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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

REPLY TO MEMORANDUM CONTRA OF COLUMBIA GAS OF OHIO, INC.
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

Pursuant to R.C. Chapter 4911 and Ohio Adm. Code 4901-1-12(B)(2) the Office of the Ohio Consumers' Counsel ("OCC"), on behalf of the residential utility consumers, replies to Columbia Gas of Ohio, Inc.'s ("Columbia" or "Company") memorandum contra to OCC comments in the above-captioned proceeding.

On March 2, 2007, Columbia filed an application ("Application") with the Commission in the above-captioned proceeding for approval of authority to modify its accounting procedures to allow for the deferral of expenses related to the Commission's investigation of gas service risers. OCC filed a motion to intervene and comments in response to Columbia's application for accounting authority on March 21, 2007 to which Columbia filed its memorandum contra on April 9, 2007.

OCC is an intervenor in the gas riser investigation proceeding and filed comments in that case where the Commission's rulings may relate to some of the costs that

Columbia may incur in responding to the Commission's directives.[1] The expenses that Columbia seeks to defer include: payments to the Commission for statistical analysis performed by consultants used to estimate Columbia's riser population by type; training development and training costs related to riser testing and performance of the survey; labor and expenses incurred in the collection of riser samples for the Commission's investigation; Commission assessments for the testing of risers and preparation of the Staff Report; contract and company labor costs incurred to conduct the survey; project management costs, including labor and expenses for survey management, data management, report generation and invoice process for contracted serves; incremental expenses incurred at Columbia's contact center as a result of increased call volumes as customers inquired about the riser survey and related riser matters; mailing costs incurred to communicate with customers about riser related matters; and carrying charges on the deferred balance.

Columbia claims that it has incurred $251,197 in order to comply with the Commission's directives in Case No. 05-463-GA-COI and estimates that its riser survey will cost $8 million.[2] Columbia also states that it "may also incur other types of expenses, depending on future orders issued in Case No. 05-463-GA-COI."[3] The Commission should not approve Columbia's request for accounting authority for several reasons. First, Columbia, like other Ohio LDCs should be required to bear the cost of the riser investigation and replacement because they have permitted installers to install field assembled risers without inspecting each joint of the risers in violation of 49 C.F.R.

[1] *In the Matter of the Investigation of the Installation, Use, and Performance of Natural Gas Service Risers Throughout the State of Ohio and Related Matters*, Case No. 05-463-GA-COI ("Case 05-463").

[2] Columbia Application at 4.

[3] Id.

§192.273(c), which is the cause of the riser leakage problem in Ohio. Second, 49 §§192.613 and 192.617 have required Ohio LDCs to survey, investigate, sample and phase out unsatisfactory conditions and segments for years and therefore the costs of the investigation are not out-of-the-ordinary expenses and should be only recovered through base rates. Third, the proposed deferral mechanism would permit Columbia to benefit from restitution by allowing the retroactive deferral of costs, which is not permitted under *Keko v. Cincinnati & Suburban Telephone.*[4] Fourth, the Commission should not permit Columbia to recover the investigation costs under R.C. 4929.11 for the reasons stated in the first and second statement above and because Columbia is not facing extreme volatility.

II. COLUMBIA WAS RESPONSIBLE FOR BUT NEGLECTED ACTIVITIES UNDER THE PIPELINE SAFETY RULES THAT COULD HAVE PREVENTED THE RISER SAFETY ISSUE AND THEREFORE THE LDCS SHOULD BE REQUIRED TO BEAR THE COSTS OF THE INVESTIGATION.

Columbia's memorandum contra makes clear that Columbia, and possibly other LDCs in Ohio, are inexcusably not aware of their responsibilities under the Federal Pipeline Safety Rules. This substantially contributed to the problem of riser leaks in Ohio. In the body of its memorandum contra, Columbia claims that it is only responsible for surveying the customer service line.[5] Columbia denies that it is responsible for many of the other activities that it has been charged with as an operator under the Pipeline Safety Rules. Columbia claims instead that its customers -- and not it -- should be responsible for the costs of the PUCO's investigation.

Columbia cannot deny that service lines are pipelines under those rules. The rules

[4] 166 Ohio St. 254 (March 27, 1957).

[5] Memo contra at 5.

of the United States Department of Transportation, 49 C.F.R. § 192.3, defines a "distribution line" as "a pipeline other than a gathering or transmission line." The same section defines a "service line" as "a distribution line that transports gas from a common source of supply to an individual customer." Accordingly, every provision in the Pipeline Safety Rules that refers to an operator's responsibility to pipeline includes a responsibility to the service line.

