<sup>82</sup>

As this shows, all parties to the 2003 Stipulation, as well as some supporters who were not signatories, intended and believed OSS/CR revenues retained by Columbia would be used as a primary source of funding to offset choice program costs.<sup>83</sup> No one even suggested that Columbia might not need to apply those revenues to offset choice program costs.<sup>84</sup> Again and again, the parties to that Stipulation emphasized the interrelationship between Choice program costs and OSS/CR revenues retained by Columbia.<sup>85</sup> Very simply, all the parties to the 2003 Stipulation intended what Staff now seeks to enforce. The corollary, of course, is that they did not intend what Columbia now claims.

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<sup>80</sup> *Id.*

<sup>81</sup> Tr. V at 25-26.

<sup>82</sup> Tr. V at 29-30.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

**C. The Commission entries reflect off-system sales and capacity release revenues are a principal source of funding Columbia's Choice program costs.**

The Commission's entries reflect that OSS/CR revenues are a primary revenue sources for Columbia's choice program.<sup>86</sup> As the reader will recall, the Commission initially rejected the OSS/CR revenue sharing scheme proposed in the 2003 Stipulation.<sup>87</sup> On rehearing, the Commission changed its view and approved the current OSS/CR revenue sharing mechanism, in large part, because "it will provide funding to Columbia for capacity."<sup>88</sup> In effect, the Commission changed the OSS/CR revenue sharing formula in large part because of the importance of OSS/CR revenues to funding Choice capacity costs.

That change shows OSS/CR revenues were recognized as a significant offset to Choice program costs. The Commission did not abandon the sharing formula it proposed with the belief that the funds would all go to Columbia's bottom line. The Commission did so to offset Choice program costs.<sup>89</sup>

As the preceding shows, the importance of the OSS/CR revenues to offsetting choice program costs is clear. The Stipulation states, the parties intended and the Commission's entries show those revenues are a primary source of funding the Choice program. That is consistent with Staff's position and contrary to the Company's claims in this case.

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<sup>86</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR *et.al.* (Entry on Rehearing, at 9) (May 5, 2004).

<sup>87</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR *et.al.* (Entry, at 15) (March 11, 2004).

<sup>88</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR *et.al.* (Entry on Rehearing, at 9) (May 5, 2004).

<sup>89</sup> *Id.*



**II. The Transition Capacity Cost Recovery Pool funds are not a principal source of funding Columbia's Choice program costs under the Stipulation. Those monies are nothing more than a secondary source of funding for Columbia's Choice program costs under the Stipulation and Commission orders adopting it.**

**A. The Transition Capacity Cost Recovery Pool funds are only a secondary source of funding Columbia's Choice program costs under the terms of the Stipulation.**

The Stipulation does not include the TCCRP funds as a primary source of funding for the Choice program.<sup>90</sup> The TCCRP funds do not define Columbia's responsibility for Choice program costs.<sup>91</sup> They are not mentioned in the section on *Treatment of Costs*.<sup>92</sup> They are not mentioned in the section on *Revenues to Offset Choice Program Costs*, identifying Choice program funding sources.<sup>93</sup> These omissions show the TCCRP funds are not a primary source of revenues to offset Choice program costs under the stipulation.

The omission of TCCRP funds from the section on *Revenues to Offset Choice Program Costs* is particularly telling. The omission alone means the TCCRP funds are not a primary revenue stream to offset choice program costs. As if to emphasize that point, this section contains the definition for *Net Choice Program Costs* that TCCRP funds can be used to offset, but makes no mention of the TCCRP funds.<sup>94</sup> If the Stipulation made the TCCRP funds a primary source of revenues to offset Choice program costs, as Columbia claims, this would have been the place to at least identify

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<sup>90</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR *et al.* (Fourth Amendment To Joint Stipulation And Recommendation, at paragraphs 10-21.).

<sup>91</sup> *Id.* at paragraph 21.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at paragraphs 11-20.

<sup>94</sup> *Id.* at paragraph 15.

them. The Stipulation did not. The omission suggests the TCCRP funds are not a primary source of revenues offsetting choice program costs.

