

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Services.	)	Case No. 08-0072-GA-AIR
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation and for a Change in its Rates and Charges.	)	Case No. 08-0073-GA-ALT
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Change Accounting Methods.	)	Case No. 08-0074-GA-AAM
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Revise Its Depreciation Accrual Rates.	)	Case No. 08-0075-GA-AAM

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**MOTION OF COLUMBIA GAS OF OHIO, INC. TO COMPEL DISCOVERY AND  
REQUEST FOR EXPEDITED RULING**

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Pursuant to Rule 4901-1-23 of the Ohio Administrative Code, Columbia Gas of Ohio, Inc. ("Columbia") respectfully moves for an Entry ordering the Ohio Consumers' Counsel ("OCC") to respond fully to discovery requests seeking information and documents relevant to the subject matter of these proceedings.

As demonstrated in the attached Memorandum In Support, the information and documents sought by Columbia are relevant and discoverable, and the objections interposed by the OCC are without merit. With depositions scheduled for the beginning of October, and the Hearing scheduled for October 14, 2008, the OCC should be ordered to promptly comply with the discovery requests propounded on it by Columbia. Given the time constraints the parties are working under, Columbia, pursuant to Rule 4901-1-12(C), requests expedited review of this

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Motion.

The unsuccessful efforts to resolve this discovery dispute through informal means are summarized in the Affidavit of Timothy R. Bricker, attached as Exhibit A hereto.

Respectfully Submitted,



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Attorneys for Columbia Gas Of Ohio, Inc.

## **MEMORANDUM IN SUPPORT**

### **I. INTRODUCTION.**

On February 1, 2008, Columbia filed its Notice Of Intent To File An Application To Increase Rates And To File An Application For Approval Of An Alternative Rate Plan to commence these proceedings. Subsequently, it filed its Verified Application For Authority To Increase Rates For Gas Distribution Service And For Approval Of An Alternative Regulation Plan ("Application") on March 3, 2008. On August 21, 2008, the Commission filed its Staff Report as to the Application. The OCC, by an August 28, 2008 Entry granting its March 10, 2008 Motion to Intervene, became a party to these proceedings. In that same August 28, 2008 Entry, the Commission set the Hearing on the Application for October 14, 2008.

The OCC has served ten sets of interrogatories and ten sets of requests for the production of documents, totaling 347 interrogatories and 120 requests for the production of documents. Of those for which responses are already due, Columbia has responded without complaint by the OCC.

For its part, Columbia served a total of five interrogatories and four requests for the production of documents. See Columbia Gas of Ohio, Inc.'s Interrogatories, First Set and Request for Production, Second Set (attached collectively as Exhibit B). Two of the interrogatories, Nos. 1 and 3, are intended to obtain the identification of expert/consultant witnesses the OCC plans to call at the Hearing, the subject matter of their testimony, the facts and opinions about which they are expected to testify and the grounds for their opinions. Another interrogatory, No. 2, seeks the identification of lay witnesses and the subject matter of their testimony. The final two interrogatories, Nos. 4 and 5, ask for information related to the OCC's position on Columbia's proposal to implement a Straight Fixed Variable rate design.

On September 2, 2008, the OCC served its responses and objections to this discovery. See OCC's Responses And Objections To Columbia Gas Of Ohio, Inc.'s Interrogatories, First Set (attached as Exhibit C). In sum total, the OCC's responses indicate it "may" call three experts/consultants and provided their names and addresses, but reserved the right to call others, and failed to provide the subject matter of their testimony, the facts and opinions about which they are expected to testify and the grounds for their opinions. Moreover, the OCC's responses completely failed to identify a single lay witness. It provided no other information related to witnesses. In regard to information related to the OCC's position on Columbia's Straight Fixed Variable rate design, the OCC stated its "general position" can be found in unidentified testimony filed in other rate cases that do not involve Columbia, do not relate to Columbia's application, and do not address the Staff Report issued in response to Columbia's application.

Because the OCC's responses were deficient, Columbia sent a letter on September 4, 2008, seeking supplementation. See Exhibit D. Given the tight time constraints the parties are working under to conduct depositions<sup>1</sup> and prepare for the October 14, 2008 Hearing, Columbia asked that the discovery deficiencies be remedied no later than September 9, 2008. Id.

Subsequently, the parties held a conference call on September 9, 2008. See Affidavit of Timothy R. Bricker, Ex. A, at ¶ 5. The OCC indicated it intends to file its objections to the Staff Report by September 22, 2008, its direct testimony by September 29, 2008, and will attempt to identify additional witnesses by September 22, 2008. Id. However, counsel for the OCC

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<sup>1</sup> The OCC has noticed sixteen potential depositions at this point. Because Columbia has not been provided the discovery at issue in this Motion, it has noticed the depositions of the three experts whose names were provided by the OCC. Columbia also has issued an omnibus notice related to fact witnesses.

indicated the OCC could not guarantee the deficiencies would be remedied prior to September 29, 2008,<sup>2</sup> which is only one day before the depositions are currently scheduled to start. Id.

Regardless, the filings the OCC must make by September 22 and 29, 2008 respectively, are not what the discovery served on August 13, 2008 seeks. To be clear, by way of these discovery requests, Columbia is not seeking to obtain the OCC's objections and submitted written testimony. Rather, as detailed below, Columbia simply seeks information and documents that are currently discoverable under the Rules that govern proceedings before the Commission. The OCC knows this information, and yet continues to withhold it from Columbia. For example, it is inconceivable that, at this point of the proceedings, given the OCC's prior experience in other rate cases, the OCC does not know the identity of its potential witnesses, cannot provide Columbia with the expert witness information to which it is entitled, and cannot provide any specificity as to its position on Columbia's rate design. The OCC has attempted to excuse its discovery deficiencies by claiming it is too busy to focus on the instant rate case due to deadlines in other rate cases and that counsel for the OCC does not control the schedule its management works under. See Affidavit of Timothy R. Bricker, Ex. A, at ¶ 5. Such excuses, however, are insufficient as a matter of law to justify failing to comply with the rule-mandated discovery obligations. This Commission should hold the OCC to its obligations.