Columbia admits only in its footnote that it is responsible for inspecting non-welded joints, such as the joints in an assembled riser and those that connect the riser to the service line and the meter.[6] However, it is this provision that is central to the gas riser leak problem in Ohio. 49 C.F.R. 192.273 "prescribes minimum requirements for joining materials in pipelines, other than by welding." Provision 49 C.F.R. 192.273(c) specifies:

> Each joint must be inspected to insure compliance with this subpart.

That directive orders operators, such as LDCs, to inspect all non-welded joints of the assembled risers along with those joints connecting the riser to the service line and to the meter. The only joints explicitly excluded from those that must not be inspected are those made in the manufacturing process.[7] Therefore, the LDCs have always been required to inspect all the joints of the Type-A or field assembled risers to prevent gas leaks.

Columbia points out that such inspection is not possible by stating that "given the configuration of Type-A risers, such an inspection would not necessarily disclose

[6] Memo contra at 3.

[7] 49 C.F.R. 192.271(b).

whether the riser had been correctly assembled or installed."[8] However, in installing the risers, the installers had to make joints. Therefore, Columbia and the other Ohio LDCs should never have permitted the installation of field assembled or Type-A risers pursuant to 49 C.F.R. § 192.273(c) because they do not permit the inspection of joints made in assembling them.

Moreover, the evidence that has been presented in Case No. 05-463 demonstrates without doubt that field assembled risers are more likely to fail than factory assembled risers.[9] The United States Department of Transportation had a reason to rule against the installation of field assembled risers without inspections of each and every non-welded joint in that assembly but the Ohio LDCs ignored that rule, which contributed to the riser failure problem in Ohio. For that reason, Columbia and the other LDCs, not their customers, should bear the costs associated with investigating and correcting the riser failure problems.

III. UNDER 49 C.F.R. § 192.613 , COLUMBIA AND OTHER LOCAL DISTRIBUTION COMPANIES HAVE BEEN RESPONSIBLE FOR CONDUCTING THE ACTIVITIES THE COMMISSION HAS ORDERED THEM TO CONDUCT TO ADDRESS GAS RISER LEAKS SO THE COSTS OF CONDUCTING SUCH ACTIVITIES ARE NOT OUT-OF-THE-ORDINARY EXPENDITURES.

As the OCC previously stated in its Comments in Case 05-463-GA-COI, the utilities should not recover any of the money associated with remedying the riser failure problem because operating companies such as Columbia have always had the responsibility to investigate failures, check for leaks, prevent failures, and initiate programs to recondition or phase out unsatisfactory conditions or segments under the

[8] Memo contra at 4, fn 5.

[9] Case No. 05-463, Staff Report at 11.

natural gas pipeline safety regulations.[10] Columbia claims that the investigation ordered by the Commission is an out-of-the-ordinary expenditure compelled by the Commission. However, the Federal Department of Transportation has required pipeline owners and operators, such as local distribution companies ("LDCs") to investigate and replace faulty pipes under 49 C.F.R. § 192.613:

> (a) Each operator shall have a procedure for continuing surveillance of its facilities to determine and take appropriate action concerning changes in class location, failures, leakage history, corrosion, substantial changes in cathodic protection requirements, and other unusual operating and maintenance conditions.
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> (b) If a segment of pipeline is determined to be in unsatisfactory condition but no immediate hazard exists, the operator shall initiate a program to recondition or phase out the segment involved, or, if the segment cannot be reconditioned or phased out, reduce the maximum allowable operating pressure in accordance with §(a) and (b).

LDCs and all other operators of pipeline facilities have had these responsibilities for many years. This provision and related provisions were first established in 1982 and last amended in 1998, so that LDCs have known about these responsibilities at least for 9 years. These responsibilities are the same as those the Commission has ordered for the LDCs, such as Columbia, with regard to problems with part of the distribution system, the riser.

Additionally, 49 C.F.R. § 192.617 requires "each operator" to:

> Establish procedures for analyzing accidents and failure, including the selection of samples of the failed facility or equipment for laboratory examination, where appropriate, for the purpose of determining the causes of the failure and minimizing the possibility of a recurrence.

[10] Case 05-463, OCC Comments at 20. Case 05-463.

Yet, Columbia denies that it is responsible for analyzing the failure of the gas risers, for taking samples of the failed gas risers or for laboratory examination of the failed risers.[11]

Columbia claims that because its tariff states that the customer shall own and maintain the customer service line, LDCs are somehow excused from their responsibilities under state and federal rule to find, investigate, correct, prevent leaks and "phase out" "unsatisfactory condition[s]."[12] It is true that the tariff has always been interpreted to require customers to pay for the replacement of leaking service lines after the LDC identifies them. But those tariff provisions have never been held to require customers to check for leaks in their service lines, to investigate the cause of service line leaks, to investigate faulty parts or to initiate programs to phase out unsatisfactory segments or conditions.