The location of the *Net Choice Program Costs* definition also indicates the secondary nature of the TCCRP funds to offsetting Choice program costs is. The Stipulation contains an Attachment devoted to definitions applying to the Stipulation and labeled *Definitions*.<sup>95</sup> *Off-system sales* is defined in this attachment.<sup>96</sup> *Capacity release* is defined in this attachment.<sup>97</sup> The definition of *Net Choice Program Costs* that is so central to Columbia's claims did not warrant a place in the *Definitions* attachment.<sup>98</sup> The omission suggests that the definition of *Net Choice Program Costs* was not intended to apply throughout the Stipulation, perhaps, limited to the section in which it appears. Regardless, the omission shows the definition of *Net Program Costs* was not significant. Its relation to the TCCRP did not raise its importance to even merit inclusion in the *Definitions* Attachment.

This treatment of the TCCRP in the Stipulation shows its funds are not a principal source of funding for Columbia's Choice program costs and that those funds can be considered only a secondary source of funding for those costs.

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<sup>95</sup> *Id.* at attachment B.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

**B. The parties to the Stipulation did not intend the Transition Capacity Cost Recovery Pool funds as a primary source of funding for Columbia's Choice program costs.**

The intent of the parties to the Stipulation, including Columbia, regarding the use of funds in the TCCRP to fund Choice program costs is shown by their silence concerning the TCCRP. As described above, the signatories to the Stipulation discussed the funding of Choice program capacity costs but none of them mentioned the TCCRP much less claimed it had any function offsetting Choice program costs.<sup>99</sup> The TCCRP was so insignificant that 13 comments, reply comments and letters were filed supporting the 2003 Stipulation and *none* of them mentioned the TCCRP.<sup>100</sup> Columbia *never*

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<sup>99</sup> *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.*, (Reply Comments Of Columbia Gas Of Ohio On The Stipulation Filed October 9, 2003), Case No. 94-987-GA-AIR, *et al.* (December 22, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.* (Memorandum Contra of Columbia Gas of Ohio, Inc. The Second Application for Rehearing of the Office of the Ohio Consumers' Counsel) (May 24, 2004); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.* (Comments In Support Of Stipulation To Assure Marketplace Certainty And Operational Stability Of Interstate Gas Supply, Inc. and WPS Energy Services, Inc. dba FSG Energy Services) (December 8, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.* (Joint Application For Rehearing Or, In The Alternative, Application For Approval Of Modified Stipulation) (April 9, 2004).

<sup>100</sup> *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.*, (Comments of Columbia Gas of Ohio on the Stipulation filed October 9, 2003) (December 8, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.*, (Comments In Support of Stipulation to Assure Marketplace Certainty and Operational Stability of Interstate Gas Supply, Inc. and WPS Everygy Services, Inc. dba FSG Energy Services) (December 8, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.*, (Comments of Honda of America Mfg., Inc., In Support of October 9, 2003 Joint Stipulation) (December 8, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.*, (Comments of North Coast Transmission, LLC) (December 8, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.*, (Comments in Support of the Stipulation by MidAmerican Energy, Inc. and Vectren Retail, LLC) (December 8, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.*, (Comments of Energy America, LLC) (December 22, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.*, (Reply Comments of Columbia Gas of Ohio on the Stipulation filed October 9, 2003) (December 22, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.*, (Reply Comments in Support of Stipulation to Assure Marketplace Certainty and Operational Stability of Interstate Gas Supply, Inc. and WPS Everygy Services, Inc. dba FSG Energy Services) (December 22, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.*, (Reply Comments of Ohio Manufactures' Association) (December 22, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.*, (Reply Comments of North Coast Gas Transmission, LLC) (December 22, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-

mentioned the TCCRP despite discussing Choice program cost funding numerous times.<sup>101</sup> The only conclusion that can be drawn is that the parties did not view the TCCRP as a significant source of Choice program cost funding; not one significant enough to even mention. It certainly was not as significant as OSS/CR revenues, which typically were included in discussions of Choice program funding.<sup>102</sup> This shows the parties intended the TCCRP as only a *secondary* source of funding for Choice program costs.