In regard to the OCC's purported inability to provide the requested information, it is significant to note that in its Motion to Intervene filed six months ago, the OCC expressly stated its "position is therefore directly related to the merits of these cases that are pending before the PUCO," and, because of its "longstanding expertise and experience," its intervention would not

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<sup>2</sup> The September 29, 2008 deadline for filing testimony was premised upon the assumption that the OCC's September 3, 2008 Motion for Extension of Time was granted. However, by way of Entry dated September 9, 2008, the Commission did not grant the full extension of time requested by the OCC. See Entry. Rather, the Commission ordered that all direct testimony be submitted by September 25, 2008.

“unduly prolong or delay” the proceedings. See Motion to Intervene, at 2-3. Yet, in response to Columbia’s discovery requests, the OCC has indicated that it now does not know what position it will be taking and cannot provide the identity of its potential witnesses until a later date. See Affidavit of Timothy R. Bricker, Ex. A, at ¶ 5.

In short, Columbia has dutifully responded, or is in the process of responding, to ten sets of interrogatories and requests for production propounded upon it by the OCC in recent months. In the interests of confirming that discovery is a two-way street, the Commission should grant the present Motion and require immediate and complete responses to the discovery sought by Columbia.

## **II. LAW AND ARGUMENT.**

### **A. The Rules Governing This Commission Allow For Liberal Discovery And Provide For The Remedy Of Compelling Discovery In The Event Of Non-Compliant Responses.**

Pursuant to Rules 4909-1-19 and 4909-1-20 of the Ohio Administrative Code, Columbia is permitted to serve interrogatories and requests for production of documents upon the OCC. Indeed, Columbia “may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding.” OAC Rule 4901-1-16(B). Where, as here, a party has exhausted all other reasonable means of resolving a discovery dispute, it may seek an order compelling discovery under Rules 4901-1-23(A)(1) and 4901-1-23(A)(2) of the Ohio Administrative Code. Thus, it has been held by this Commission that “Any party who requests it should be afforded the opportunity to conduct reasonable and relevant discovery before a scheduled hearing date.” May 25, 1999 Entry In the Matter of R.L. Altomare v. Columbia Gas Company, Case No. 98-1078-GA-CSS (compelling responses to interrogatories and requests for production of documents).

The broad scope of discovery available to parties is equally applicable to the realm of expert discovery. Rule 4901-1-16 (C) of the Ohio Administrative Code provides that any party may require another party to identify each expert witness expected to testify at a hearing and to state the subject matter on which the expert will testify. Moreover, a party may conduct discovery as to "facts or data known or opinions held by the expert which are relevant to the stated subject matter." Rule 4901-1-16(C); see also August 10, 2007 Entry In the Matter of the Complaints of S.G. Foods, Inc., et al. v. The Cleveland Electric Illuminating Company, et al., Case Nos. 04-28, 05-803, 05-1011, 05-1012 (ordering complainants to provide complete responses to discovery regarding expert witnesses, including interrogatories and document requests).

**B. The OCC Has Failed To Provide Adequate Discovery Responses.**

The foregoing law expressly mandates that the OCC comply with the discovery requests propounded on it by Columbia. Columbia addresses the OCC's discovery deficiencies in turn as follows:

**Interrogatory Nos. 1 and 3.** Through Interrogatory Nos. 1 and 3, Columbia simply seeks expert/consultant information it is entitled to under Rule 4901-1-16(C) of the Ohio Administrative Code, including (a) an identification of the experts that the OCC plans to call at the Hearing; (b) the subject matter on which each expert is expected to testify; (c) the substance of the facts and opinions to which each expert is expected to testify; and (d) a summary of the grounds for each and every opinion of each expert. Instead of providing this information, the OCC merely identified by name and address three experts it plans to have testify at the Hearing. It did not respond to the other subparts of the Interrogatories apart from providing a generalized list of topics.

Tellingly, the OCC does not interpose any objections that the information sought is not relevant. Nor can it given the nature of the information. Instead, the OCC purports to rely on the attorney-client privilege and/or attorney work product doctrine to justify its failure to respond, but does not identify any specific information or categories of information that may be protected. The OCC's other "justification" for not providing substantive responses is equally unavailing. The OCC cannot baldly claim that it has not yet made determinations regarding the subject matter, nature and basis of the expert testimony it plans to proffer, and state that it will supplement its answers under Rule 4909-1-16(D). That rule requires supplementation in cases where "[d]iscovery responses which are complete" may need to be supplemented with subsequently acquired information. Here, the OCC has not provided complete responses to begin with, and there is, therefore, nothing to supplement.

On a more practical note, it would strain credibility that at this point in the proceedings, the OCC would not be able to provide the information sought. Columbia's application and testimony were filed approximately six months ago. With just 13 days before their direct testimony must be filed, the OCC should not only be able to identify all of its experts, but also should be able to provide the additional information sought by Columbia in accordance with Rule 4901-1-16(C). The ten sets of interrogatories and requests for production served by the OCC on Columbia and dutifully responded to, or in the process of being responded to, by Columbia further attest to the fact that the OCC is aware of the issues it plans to proffer testimony on, and, should not be permitted to impede Columbia at this late juncture. The information sought by Columbia is limited in scope to the public testimony the OCC's experts will be giving in these proceedings, and is not intended to delve into any privileged areas.



Simply stated, the OCC has not shown, and cannot show, any legitimate basis for denying Columbia's expert discovery that is inherently relevant to the subject matter of these proceedings. The Commission should compel responsive answers to this discovery.

**Interrogatory No. 2.** The OCC also has stymied Columbia's attempt through Interrogatory No. 2 to learn the identity of any non-expert witnesses the OCC plans to call at the Hearing, as well as the subject matter on which each will testify. In fact, the OCC failed to identify any non-expert witnesses at all.<sup>3</sup> Under Rule 4901-1-19(B) of the Ohio Administrative Code, an interrogatory may "elicit facts, data, or other information known or readily available to the party upon whom the interrogatories are served." The identity of any OCC witnesses to be called at the Hearing (and the subject matter about which they will testify) is information readily available to the OCC, and, pursuant to Rule 4901-1-16, undeniably "relevant to the subject matter of [this] proceeding." Columbia is entitled to adequately prepare for depositions and the Hearing, and to timely notice the depositions of any witnesses the OCC plans to call at the Hearing. In response to this relevant Interrogatory, the OCC again objected on attorney-client privilege/attorney work product grounds without even attempting to explain the grounds for such an objection. This is because the information is not so protected given the public nature of these proceedings. The OCC should be compelled to provide the requested information.

