FILE

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 OHIO PARTNERS FOR AFFORDABLE ENERGY

Pursuant to Ohio Administrative Code ("O.A.C.") 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 Ohio Partners for Affordable Energy ("OPAE"), filed on April 3, 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.[1] 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 re-

[1] A reportable incident generally involves the release of natural gas from a pipeline which results in a death or injury requiring in-patient hospitalization, or property damage of $50,000 or more. 49 C.F.R. § 191.3; O.A.C. Rule 4901:1-16-01(I).

moval 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 April 3, 2007, OPAE filed a Motion to Intervene and Comments, urging the Commission to reject Columbia's application. OPAE's arguments largely parallel those of the Office of Consumers' Counsel ("OCC"), which were filed on March 21, 2007. Columbia does not oppose OPAE'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 OPAE's comments are comprised of unsupported and erroneous assertions that provide no basis whatsoever for rejecting Columbia's application to defer costs associated with the Commission's riser investigation.

II. Argument

At the outset, it is important to identify what is, and is not, at issue in this proceeding. The issue, simply stated, is whether Columbia should be permitted to defer, for accounting purposes, the substantial and extraordinary expenses it is incurring to comply with orders issued by the Commission in Case No. 05-463-GA-COI. The ultimate recoverability of those costs will be

addressed in a separate, future proceeding in which all interested parties will have the opportunity to be heard. Columbia is prepared, at the appropriate time, to demonstrate that it has satisfied all material obligations with respect to customer-owned gas service risers, and that it is fully entitled to recover the costs incurred as a result of the Commission's investigation. Those issues, however, are simply not before the Commission in this proceeding.

As a result, a number of OPAE's arguments require only brief response. OPAE, like OCC, argues that the recoverability of these costs should be determined in a base rate proceeding.[2] While there are sound reasons why that is not the case,[3] that contention is clearly premature.

OPAE also suggests that Columbia's requested deferrals are barred by the rule against retroactive ratemaking.[4] It is well-established that an accounting deferral, in and of itself, does not constitute retroactive ratemaking, even if it affects the amounts which are ultimately recovered by the utility.[5] As a result, the approval of Columbia's requested deferrals would not, under any circumstances, constitute retroactive ratemaking.

OPAE's basic contention, like that of OCC, is that local gas distribution companies, such as Columbia, have always had certain obligations with respect to gas service risers, and as a result, Columbia's petition to defer certain costs should be denied because some or all of those costs are already reflected in Columbia's base rates for gas service.[6] That assertion is clearly erroneous. It is based on a pervasive misunderstanding of both Columbia's ongoing obligations

[2] OPAE Comments at 5.
[3] Columbia Gas of Ohio, Memorandum Contra to the Motion to Intervene and Comments of the Office of the Consumers' Counsel at 6-7.
[4] OPAE Comments at 6.
[5] *Office of Consumers' Counsel v. Public Utilities Comm.*, 6 Ohio St.3d 377 (1983).
[6] OPAE Comments at 5-6.

with respect to customer-owned property, and the nature of the costs which Columbia seeks to defer.

OPAE argues, for example, that Columbia is currently responsible for the maintenance of gas service risers, and that "funding" for such activities is therefore included in Columbia's base rates.[7] That contention is simply wrong. Under Columbia's Commission-approved tariff, which carries the force of law,[8] the customer, and not Columbia, is responsible for owning and maintaining the customer service line, which includes the riser.[9] Columbia's only obligation, upon the discovery of leakage or other dangerous conditions involving such customer-owned equipment, is to make the situation safe – including the disconnection of gas service where necessary – and to advise the customer to make the necessary repairs.[10] Columbia has never had the obligation to maintain such equipment,[11] and the cost of such maintenance is therefore not reflected in Columbia's existing base rates.

OPAE further argues that various expenses associated with "testing and sampling" are likewise reflected in base rates, and suggests that Columbia is now paying consultants to develop data it should already possess.[12] In fact, OPAE goes so far as to suggest that Columbia's request to defer such expenses "stretches the bounds of credulity."[13] Once again, those arguments are based upon a fundamental misunderstanding of Columbia's existing obligations with respect to customer-owned equipment, and the nature of the expenses which Columbia seeks to defer.

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[7] *Id* at 5.
[8] *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)
[9] P.U.C.O. No. 2, Second Revised Sheet No. 6, Section 23(b).
[10] *Perry v. East Ohio Gas Co.*, 82 Ohio Law Abs. 584, 164 N.E.2d 774, 779 (Ohio App. 1960); 49 C.F.R. 192.16.
[11] *See, e.g., Voorhees v. Jovingo*, 2005-Ohio-4948, 2005 Ohio App. LEXIS 4481, 2005 WL 2292796 (Ohio App. 2005) at {¶ 42}; *Perry v. East Ohio Gas Co.*, 82 Ohio Law Abs. 584, 164 N.E.2d 774, 779 (Ohio App. 1960).
[12] OPAE Comments at 6.
[13] *Id.*

It is true, of course, that existing law imposes certain obligations with respect to customer service lines. The federal pipeline safety regulations, for example, require an LDC – or "operator" – to conduct periodic leakage surveys.[14] Those regulations also require that each joint be inspected after the installation of a riser,[15] and that new or replaced service lines be pressure-tested.[16]

The expenses associated with these routine activities, however, are *not* the costs which Columbia seeks to defer. Indeed, if such routine expenses were the only costs that Columbia was incurring with respect to gas service risers, it would not have filed the instant application. That, however, is plainly 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 obligations imposed by existing law, at a very substantial cost to those companies.