That conclusion is consistent with the representations Columbia made to the parties during the discussions leading-up to agreement to the Stipulation. During those discussions, Columbia presented a document showing Choice program costs and offsetting revenues.<sup>103</sup> It listed OSS/CR revenues as offsetting Choice program costs but it did not show the TCCRP funds as an offsetting revenue source.<sup>104</sup> As Mr. Puican explained,

It is the categories of costs and revenues in the spreadsheets that demonstrate the Calculation of transition cost recovery and nowhere in

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Footnote continued from previous page:

AIR, *et.al.*, (letter expressing support for Stipulation from Constellation/ New Energy to Commission) (December 19, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.*, (letter expressing support for Stipulation on behalf of IEU-Ohio to Commission) (December 22, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.*, (letter expressing support for Stipulation from Ohio Farm Bureau to Commission) (December 8, 2003).

<sup>101</sup> *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.* (Reply Comments of Columbia Gas of Ohio on the Stipulation Filed October 9, 2003 at 15-26) (December 22, 2003); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.* (Joint Application For Rehearing Or, In The Alternative, Application For Approval Of Modified Stipulation at 5, 9-10) (April 9, 2004); *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.* (Memorandum Contra of Columbia Gas of Ohio, Inc. The Motion To Dismiss of The Motion To Dismiss of The Office of The Ohio Consumers' Counsel at 5, 8-14) (April 28, 2004).

<sup>102</sup> *Id.*

<sup>103</sup> Staff Ex. 1 (Puican Test.) at 8, SEP-2.

<sup>104</sup> *Id.*

those spreadsheets will you find a line item for TCCRP revenues. The spreadsheets that were prepared to help the parties understand the various Settlement proposals illustrate the calculation as set forth in paragraph 21 and are inconsistent with the combined paragraphs 15 and 22 [that Columbia relies on].<sup>105</sup>

Mr. Puican's testimony shows the TCCRP funds were either not offsetting revenues or not significant enough to list. At the very least, it shows TCCRP funds were not a primary revenue source; certainly, not one that could supplant a listed primary revenue source.

**C. The Commission's entries approving and modifying the Stipulation do not reflect that the Transition Capacity Cost Recovery Pool is a primary source of funding for Columbia's Choice program costs.**

The Commission's entries never identify the TCCRP as a source of Choice program funding.<sup>106</sup> Choice program funding was an important part of the Commission's discussions in its May 5, 2004 Entry on Rehearing.<sup>107</sup> Despite the importance of this topic, the Commission *never* mentioned the TCCRP in connection with Choice program funding.<sup>108</sup> Nothing in the Commission's entries supports Columbia's use of the TCCRP to supplant OSS/CR revenues in offsetting Choice program costs.

The Commission mentioned the TCCRP only one time and that was in its May 5, 2005 Entry on Rehearing.<sup>109</sup> The TCCRP did not warrant a textual reference or

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AJR *et.al.* (Entry on Rehearing, at 8-10) (May 5, 2004).

<sup>108</sup> *Id.*

<sup>109</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AJR *et.al.* (Entry on Rehearing, at 10, fn.6) (May 5, 2004).

discussion.<sup>110</sup> The only reference to it appears in a footnote, where the Commission notes “funds possibly remaining in the transition capacity cost recovery pool are expected to be credited to the choice program sharing credit (per original provision 22).”<sup>111</sup> As this reference indicates, the Commission recognized the existence of the TCCRP but did not discuss it as a source of Choice program funding.<sup>112</sup> This sole reference identifies it as a credit to Columbia customers. Accordingly, the Commission’s entries did not reflect the TCCRP funds as a primary revenue source for the Choice program and, certainly, not one that could supplant such a significant funding source as OSS/CR revenues.