**Interrogatory No. 4.** Through Interrogatory No. 4, Columbia seeks information addressing the OCC's position on Columbia's proposal to implement a Straight Fixed Variable rate design in this case. This is patently relevant and discoverable within the meaning of Ohio Administrative Code Rule 4901-1-16(B). The OCC did not interpose any relevancy objections. Instead, it simply stated its "general position" on the issue of Straight Fixed Variable rate design

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<sup>3</sup> The OCC again indicates that it has not yet identified the non-expert witnesses it plans to call at the Hearing and will seasonably supplement its response under Rule 4909-1-16(D). As discussed above, that is not a valid justification for non-compliance where a complete response has not been provided in the first place.

can be found in unidentified testimony in three other rate cases. Simply referring to unidentified testimony, filed in other PUCO cases, that does not involve Columbia, does not relate to Columbia's Application, and does not address the Staff Report issued in response to Columbia's Application, is not responsive. While the testimony may shed light on the OCC's "general position" about a Straight Fixed Variable rate design, Interrogatory No. 4 asked for information related to the specific position the OCC has with respect to Columbia's proposal for the same. It is unreasonable to believe that at this point in time, the OCC's position is not established. As before, such information cannot be the subject of attorney-client privilege/attorney work product objections, and, in any event, the OCC provides no indication as to its grounds for such objections. Simply stated, Columbia is entitled to know the basis for the OCC's challenge to its proposal.

In addition, because it appears the OCC is relying on testimony from other cases for its "general position," it is obligated to do more than simply cite to the other cases. It also must produce the materials or information relied upon, created, utilized, etc., by the persons testifying which are relevant to that general position. Related to this, Interrogatory No. 4 is not "unduly burdensome" as the OCC claims. An OCC Press Release from four years ago indicates that as part of an "enhanced records retention schedule," it will "[p]ermanently retain documents related to utility cases in electronic format." See May 20, 2004 News Release (attached as Exhibit E). This suggests that the OCC has retained documents relevant to this issue, and the documents are in an accessible format such that it would not be unduly burdensome to locate and produce them.

**Interrogatory No. 5.** Also related to the Straight Fixed Variable rate design proposed by Columbia, Interrogatory No. 5 sought the production of interactive computer files in Microsoft Excel format that contain any calculations developed by the OCC or its witnesses that support

the OCC's position on said design. The OCC has failed to produce the requested information, even though it does not dispute its relevance. Instead, the OCC simply interposes the same objections dealing with attorney-client privilege and attorney work product protection, without providing any justification for those objections. It also objects on the ground of undue burden. However, if the files exist, they are electronic and can simply be copied to a disc or e-mailed. The requested discovery is relevant and should be produced immediately, along with any data that forms the basis for the calculations referenced in Interrogatory No. 5.

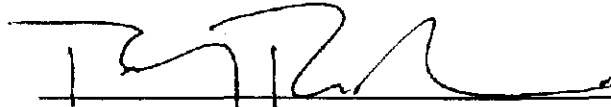
**C. This Motion Should Be Adjudicated On An Expedited Basis.**

Pursuant to Rule 4901-1-12(C) of the Ohio Administrative Code, "any motion may include a specific request for an expedited ruling." Here, expedited treatment of this Motion is clearly warranted. The parties are in the process of scheduling depositions to begin on October 1, 2008. In particular, Columbia noticed on September 4, 2008, the depositions of the three identified experts of the OCC (and any other witnesses the OCC may later identify) for the first three days of October. Were the regular fifteen-day response period afforded the OCC in this case, the Commission would, at the earliest, be able to consider this Motion on September 25, 2008, which is only six days before the start of depositions. Expedited treatment would enable the Commission to promptly issue a ruling, and would allow Columbia, for the reasons discussed above, to obtain the discovery it is entitled to with sufficient time before the noticed depositions.

**III. CONCLUSION.**

Based on the foregoing, Columbia respectfully requests that the Commission, on an expedited basis, issue an Entry compelling the OCC to remedy its outstanding discovery deficiencies.

Respectfully Submitted,



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Attorneys for Columbia Gas Of Ohio, Inc.

### CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion Of Columbia Gas Of Ohio, Inc. To Compel Discovery And Request For Expedited Ruling was served upon all parties of record by e-mail and regular, U.S. mail, postage prepaid, on this 10<sup>th</sup> day of September, 2008.

  
Timothy R. Bricker (0061872)

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822-002:212252

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Services.	) ) ) )	Case No. 08-0072-GA-AIR
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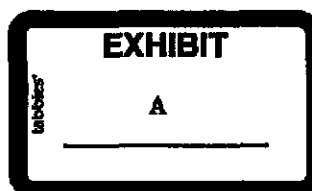
**AFFIDAVIT OF TIMOTHY R. BRICKER**

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STATE OF OHIO                    )  
  ) ss:  
COUNTY OF FRANKLIN        )

Timothy R. Bricker, being first duly sworn, states as follows:

1. I am a partner in the law firm of Carpenter Lipps & Leland LLP and one of the attorneys for Columbia Gas of Ohio, Inc. ("Columbia").
2. The Columbia Gas of Ohio, Inc.'s Interrogatories, First Set, was served upon the Ohio Consumers Counsel ("OCC") on August 13, 2008 and contained various interrogatories and related document requests. A true and correct copy of that document is attached as Exhibit B to the Motion Of Columbia Gas Of Ohio, Inc. To Compel Discovery And Request For Expedited Ruling ("Motion").




3. On September 2, 2008, the OCC served its Responses and Objections To Columbia Gas Of Ohio, Inc.'s Interrogatories, First Set. A true and correct copy of that document is attached as Exhibit C to the Motion.

4. In an effort to informally resolve the discovery deficiencies of the OCC, I sent a letter on behalf of Columbia on September 4, 2008, to counsel for the OCC, asking that these deficiencies be remedied no later than September 9, 2008. A true and correct copy of that letter is attached as Exhibit D to the Motion.



5. On September 9, 2008, a discovery conference was held between counsel for Columbia and counsel for the OCC. During that conference, the OCC indicated it intends to file its objections to the Staff Report by September 22, 2008, its direct testimony by September 29, 2008, and will attempt to identify additional witnesses by September 22, 2008. However, counsel for the OCC indicated the OCC could not guarantee the deficiencies would be remedied prior to September 29, 2008. Counsel for the OCC also indicated the OCC cannot provide the requested information until a later date because it has not had time to focus on the instant rate case due to deadlines in other rate cases and that its counsel does not control the schedule of its management in making decision related to this matter.