For example, the pipeline safety regulations require an operator to establish procedures for analyzing accidents and failures, including the selection of samples of "the failed facility or equipment" for laboratory examination, where appropriate,[17] but nothing in existing law requires an LDC to identify, remove, submit for testing, and replace hundreds of customer-owned risers that were neither leaking nor exhibiting any other signs of failure.

Similarly, the pipeline safety regulations require an operator to establish a program of "continuing surveillance of *its facilities*" in order to determine and take appropriate action with respect to changes in leakage history, corrosion, failures, or similar operating and maintenance

[14] 49 C.F.R. § 192.723. In O.A.C. Rule 4901:1-16-03, the Commission has adopted the federal regulations set forth in 49 C.F.R. Part 192.
[15] 49 C.F.R. § 192.273(c).
[16] 49 C.F.R. §§ 192.511 and 192.725.
[17] 49 C.F.R. § 192.617.

conditions,[18] but that provision has no application to customer-owned equipment. Despite OPAE's suggestions to the contrary,[19] nothing in either that regulation or any other provision of law requires an LDC to engage in widespread sampling or testing of customer-owned gas service risers; to generate extensive statistical data concerning such facilities; or to pay outside consultants to undertake such activities.

Finally, while the pipeline safety regulations require periodic leakage surveys, which are conducted every three or five years in areas outside business districts (where most residential customers are located),[20] nothing in existing law requires an LDC, such as Columbia, to conduct a special, one-time inventory of more than 1.2 million service locations 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. Columbia estimates that such a survey will cost approximately $8 million.

The costs of these activities are not only substantial; they are clearly incremental to Columbia's ongoing operations. Since the Company previously had no obligation to undertake such activities, and since its existing base rates were established several years ago, it is readily apparent that those rates do not – and cannot – reflect any of the extraordinary costs resulting from Commission's riser investigation initiated in 2005.[21]

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[18] 49 C.F.R. § 192.613 (emphasis supplied).
[19] OPAE Comments at 6.
[20] 49 C.F.R. § 723(b)(2).
[21] The same thing is true of the incremental costs incurred at Columbia's contact center in order to respond to customer inquiries concerning gas service risers. OPAE terms the request to defer those costs "ludicrous" because it is "common knowledge" that Columbia, along with "most Ohio utilities," has closed certain customer call centers. OPAE Comments at 6. OPAE "suspects" that the savings associated with these closures can "somehow" cover the costs of customer calls relating to risers. *Id.* Apart from the obvious fact that OPAE's unsubstantiated suspicions cannot form the basis for a Commission decision, this argument misses the point. The issue here is not whether Columbia, or any other Ohio utility, has consolidated call centers in order to provide service in a more efficient and cost-effective manner; the issue is whether the extraordinary costs associated with increased calls resulting from a Commission-ordered investigation should be deferred for accounting purposes. Responding to such calls, which concern possible defects in *customer-owned* equipment, are not part of Columbia's ongoing obligations relating to the provision of utility service, and the costs of doing so are clearly not reflected in Columbia's existing base rates.

OPAE concludes with a sweeping statement that urges the Commission to reject the "broad, ill-defined deferrals" requested by Columbia, on the grounds that "these activities have always been Columbia's responsibility," and further claims that "the fact that they have not focused on their responsibilities as a public utility to provide adequate service at just and reasonable rates is not a good reason" for approving the requested deferrals.[22] At best, these arguments are erroneous; at worst, they are highly misleading; and in any event, they are completely and totally unsupported.

In the first place, Columbia's deferral request is hardly "ill-defined." A review of the Company's application shows that it has carefully delineated nine categories of expenses which it proposes to defer, all of which represent extraordinary, incremental expenses resulting directly from the Commission's investigation in Case No. 05-463-GA-COI.

Second, OPAE has provided no definition of "these activities" for which Columbia is supposedly responsible. As noted earlier, a gas utility has no obligation under existing law to inventory, maintain, remove, repair, or replace customer-owned equipment such as gas service risers.

Finally, OPAE provides no support whatsoever for its suggestion that Columbia has somehow failed to provide adequate service at just and reasonable rates. Nor has it provided any information suggesting that Columbia has failed to take any required actions with respect to customer-owned risers. Indeed, Columbia has fully cooperated with the Commission Staff throughout the course of the riser investigation. Unsubstantiated claims such as those offered by OPAE contribute nothing to the resolution of the issues presented in this proceeding, and should be firmly rejected by the Commission.

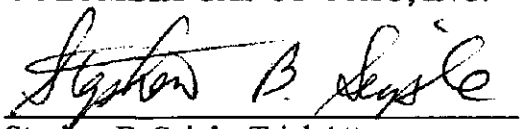
[22] OPAE Comments at 6-7.

III. Conclusion

For the reasons set forth herein, Columbia urges the Commission to reject the arguments contained in the comments of OPAE and approve Columbia'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.



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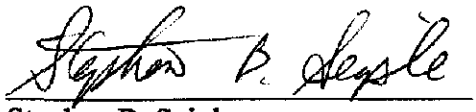
CERTIFICATE OF SERVICE

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 23rd day of April 2007.



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