As the foregoing shows, the TCCRP was not intended as a principal funding source for Choice program costs and it was not represented as such to the Commission. Nothing in the Commission’s entries suggest the TCCRP is a significant funding source. In fact, the lack of discussion and the expression of expectation that TCCRP funds would be credited to the benefit of Columbia’s customers shows the TCCRP funds are only a secondary source of Choice program cost funding.

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<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

**III. Columbia's attempt to supplant OSS/CR revenues, a primary revenue stream for offsetting Choice program costs, with the TCCRP funds, at most a secondary revenue stream for offsetting Choice program costs, violates the Stipulation, the intent of the parties to it and the Commission's entries approving the Stipulation with modifications.**

The issue in this matter is which revenue stream is applied first to offset Choice program costs – OSS/CR revenues or the TCCRP funds.<sup>113</sup> Mr. Puican summed-up the dispute:

According to Columbia's witnesses Mr. Brown and Mr. Martin, this definition [*Net Choice Program Costs*] combined with the procedures described in paragraph 22 are definitive and allow them to use the TCCRP revenue prior to the application of Off-System Sales and Capacity Release revenues. Staff's position is that paragraph 21 clearly defines the order by which the various funding sources are to be used.<sup>114</sup>

As discussed, the language and structure of the Stipulation, the express intent of the parties, and the Commission's entries support Staff's position. Staff's position applies the OSS/CR revenues as primary sources of revenues to the Choice program and, beyond doubt, those revenues are primary sources of revenues to the Choice program. The effect of Columbia's position is to supplant that primary revenue stream with a revenue stream of secondary importance in offsetting Choice program costs. There is no basis to conclude the Stipulation and Commission entries provide, or the parties intended that the OSS/CR revenues be supplanted by a secondary source such as the TCCRP.

Additionally, Columbia's actions transform the TCCRP funds from a secondary source of funding to one of the principal sources of funding Choice program costs, more significant than the OSS/CR revenues. This is because Columbia, likely, does not need

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<sup>113</sup> Staff Ex. 2, (Puican Surrebuttal Test.) at 2.

<sup>114</sup> *Id.*

OSS/CR revenues to offset Choice program costs under its position. As explained by Mr. Puican, "Using this [Columbia's] approach, Columbia would likely be able to retain all of its OSS & CR revenues (other than the shared amount) and instead fund any Choice program cost shortfall from the TCCRP."<sup>115</sup> This audit period presents an example of this result. The net result of Columbia's treatment of TCCRP funds and OSS/CR revenues "is that Columbia retained all the OSS & CR revenues (after sharing) and the balance of the TCCRP was reduced by \$14,830,898 which would otherwise have been available for crediting back to core customers."<sup>116</sup> That contradicts the provisions of the Stipulation, the intent of the parties and the Commission's entries. As Mr. Puican stated, it is "inappropriate and inconsistent with the Stipulation."<sup>117</sup>

That result also contradicts what Columbia told the Commission. Columbia argued that the Commission should abandon the OSS/CR revenue sharing formula the Commission proposed and adopt the method Columbia proposed, instead, to, in part, provide incentives for Columbia to maximize its OSS/CR revenues.<sup>118</sup> In discussing its incentives to maximize OSS/CR revenues and, thereby, benefit those that share in them, Columbia asserted that it "is further encouraged to maximize such revenues [OSS/CR], because it has an opportunity to retain any revenue over and above total CHOICE program capacity costs."<sup>119</sup> In other words, Columbia claimed it would profit from

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<sup>115</sup> Staff Ex. 1 (Puican Supp. Test.) at 9.

<sup>116</sup> Staff Ex. 1 (Puican Supp. Test.) at 10.

<sup>117</sup> *Id.*

<sup>118</sup> *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, *et.al.* (Reply Comments of Columbia Gas of Ohio on the Stipulation Filed October 9, 2003 at 26) (December 22, 2003).

<sup>119</sup> *Id.*



OSS/CR revenues only to the extent they exceeded choice program costs. This, of course, is consistent with Staff's position and contrary to what Columbia now claims.