**FURTHER AFFIANT SAYETH NAUGHT.**

  
Timothy R. Bricker

Sworn to before me and subscribed in my presence this 10<sup>th</sup> day of September, 2008.

822-002:212255

  
Notary Public  
  
KARLA LEBEAU  
NOTARY PUBLIC  
STATE OF OHIO  
Comm. Expires  
JULY 10, 2010



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**INTERROGATORIES OF  
COLUMBIA GAS OF OHIO, INC.  
TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL  
FIRST SET**

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Pursuant to Ohio Administrative Code § 4901-1-19, Columbia Gas of Ohio, Inc. ("Columbia"), propounds the following interrogatories to be answered by the Office of the Ohio Consumers' Counsel ("OCC") in writing under oath, within twenty (20) days of service hereof. These interrogatories shall be deemed to be continuing so as to require supplementary answers between the time the answers are served and the time of hearing, in accordance with Ohio Administrative Code § 4901-1-16(D). An electronic response should be provided to the extent possible, with hard copies of materials not available electronically, to:

Stephen B. Seiple



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Columbus, OH 43216-0117  
Email: sseiple@nisource.com

#### INSTRUCTIONS FOR ANSWERING

(1) Representative. As used herein, the term "representative" means any and all agents, employees, servants, officers, directors, attorneys, or other persons acting or purporting to act on behalf of the person in question.

(2) Person. As used herein, the term "person" means any natural individual in any capacity whatsoever or any entity or organization, including divisions, departments, and other units therein, and shall include, but not be limited to, a public or private corporation, partnership, joint venture, voluntary or unincorporated association, organization, proprietorship, trust, estate, governmental agency, commission, bureau, or department.

(3) Document. As used herein, the term "document" means any medium upon which intelligence or information can be recorded or retrieved, and includes, without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, periodical, letter, memorandum (including any memorandum or report of a meeting or conversation), invoice, bill, order form, receipt, financial statement, accounting entry, diary, calendar, telex, telegram cable, report, record, contract, agreement, study, handwritten note, draft, working paper, chart, paper, print, laboratory record, drawing, sketch, graph, index, list, tape, photograph, microfilm, data sheet or data processing card, electronic mail, computer discs or tapes, or computer-produced interpretations thereof, or any other written, recorded, transcribed, punched, taped, filmed, or

graphic matter, however produced or reproduced, which is in your possession, custody, or control or which was, but is no longer, in your possession, custody, or control.

(4) Communication. As used herein, the term "communication" means any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreement, and other understandings between or among two or more persons.

(5) Identification. As used herein, the terms "identification," "identify," or "identity," when used in reference to (a) a natural individual, require you to state his or her full name and residential and business address; (b) a corporation, require you to state its full corporate name and any names under which it does business, its state of incorporation, the address of its principal place of business, and the address of all of its offices in Ohio; (c) a business, require you to state the full name or style under which the business is conducted, its business address or addresses, the types of businesses in which it is engaged, the geographic areas in which it conducts those businesses, and the identity of the person or persons who own, operate, and control the business; (d) a document, require you to state the number of pages and the nature of the document (e.g., letter of memorandum). Its title, its date, the name or names of its authors and recipients, and its present location and custodian; (e) a communication, require you, if any part of the communication was written, to identify the document or documents which refer to or evidence the communication, and, to the extent that the communication was nonwritten, to identify the person participating in the communication and to state the date, manner, place, and substance of the communication.

(6) Identification of documents. With respect to each interrogatory, in addition to supplying the information requested, you are to identify all documents that support, refer to, or evidence the subject matter of each interrogatory and your answer thereto.

If any or all documents identified herein are no longer in your possession, custody, or control because of destruction, loss, or any other reason, then do the following with respect to each and every such document: (a) describe the nature of the document (e.g., letter of memorandum); (b) state the date of the document; (c) identify the persons who sent and received the original copy of the document; (d) state in as much detail as possible the contents of the document; and (e) state the manner and date of disposition of the document.

If you contend that you are entitled to withhold from production any or all documents identified herein on the basis of the attorney-client privilege, the work-product doctrine, or other ground, then do the following with respect to each and every document: (a) describe the nature of the document (e.g., letter of memorandum); (b) state the date of the document; (c) identify the persons who sent and received the original and a copy of the document; (d) state the subject matter of the document; and (e) state the basis upon which you contend you are entitled to withhold the document from production.

(7) Contention Interrogatories. When an interrogatory requires you to "state the basis of" a particular claim, contention, or allegation, state in your answer the identity of each and every communication and each and every legal theory that you think supports, refers to, or evidences such claim, contention, or allegation.

(8) The Word "Or." As used herein, the word "or" appearing in an interrogatory should not be read so as to eliminate any part of the interrogatory, but, whenever applicable, it should

have the same meaning as the word "and." For example, an interrogatory stating "support or refer" should be read as "support and refer" if an answer that does both can be made.

(9) All information is to be divulged which is in your possession or control or within the possession and control of your attorneys, investigators, agents, employees, or other representatives of you or your attorney.

(10) Where an interrogatory calls for an answer in more than one part, each part should be separated in the answer so that the answer is clearly understandable.

(11) You are reminded that all answers must be made separately and fully, and that an incomplete or evasive answer is a failure to answer.

(12) You are under a continuing duty to seasonably to supplement your response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, the identity of any person expected to be called as an expert witness at hearing, and the subject matter of which he is expected to testify, and to correct any response which you know or later learn is incorrect.

### INTERROGATORIES

(1) With respect to each and every expert whom you expect to call as an expert witness at hearing, do the following:

(a) Identify him or her;

(b) State the subject matter on which he or she is expected to testify;

(c) State the substance of the facts and opinions to which he or she is expected to testify; and

(d) Set forth a summary of the grounds for each and every opinion of the expert.

(2) List all other witnesses which you intend to call at the hearing scheduled for this case, and state the subject matter on which he or she is expected to testify.

(3) Has the OCC retained the services of any consultants for purposes of analyzing the issues in this case, or for the purpose of assisting the OCC with the preparation of testimony? If so, with respect to each and every consultant do the following:

- (a) Identify him or her;
- (b) State the subject matter about which he or she has been retained to assist the OCC.
- (c) Provide copies of the Request For Proposal or other bid solicitation document used to solicit bids for the hiring of the consultant as well as all of the responses to the bid solicitation document received by the OCC
- (d) Provide copies of all studies or analyses or reports provided to the OCC by such consultants.