Rather, LDCs have always been held responsible for surveying service lines, for detecting leaks, for turning off the gas when there is a leak and for initiating programs to recondition or phase out unsatisfactory segments involved. The Commission's directive to LDCs to survey for leaks has been a responsibility of LDCs for many years and thus Columbia should not be heard to argue that the costs of the Commission's directive constitute out-of-the-ordinary expenditures.

Columbia attempts to deny almost all of its responsibilities for gas riser safety in its memorandum contra.[13] Columbia admits that it is responsible for ensuring that only qualified individuals install gas risers but denies that it is responsible for maintaining a list of qualified individuals. Yet Columbia is clearly responsible for maintaining records

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[11] Memo Contra at 5.

[12] Memo Contra at 5.

[13] Memo Contra 3-6.

of qualified individuals under 49 C.F.R. 192.807. Perhaps Columbia knows of a way in which it can ensure that only qualified individuals install gas risers without providing customers with a list of qualified providers. But clearly, if Columbia chooses not to provide property owners a list of qualified individuals and a property owner hires an individual to install a gas riser who is not qualified, Columbia must be held responsible.

Finally, Columbia states that nothing in the pipeline safety regulations require LDCs to identify, remove, submit for testing, and replace hundreds of customer-owned risers; to pay for outside consultants for a statistical analysis of existing customer-owned risers; or to conduct an inventory of more than 1.2 million service locations. But that is exactly what 49 C.F.R. §§192. 613 and 192.617, quoted above, directs all operators, including LDCs, to do. Those sections requires operators to survey for leaks, identify problems, take appropriate action, to initiate programs to phase-out or recondition unsatisfactory segments, to establish procedures for analyzing failures, "including the selection of samples of the failed facility or equipment for laboratory examination, where appropriate, for the purpose of determining the causes of the failure and minimizing the possibility of a recurrence." Columbia cannot deny that it has been responsible to meet those directions under federal and state regulation for many years. For that reason, the related expenditures are not extraordinary and are in its current rates for gas service. Therefore, recovery by Columbia for the same expenses through a deferral would be a double recovery.

Rather than seeking authority from the PUCO to defer these costs, Columbia has available the opportunity under law to file a rate case for new rates effective November 1, 2008 to recover the increased costs of surveying and leak detection that may be resulting from the Commission's order, though other costs, including decreases in costs, will be contemporaneously considered. If the LDCs do not choose to file a rate case to collect these costs, the LDCs are obviously collecting sufficient revenues from the base rates that are currently in effect to cover their costs which include costs related to surveying, detecting, correcting, and phasing out unsatisfactory conditions. The Commission has the authority to enforce the pipeline safety rules, without granting deferral authority under its own Rule 4901:1-16-13.

IV. IN ORDER FOR COLUMBIA TO SEEK AN APPROPRIATE DEFERRAL COLUMBIA MUST NOT SEEK EXPENSES PREVIOUSLY INCURRED AND MUST IDENTIFY SPECIFICALLY THE EXPENSES IT INTENDS TO DEFER.

In its memorandum contra, Columbia mistakenly asserts that the rule against retroactive rate making does not apply to deferrals by citing to three cases that are inapplicable. To support its argument, Columbia cites *River Gas Company,* which distinguishes a GCR proceeding from a rate case.[14] Columbia also cites *Consumers' Counsel,* which addresses the recovery of allowance for funds used during construction after an asset is completed rather than retroactive deferring of expenses.[15] Columbia additionally cites *Columbus Southern Power,*[16] which is not relevant because that case addressed a deferral that did not begin until after approval was granted.[17]

In this case, Columbia is attempting to recover costs that it incurred before the date upon which the Commission approves the deferral (if the deferral is approved). The

[14] *River Gas Company v. Public Utilities Commission of Ohio,* 69 Ohio St. 2d 509 (March 3, 1982).

[15] *Office of Consumers' Counsel v. Public Utilities Commission of Ohio,* 6 Ohio St. 3d 377 (August 31, 1983).

[16] Memo Contra at 6.

[17] *Columbus Southern Power Company v. Public Utilities Commission of Ohio,* Case No. 67 Ohio St. 3d 535 (November 3, 1993).

rule against retroactive ratemaking addresses the timing of the Commission's approval and does not permit the Commission to direct a company to go back in time after it has approved recovery of costs to increase or decrease the costs a company can recover from customers.

Retroactive ratemaking was first addressed in *Keko Industries.*[18] The Court identified the issue as one in which the Court had to determine whether the remedy of restitution applies to public utilities or its customers.[19] In that case, the Court determined that the remedy of restitution does not apply to customers of public utilities.[20] Similarly, the remedy of restitution does not apply to public utilities when the Court subsequent to a holding of the Commission, finds that the rates the Commission granted the utility are too low.[21] For the same reason, the Commission should not approve deferrals of costs that were incurred before its approval. Restitution does not apply to allowing a company to defer costs previously incurred and will not apply to the recovery of those costs that were incurred before the deferral was approved in the next rate case. Under the concept of no retroactivity or no restitution, the Commission cannot allow either the deferral or recovery of costs incurred before approval by the Commission.