Significantly, Columbia never told the Commission that a scenario existed, in Columbia's opinion, where its share of OSS/CR revenues would be treated entirely as its profit rather than used to offset Choice program capacity costs. Neither its original comments supporting the 2003 Stipulation, its Reply Comments on the Stipulation nor do any of their memoranda assert such a possibility. Columbia told the Commission that it could only retain OSS/CR revenues "over and above total CHOICE program capacity costs."<sup>120</sup> Columbia discussed its incentives to maximize OSS/CR revenues; an ideal place to claim it could keep them all if that was the intent. Rather than making such a claim, Columbia asserted it could keep only those OSS/CR revenues that exceeded CHOICE program capacity costs.<sup>121</sup> Columbia did so stating:

Columbia is responsible for funding the CHOICE program capacity costs and thus has an incentive to maximize such revenues. Columbia is further encouraged to maximize such revenues, because it has an opportunity to retain any revenue over and above total CHOICE program capacity costs.<sup>122</sup>

According to Columbia, OSS/CR revenues and Choice program costs were bound together under the 2003 Stipulation.<sup>123</sup>

Columbia made it clear that OSS/CR revenues were to offset Choice program costs and they were not to be retained by Columbia for the sole purpose of enhancing its

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<sup>120</sup> *Id.* at 21.

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

bottom line.<sup>124</sup> Explaining why the OSS/CR sharing formula ultimately approved by the Commission was lawful, Columbia stated that these revenues were not to be retained by Columbia for the sole purpose of enhancing its bottom line as it has attempted to do in this case but are to be used to offset Choice program costs.<sup>125</sup> Columbia stated:

Third, the OCC continually refers to Columbia's retention of Off-System Sales and Capacity Release revenue, but conveniently omits any meaningful discussion of the fact that the revenues are to be used to help offset CHOICE program costs. *Thus, the OCC appears to be attempting to leave the false impression that all the revenue is retained by Columbia for the sole purpose of enhancing its bottom line.* By using the non-traditional revenues to fund CHOICE program costs, ratepayers have available to them, with no additional base rate increases or related riders, one of the most robust CHOICE programs in the nation.

(Emphasis added).<sup>126</sup> Columbia told this Commission that what happened in the present case, OSS/CR revenues going exclusively to Columbia's bottom line, was not the purpose of OSS/CR revenues.

The result of Columbia's approach also negates one of the factors that led the Commission to approve the OSS/CR sharing mechanism. In addition to the importance of OSS/CR revenues to offsetting Choice program costs, the Commission adopted the current OSS/CR sharing mechanism because the Commission found it "will not disadvantage choice customers."<sup>127</sup> That rationale does not exist under Columbia's approach. Under Columbia's approach, "[t]he net result is a shift of burden of paying a

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<sup>124</sup> *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, et., Case No. 94-987-GA-AIR, et.al., (Memorandum Contra of Columbia Gas of Ohio, Inc. The Second Application for Rehearing of the Office of the Ohio Consumers' Counsel at 9) (May 24, 2004).

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 9.

<sup>127</sup> *In re Columbia Gas of Ohio, Inc.* Case No. 94-987-GA-AIR et.al. (Entry on Rehearing, at 9) (May 5, 2004).

portion of un-recovered Choice program costs from Columbia to core customers (GCR and choice customers).”<sup>128</sup>

Columbia’s approach punishes GCR customers. That approach requires GCR customers to subsidize the Choice program, paying not only 100% of the GCR capacity costs but also a portion of the Choice program costs through TCCRP funds that would otherwise be credited to them.<sup>129</sup> Mr. Puican explained:

The net result [of covering Choice program shortfall from the TCCRP] is a shift in the burden of paying a portion of un-recovered Choice program costs from Columbia to core customers [choice customers as well as GCR]. GCR customers in particular are being disadvantaged because they are already paying 100% of their own GCR capacity costs, but they are now also paying a share of the Choice program costs that Columbia agreed to be responsible for. This is because Columbia is using TCCRP funds that otherwise would be credited back to GCR and Choice customers, to help fund its share of Choice program capacity costs.<sup>130</sup>

As discussed, the Stipulation does not provide for this result and neither the intention of the parties nor the Commission’s entries call for it. Staff believes the Commission did not sanction the approach Columbia followed or this result.