(4) Please provide all Documents and Communications (as those terms are defined above), including but not limited to, e-mails, letters, correspondence, reports, analyses, studies, workpapers, data, and source documents that address the OCC's position on Columbia's proposal to implement a Straight Fixed Variable rate design in this case.

(5) Please provide interactive computer files in Microsoft Excel format that contain any calculations developed by the OCC or its witnesses in this case in support of any OCC position related to Columbia's proposed implementation of a Straight Fixed Variable rate design in this case.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Interrogatories of Columbia Gas of Ohio, Inc. to the Office of the Ohio Consumer's Counsel was served upon all parties of record by email and regular U. S. mail this 13<sup>th</sup> day of August 2008.

---

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**COLUMBIA GAS OF OHIO, INC.**

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbia )	
Gas of Ohio, Inc. for Authority to Amend Filed )	Case No. 08-0072-GA-AIR
Tariffs to Increase the Rates and Charges for )	
Gas Distribution Service. )	

In the Matter of the Application of Columbia )	
Gas of Ohio, Inc. for Approval of an Alternative )	Case No. 08-0073-GA-ALT
Form of Regulation and for a Change in its )	
Rates and Charges. )	

In the Matter of the Application of Columbia Gas )	
of Ohio, Inc. for Approval to Change Accounting )	Case No. 08-0074-GA-AAM
Methods. )	

In the Matter of the Application of Columbia )	
Gas of Ohio, Inc. for Authority to Revise its )	Case No. 08-0075-GA-AAM
Depreciation Accrual Rates. )	

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**REQUEST FOR PRODUCTION OF  
COLUMBIA GAS OF OHIO, INC.  
TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL  
SECOND SET**

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Pursuant to Ohio Administrative Code § 4901-1-19, Columbia Gas of Ohio, Inc. ("Columbia"), propounds the following Requests for Production to be answered by the Office of the Ohio Consumers' Counsel ("OCC") in writing under oath, within twenty (20) days of service hereof. These Requests for Production shall be deemed to be continuing so as to require supplementary answers between the time the answers are served and the time of hearing, in accordance with Ohio Administrative Code § 4901-1-16(D). An electronic response should be provided to the extent possible, with hard copies of materials not available electronically, to:

Stephen B. Seiple

Lead Counsel  
Columbia Gas of Ohio, Inc.  
200 Civic Center Drive  
P.O. Box 117  
Columbus, OH 43216-0117  
Email: sseiple@nisource.com

#### INSTRUCTIONS FOR ANSWERING

(1) Representative. As used herein, the term "representative" means any and all agents, employees, servants, officers, directors, attorneys, or other persons acting or purporting to act on behalf of the person in question.

(2) Person. As used herein, the term "person" means any natural individual in any capacity whatsoever or any entity or organization, including divisions, departments, and other units therein, and shall include, but not be limited to, a public or private corporation, partnership, joint venture, voluntary or unincorporated association, organization, proprietorship, trust, estate, governmental agency, commission, bureau, or department.

(3) Document. As used herein, the term "document" means any medium upon which intelligence or information can be recorded or retrieved, and includes, without limitation, the original and each copy, regardless of origin and location, of any book, pamphlet, periodical, letter, memorandum (including any memorandum or report of a meeting or conversation), invoice, bill, order form, receipt, financial statement, accounting entry, diary, calendar, telex, telegram cable, report, record, contract, agreement, study, handwritten note, draft, working paper, chart, paper, print, laboratory record, drawing, sketch, graph, index, list, tape, photograph, microfilm, data sheet or data processing card, electronic mail, computer discs or tapes, or computer-produced interpretations thereof, or any other written, recorded, transcribed, punched, taped, filmed, or

graphic matter, however produced or reproduced, which is in your possession, custody, or control or which was, but is no longer, in your possession, custody, or control.

(4) Communication. As used herein, the term "communication" means any oral or written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, dialogues, discussions, interviews, consultations, agreement, and other understandings between or among two or more persons.

(5) Identification. As used herein, the terms "identification," "identify," or "identity," when used in reference to (a) a natural individual, require you to state his or her full name and residential and business address; (b) a corporation, require you to state its full corporate name and any names under which it does business, its state of incorporation, the address of its principal place of business, and the address of all of its offices in Ohio; (c) a business, require you to state the full name or style under which the business is conducted, its business address or addresses, the types of businesses in which it is engaged, the geographic areas in which it conducts those businesses, and the identity of the person or persons who own, operate, and control the business; (d) a document, require you to state the number of pages and the nature of the document (e.g., letter of memorandum). Its title, its date, the name or names of its authors and recipients, and its present location and custodian; (e) a communication, require you, if any part of the communication was written, to identify the document or documents which refer to or evidence the communication, and, to the extent that the communication was nonwritten, to identify the person participating in the communication and to state the date, manner, place, and substance of the communication.

(6) Identification of documents. With respect to each question, in addition to supplying the information requested, you are to identify all documents that support, refer to, or evidence the subject matter of each question and your answer thereto.

If any or all documents identified herein are no longer in your possession, custody, or control because of destruction, loss, or any other reason, then do the following with respect to each and every such document: (a) describe the nature of the document (e.g., letter of memorandum); (b) state the date of the document; (c) identify the persons who sent and received the original copy of the document; (d) state in as much detail as possible the contents of the document; and (e) state the manner and date of disposition of the document.

If you contend that you are entitled to withhold from production any or all documents identified herein on the basis of the attorney-client privilege, the work-product doctrine, or other ground, then do the following with respect to each and every document; (a) describe the nature of the document (e.g., letter of memorandum); (b) state the date of the document; (c) identify the persons who sent and received the original and a copy of the document; (d) state the subject matter of the document; and (e) state the basis upon which you contend you are entitled to withhold the document from production.

(7) Contention Interrogatories. When an interrogatory requires you to "state the basis of" a particular claim, contention, or allegation, state in your answer the identity of each and every communication and each and every legal theory that you think supports, refers to, or evidences such claim, contention, or allegation.

(8) The Word "Or." As used herein, the word "or" appearing in a question should not be read so as to eliminate any part of the question, but, whenever applicable, it should have the

same meaning as the word "and." For example, a question stating "support or refer" should be read as "support and refer" if an answer that does both can be made.

(9) All information is to be divulged which is in your possession or control or within the possession and control of your attorneys, investigators, agents, employees, or other representatives of you or your attorney.