Columbia also states that it is requesting deferral authority for "additional, unanticipated costs."[22] The Commission should not grant the LDCs blanket authority in the manner Columbia has requested. The Commission should require the LDCs to

[18] *Keco Industries, Inc. v. the Cincinnati & Suburban Bell Telephone Company,* 166 Ohio St. 254 (March 27, 1957).

[19] Id at 255.

[20] Id.

[21] *Cleveland Electric Illuminating Company v. Public Utilities Commission of Ohio,* 46 Ohio St. 2d 103 (May 5, 1976).

[22] Memo Contra at 8.

clearly define the specific costs they seek to be deferred so that LDCs do not defer categories of items that the Commission had not intended the LDCs to defer. To do otherwise is contrary to the Commission's practice with regard to deferrals. Rather the Commission expects clarity in identifying exactly what costs should be incorporated into deferrals before they are deferred.[23]

Deferrals are not meant to replace rate case procedures. Rather they are meant to be the exception to the rule. In fact, the Commission denies deferrals on the basis that a utility does not show that the deferral of expenses was necessary to maintain the utility's financial integrity.[24] Because Columbia has made no effort to show that the deferral of the expenses associated with its compliance with the Commission's directives in Case No. 05-463 is necessary to maintain Columbia's financial integrity, Columbia should not be permitted to defer the expenses.

V. THE COMMISSION SHOULD NOT PERMIT COLUMBIA TO COLLECT PREVIOUSLY INCURRED COSTS THROUGH R.C. 4929.11 BECAUSE THE LDCS ARE NOT FACING EXTREME VOLATILITY.

Columbia then states that it will request the recovery of previously incurred costs through R.C. 4929.11.[25] Pursuant to Commission precedent, Columbia's proposal to seek recovery of the previously incurred gas riser costs is not appropriate. In the case in which the Commission granted gas companies the right to recover uncollectible expenses through R.C. 4929.11, the Commission found that "when extreme volatility exists, an

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[23] *Ohio Edison Company, The Cleveland Electric Illuminating Company and the Toledo Edison Company for Authority to Modify Certain Accounting Practices and for Tariff Approvals,* Case No. 05-1126-EL-AAM, Entry on Rehearing (January 25, 2006) at 3.

[24] *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in Electric Rates in its Service Area,* Case No. 91-410-EL-AIR, Opinion and Order (May 12, 1992) at 106.

[25] Memo Contra at 7.

expense recovery mechanism that moves with the volatility to allow a more contemporaneous recovery of expenses or costs is an understandable business approach."[26] Extreme volatility is not on point in this case.

Additionally, as discussed above in Section II, Columbia and other LDCs are responsible for the gas riser problem because they have apparently not been inspecting each non-welded joint, including those of field assembled risers, as required under 49 C.F.R. 192.273. For that reason, the LDCs should not recover the costs of the investigation under R.C. 4929.11 or any other mechanism. As addressed in Section III, the costs associated with investigating and correcting the unsatisfactory riser situation are already incorporated in the LDCs' base rates and to permit Columbia to recover through 4929.11 costs that are already in base rates is inappropriate.

VI. CONCLUSION

For the reasons stated above, the Commission should require Columbia and other LDCs to bear the cost of the investigation and replacement of leaking natural gas risers and the PUCO should not authorize Columbia to defer gas costs associated with its compliance with the Commission's directives in Case No. 05-463. The LDCs have not complied with 49 C.F.R. 192.273, in failing to inspect the joints of field assembled risers, and should be held responsible for the costs of the investigation and replacement of those risers. Moreover, the gas costs associated with those directives are not extraordinary because the U.S. Department of Transportation years ago already directed Columbia to conduct those activities. Additionally, the Commission should not permit Columbia to defer those costs because Columbia is requesting retroactive expenses that were incurred

[26] 03-1127-GA-UNC, Finding and Order (December 17, 2003) at 11.

before the Commission has approved the deferral. Moreover, deferral is intended to be a limited exception to the use of rate cases for the recovery of increasing expenses and should only be permitted when the utility can show that the deferral is necessary to maintain its financial integrity.

Finally, the Commission should not permit Columbia to recover the costs of the gas riser investigation under R.C. 4929.11 because the gas riser issue is not related to volatile rates, which the Commission has previously used to justify the recovery of costs through R.C. 4929.11.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Reply to Memorandum Contra of Columbia Gas of Ohio, Inc. by the Office of the Ohio Consumers' Counsel has been served upon the following parties via first class U.S. mail, postage prepaid, this 19th of April 2007.

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