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<sup>128</sup> Staff Ex. 1 (Puican Supp. Test.) at 9.

<sup>129</sup> *Id.*

<sup>130</sup> Staff Ex. 1 (Puican Supp. Test.) at 9.

**IV. The Stipulation's provisions can be reconciled if the Commission interprets the Stipulation to recognize that off-system sales and capacity release revenues are primary sources of funding for Columbia's Choice program costs and the funds in the Transition Capacity Cost Recovery Pool are secondary sources of funding Columbia's Choice program costs. The Stipulation's provisions cannot be reconciled under Columbia's position.**

The proper interpretation of the Stipulation is to follow paragraph 21 and apply OSS/CR revenues before using TCCRP funds to offset Choice program costs. Under this interpretation, OSS/CR revenues are always used to offset Choice program costs as provided in the Stipulation and as contemplated by the parties and the Commission's entries. TCCRP funds are used to offset costs to the extent needed to offset costs that the primary revenue streams could not offset. That result treats OSS/CR revenues as a primary revenue source for funding Choice program costs and it treats TCCRP funds as a secondary source of funding. That is a reasonable result and it is consistent with the terms and intent of the Stipulation.

Accomplishing that result requires nothing more than recognizing that the TCCRP fund is a secondary source of Choice program funding that is only used after the primary sources are exhausted. In other words, all the provisions of the Stipulation are reconciled by interpreting the Stipulation to recognize the TCCRP fund is used *as needed* to offset Choice program costs for which Columbia remains responsible *after* offsetting Choice program costs with the primary revenue streams, including OSS/CR revenues, listed in paragraph 21. That is a reasonable interpretation and it is one that gives effect to all the Stipulation's provisions.

The result of Columbia's position is not reasonable and it is not consistent with the terms and intent of the Stipulation. Columbia's position requires a secondary source

of revenue to supplant a primary source of revenue. The provision on the *Treatment of Costs*, paragraph 21, does not allow that. Additionally, Columbia's position leads to the unreasonable result that Columbia can use revenues to offset costs for which it does not bear any responsibility. Columbia is only responsible for Choice program capacity costs that are not offset by the revenue streams identified in paragraph 21. Simply, it is not reasonable to believe the Stipulation provides monies to Columbia to offset costs for which Columbia does not bear any responsibility; that would be a windfall and a gift. That is not a reasonable result and it is not consistent with the terms and intent of the Stipulation or the Commission's entries approving it.

Unlike Staff's interpretation of the Stipulation, Columbia's position cannot reconcile all the Stipulation's provisions. This is because Columbia's position contradicts significant Stipulation terms. Columbia's application of the Stipulation contradicts the *Revenues to Offset Choice Program Costs* section of the Stipulation, paragraphs 11-20, and the *Treatment of Costs* section of the Stipulation, paragraph 21, by creating a primary revenue stream not listed in those sections. Beyond that, Columbia's application changes the offset to Choice program costs explicitly described in paragraph 21. Columbia's application does so not only by adding a revenue stream that is not listed but also by requiring it be used to offset Choice program costs before one of the revenue streams listed in paragraph 21. Those contradictions are irreconcilable conflicts. Unlike Staff's interpretation, Columbia's claims can be implemented *only* by ignoring the Stipulations express provisions. That is an unreasonable interpretation and it, in effect, changes the terms of the Stipulation in significant ways.

### **Conclusion**

For all the above stated reasons, Staff requests the Commission find Columbia's treatment of the TCCRP fund and its retention of OSS/CR revenues to be erroneous. Staff also requests the Commission direct Columbia to replace erroneously removed funds to the TCCRP.

Respectfully submitted,

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## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing post hearing brief, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, hand-delivered, or delivered via electronic mail, upon the following parties of record, this 18th day of April, 2007.

/s/ Stephen A. Reilly

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