(10) Where a question calls for an answer in more than one part, each part should be separated in the answer so that the answer is clearly understandable.

(11) You are reminded that all answers must be made separately and fully, and that an incomplete or evasive answer is a failure to answer.

(12) You are under a continuing duty to seasonably to supplement your response with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, the identity of any person expected to be called as an expert witness at hearing, and the subject matter of which he is expected to testify, and to correct any response which you know or later learn is incorrect.

### **REQUESTS FOR PRODUCTION**

**Request for Production No. 1:** All exhibits (including demonstrative exhibits) YOU intend to introduce or use at the hearing of this matter.

### **RESPONSE:**

**Request for Production No. 2:** All expert reports and curriculum vitae of the expert whom YOU have retained or who will testify on YOUR behalf in this matter.

**RESPONSE:**

**Request for Production No. 3:** All documents created, prepared, reviewed, relied upon, or utilized by any expert witness you have retained or who will testify on YOUR behalf in this matter, including, but not limited to, the following:

- 1) All documents, records, testimony, depositions, files, photographs, videotapes, reports, analyses, other written materials, or electronic storage mediums created or utilized by him in forming his opinions in the above captioned matter;
- 2) All books, articles, treatise, tests, reports, studies or periodicals or documents of any other kind on which he may rely, cite or consult for any opinions he holds in the above captioned matter;
- 3) All reports, tests, test results, graphs, models or other things prepared or used by him and which form the basis for his opinions or testimony;
- 4) All work notes dealing with the above captioned matter;
- 5) All documents relating to his fee arrangement in the above captioned matter;
- 6) All of his time sheets, billing statements, or invoices relating to the above captioned matter;



- 7) A list of all administrative matters, proceedings, or lawsuits in which he has provided testimony at hearing or trial;
- 8) A list of all administrative matters, proceedings, or lawsuits in which he has given deposition testimony;
- 9) All films, videos or photographs he reviewed or created in relation to the above captioned matter;
- 10) All computer programs, including input and output data, he used or relied on in forming his opinions in the above captioned matter, both on disk and in hard copy format;
- 11) All Columbia Gas of Ohio, Inc. documents or other information he reviewed or relied upon in forming his opinions in the above captioned matter, whether obtained in the above captioned matter or from other sources;
- 12) All Columbia Gas of Ohio, Inc. sites or physical locations he inspected or relied upon in forming his opinions in the above captioned matter; and
- 13) All exhibits he intends to use at the hearing of this matter.

**RESPONSE:**

Respectfully submitted,

**COLUMBIA GAS OF OHIO, INC.**

By: \_\_\_\_\_  
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Attorneys for  
**COLUMBIA GAS OF OHIO, INC.**

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Request for Production of Documents of Columbia Gas of Ohio, Inc. to the Office of the Ohio Consumer's Counsel was served upon all parties of record by email and regular U. S. mail this 4<sup>th</sup> day of September 2008.

---

Stephen B. Seiple  
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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Distribution Service.	)	Case No. 08-0072-GA-AIR
	)	
	)	
	)	
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation and for a Change in its Rates and Charges.	)	Case No. 08-0073-GA-ALT
	)	
	)	
	)	
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Change Accounting Methods.	)	Case No. 08-0074-GA-AAM
	)	
	)	
	)	
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Revise its Depreciation Accrual Rates.	)	Case No. 08-0075-GA-AAM
	)	

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**OFFICE OF THE OHIO CONSUMERS' COUNSEL'S  
RESPONSES AND OBJECTIONS TO  
COLUMBIA GAS OF OHIO, INC.'S  
INTERROGATORIES, FIRST SET**

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The Ohio Consumers' Counsel ("OCC"), by and through its counsel, hereby submits its Responses and Objections to Columbia Gas of Ohio, Inc.'s ("Columbia's") Interrogatories, First Set, served upon the Office of Consumers' Counsel in the above-captioned proceeding. OCC notes that despite its title, Columbia's discovery request included several requests for production of documents. Columbia's discovery request but did not include requests for admissions.



OCC's responses to these discovery requests are being provided subject to, and without waiver of, the general objections stated below and the specific objections posed in response to each interrogatory and request for production of documents. The general objections are hereby incorporated by reference into the individual response made to each discovery request. OCC's responses to these discovery requests are submitted without prejudice to, and without waiving, any general objections not expressly set forth therein.

The provisions of any response below shall not waive OCC's objections. The response below, while based on diligent investigation and reasonable inquiry by OCC and its counsel, reflect only the current state of OCC's knowledge, understanding and belief with respect to the matters about which the discovery requests seek information, based upon the information and discovery to date. OCC's investigation is not yet complete and is continuing as of the date of the responses below. OCC anticipates the possibility that it may discover additional information, and without obligating itself to do so, OCC reserves the right to continue its investigation and to modify or supplement the responses below with such pertinent information or documents as it may reasonably discover. The responses below are made without prejudice to OCC's right to rely upon or use subsequently discovered information or documents, or documents of information inadvertently omitted from the responses below as a result of mistake, error, or oversight. OCC reserves the right to object on appropriate grounds to the use of such information and documents. The fact that OCC, in the spirit of cooperation, has elected to provide relevant information and documents below in response to Columbia's discovery requests shall not constitute or be deemed a waiver of OCC's objections. OCC hereby fully

preserves all of its objections to the discovery request or the use of its responses for any purpose.

### **GENERAL OBJECTIONS**

1. OCC objects to any data requests as improper, overbroad, and unduly burdensome to the extent that they purport to impose upon OCC any obligations broader than those set forth in the Commission's rules or otherwise permitted by law.
2. OCC objects to Columbia's definitions and Instructions for Answering as improper, overbroad, and unduly burdensome to the extent that they improperly seek or purport to require the disclosure of information protected by the attorney-client privilege, attorney work-product doctrine or any other applicable privilege or doctrine. Such responses as may hereafter be given shall not include any information protected by such privileges or doctrines, and the inadvertent disclosure of such information shall not be deemed as a waiver of any such privilege or doctrine.
3. OCC objects to these discovery requests and to Columbia's definitions and Instructions for Answering to the extent that they improperly seek or purport to require OCC to provide documents and information not in OCC's possession, custody or control.
4. The objections and responses contained herein and documents produced in response hereto are not intended nor should be construed to waive OCC's right to object to these requests, responses or documents produced in response hereto, or the subject matter of such requests, responses, or documents, as to their

competency, relevancy, materiality, privilege and admissibility as evidence for any purpose, in or at any hearing of this or any other proceeding.

5. OCC objects to these discovery requests to the extent they improperly seek or purport to require the production of documents or information which is neither relevant nor material to the subject matter of the proceeding, nor reasonably calculated to lead to the discovery of admissible evidence.
6. OCC objects to these discovery requests and to Columbia's definitions in Instructions for Answering to the extent they improperly seek or purport to require production of documents in a form other than how the documents are maintained in the regular course of business.
7. OCC objects to these discovery requests insofar as they request documents of information that are publicly available or already in Columbia's possession, custody or control.
8. OCC objects to each and every data request that seeks to obtain "all," "each" or "any" document to the extent that such requests are overbroad and unduly burdensome and seek information that is neither relevant nor material to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.
9. OCC objects to these discovery requests to the extent that such requests are not limited to any stated time period or identify a stated period of time that is longer than is relevant for purposes of this docket, as such discovery is unduly broad and overly burdensome.



10. OCC objects to these discovery requests to the extent they are vague, ambiguous, use terms that are subject to multiple interpretations but are not properly defined for purposes of these discovery requests, or otherwise provide no basis from which OCC can determine what information is sought.
11. The objections and responses contained herein are not intended nor should they be construed to waive OCC's rights to object to other discovery involving or relating to the subject matter of these requests or responses provided hereto.
12. OCC's agreement to respond to a particular request should not be construed to mean that any information responsive to the request exists.

### **INTERROGATORIES**

#### **Interrogatory No.1**

With respect to each and every expert whom you expect to call as an expert witness at hearing, do the following:

- (a) Identify him or her;
- (b) State the subject matter on which he or she is expected to testify;
- (c) State the substance of the facts and opinions to which he or she is expected to testify; and
- (d) Set forth a summary of the grounds for each and every opinion of the expert.

#### **RESPONSE:**

(a)

**Objection:** At present, this request seeks information that is protected under the attorney-client privilege and constitutes attorney work product.

Without waiving any specific or general objections, OCC responds as follows:

At this time, and without limiting itself, OCC anticipates that it may call the following expert witnesses at hearing:

David J. Effron  
Berkshire Consulting Services  
12 Pond Path  
North Hampton, New Hampshire 03862

Glen A. Watkins  
Vice President/Senior Economist  
Technical Associates  
James Center III,  
1051 East Cary Street, Suite 601  
Richmond, VA 23219

J. Randall Woolridge, Ph.D.  
Professor of Finance and Financial Consultant  
Pennsylvania State University  
University Park, PA 16802

(b)

**Objection:** At present, this request seeks information that is protected as attorney-client privileged.

**Objection:** This request seeks information that is protected as attorney work product under *Hickman v. Taylor* (1947), 329 U.S. 495.

Without waiving any specific or general objections, OCC responds as follows:

At this time, OCC has not yet made a determination regarding the specific subject matter of each expert's testimony in these cases. Without limiting itself in any way, OCC anticipates it may present testimony on the subjects of cost of service, rate design, cost of capital, rate of return, return on equity, capital structure, cost of debt, and revenue requirements. When OCC makes a determination regarding the subject matter on which each of its witnesses will testify, it will seasonably supplement these responses consistent with Ohio Adm. Code 4901-1-16(D).

(c)

**Objection:** At present, this request seeks information that is protected as attorney-client privileged.

**Objection:** This request seeks information that is protected as attorney work product under *Hickman v. Taylor* (1947), 329 U.S. 495.

Without waiving any specific or general objections, OCC responds as follows:

At this time, OCC has not yet made a determination regarding the specific facts and opinions in each expert's testimony in these cases. When OCC makes such a determination, it will seasonably supplement these responses consistent with Ohio Adm. Code 4901-1-16(D).

(d)

**Objection:** At present, this request seeks information that is protected as attorney-client privileged.

**Objection:** This request seeks information that is protected as attorney work product under *Hickman v. Taylor* (1947), 329 U.S. 495.

Without waiving any specific or general objections, OCC responds as follows:

At this time, OCC has not yet made a determination regarding the opinions or the specific grounds for the opinions in each expert's testimony in these cases. When OCC makes such a determination, it will seasonably supplement these responses consistent with Ohio Adm. Code 4901-1-16(D).

### **Interrogatory No. 2**

List all other witnesses which you intend to call at the hearing scheduled for this case, and state the subject matter on which he or she is expected to testify.

### **RESPONSE:**

**Objection:** At present, Columbia's request to identify all non-expert witnesses that it intends to sponsor in these hearings seeks information that is protected under attorney-client privilege.

**Objection:** Columbia's request seeks information that is protected as it constitutes attorney-client privilege.

**Objection:** Attorney work product.

Without waiving any specific or general objections, OCC responds as follows:

At present, OCC has not identified the non-expert witnesses it intends to present in the hearing in these cases. When OCC makes such a determination, it will seasonably supplement these responses consistent with Ohio Adm. Code 4901-1-16(D).

**Interrogatory No. 3**

Has the OCC retained the services of any consultants for purposes of analyzing the issues in this case, or for the purpose of assisting the OCC with the preparation of testimony? If so, with respect to each and every consultant do the following:

- (a) Identify him or her;
- (b) State the subject matter about which he or she has been retained to assist the OCC.
- (c) Provide copies of the Request For Proposal or other bid solicitation document used to solicit bids for the hiring of the consultant as well as all of the responses to the bid solicitation document received by the OCC.
- (d) Provide copies of all studies or analyses or reports provided to the OCC by such consultants.

**RESPONSE:**

**Objection:** Vague and overbroad.

(a)

**Objection:** At present, this request seeks information that is protected as attorney-client privileged.

**Objection:** This request, which is not limited to experts who are witnesses, seeks information that is protected as attorney work product under *Hickman v. Taylor* (1947), 329 U.S. 495.

Without waiving any specific or general objections, OCC responds as follows:

To date, OCC has retained the services of the following:

David J. Effron  
Berkshire Consulting Services  
12 Pond Path  
North Hampton, New Hampshire 03862

Glen A. Watkins  
Vice President/Senior Economist  
Technical Associates  
James Center III,  
1051 East Cary Street, Suite 601  
Richmond, VA 23219

J. Randall Woolridge, Ph.D.  
Professor of Finance and Financial Consultant  
Pennsylvania State University  
University Park, PA 16802

(b)

**Objection:** At present, this request seeks information that is protected as attorney-client privileged.

**Objection:** This request, which is not limited to experts who are witnesses, seeks information that is protected as attorney work product under *Hickman v. Taylor* (1947), 329 U.S. 495.

Without waiving any specific or general objections, OCC responds as follows:

At this time, OCC has not yet made a determination regarding the specific subject matter about which each of its consultants will assist OCC in these cases. Without limiting itself in any way, OCC anticipates its consultants will assist OCC on the subjects of cost of service, rate design, cost of capital, rate of return, return on equity, capital structure, cost of debt, and revenue requirements. When OCC makes a determination regarding the subject matter on which each of its experts will assist OCC, it will seasonably supplement these responses consistent with Ohio Adm. Code 4901-1-16(D).

(c)

**Objection:** At present, this request seeks information that is protected as attorney-client privileged.

**Objection:** This request, which is not limited to experts who are witnesses, seeks information that is protected as attorney work product under *Hickman v. Taylor* (1947), 329 U.S. 495.

Without waiving any specific or general objections, OCC responds as follows:

Please see attached documents.

(d)

**Objection:** At present, this request seeks documents that are protected as attorney-client privileged.

**Objection:** This request seeks documents that are protected as attorney work product under *Hickman v. Taylor* (1947), 329 U.S. 495.

**Objection:** Impossibility. Certain documents requested are unavailable at this time.

**Interrogatory No. 4**

Please provide all Documents and Communications (as those terms are defined above), including but not limited to, e-mails, letters, correspondence, reports, analyses, studies, workpapers, data, and source documents that address the OCC's position on Columbia's proposal to implement a Straight Fixed Variable rate design in this case.

**RESPONSE:**

**Objection:** Attorney-client privilege.

**Objection:** At this time, this request seeks documents that are protected as attorney work product under *Hickman v. Taylor* (1947), 329 U.S. 495.

**Objection:** Vague, overbroad and unduly burdensome.

Without waiving any specific or general objections, OCC responds as follows:

OCC's general position on the implementation of a Straight Fixed Variable rate design is presented in the filed testimony of the following PUCO cases:

Case No. 07-589-GA-AIR

Case No. 07-829-GA-AIR

Case No. 07-1080-GA-AIR

**Interrogatory No. 5**

Please provide interactive computer files in Microsoft Excel format that contain any calculations developed by the OCC or its witnesses in this case in support of any OCC position related to Columbia's proposed implementation of a Straight Fixed Variable rate design in this case.

**RESPONSE:**

**Objection:** Attorney-client privilege.

**Objection:** At this time, this request seeks documents that are protected as attorney work product under *Hickman v. Taylor* (1947), 329 U.S. 495.

**Objection:** Vague, overbroad and unduly burdensome.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL

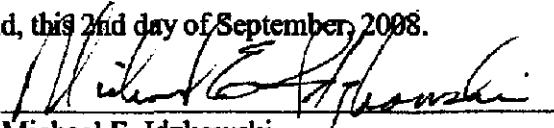


Larry S. Sauer, Counsel of Record  
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### **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing *Office of the Ohio Consumers' Counsel's Responses and Objections to Columbia Gas of Ohio, Inc.'s Interrogatories, First Set*, was served via First Class US Mail, postage prepaid, this 2nd day of September, 2008.

  
Michael E. Idzkowski  
Assistant Consumers' Counsel

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September 4, 2008

**VIA E-MAIL AND**  
**ORDINARY U.S. MAIL**

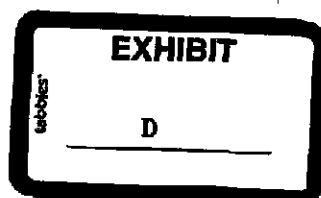
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Office of the Ohio Consumers' Counsel  
10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485

In Re: The Matters of the Application of Columbia Gas of Ohio, Inc.  
Before The Public Utilities Commission Of Ohio  
Case Nos. 08-0072-GA-AIR; 08-0073-GA-ALT;  
08-0074-GA-AAM; and 08-0075-GA-AAM

Dear Counsel:

As you know from the Notice of Additional Counsel filed today, our firm has been retained to represent Columbia Gas of Ohio, Inc. ("Columbia Gas") in the above-captioned proceedings. To that end, we have received and reviewed the Ohio Consumers' Counsel's ("OCC") written discovery responses and document production provided in response to Columbia Gas' first set of discovery requests. Each of Columbia Gas' discovery requests sought information and documents directly relevant to the issues in these proceedings, and directed to the heart of the OCC's challenges and/or objections. However, many of the OCC's written responses are deficient and the document production is incomplete. Accordingly, pursuant to Rule 4901-1-23(C) of the Ohio Administrative Code, we write in an attempt to informally address and resolve the various deficiencies and inadequacies in the OCC's responses.

Initially, with respect to Interrogatory Nos. 1 and 3, Columbia Gas seeks information related to expert or consultant witnesses that the OCC plans to call at the Hearing. While the OCC identified such witnesses, it did not provide responsive answers to the remaining subparts of these Interrogatories. Rule 4901-1-16(C) of the Ohio Administrative Code sets out the scope of discovery with respect to the subject matter of expert opinions, the nature of the opinions and the factual basis for the same. Columbia Gas is entitled to such information. Related to this, we note the objections interposed do not identify any specific information or



Larry S. Sauer, Esq.  
Joseph P. Serio, Esq.  
Michael E. Idzkowski, Esq.  
September 4, 2008  
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categories of information protected by the attorney-client privilege or the work product doctrine. The information requested should be produced immediately.

In regard to Interrogatory No. 2, it is similarly difficult to understand how the identity of witnesses the OCC intends to call at the Hearing can be the subject of the attorney-client privilege or attorney work product doctrine. Under Rule 4901-1-19(B) of the Ohio Administrative Code, an interrogatory may "elicit facts, data, or other information known or readily available to the party upon whom the interrogatories are served." The identity of any OCC witnesses to be called at the Hearing (and the subject matter about which they will testify) is information readily available to the OCC, and, pursuant to Rule 4901-1-16, undeniably "relevant to the subject matter of [this] proceeding." Columbia Gas is entitled to adequately prepare for the Hearing. Please immediately identify the witnesses the OCC intends to call at the Hearing and provide the subject matter of their proposed testimony.

Columbia Gas is entitled to more than the OCC's "general position" in response to Interrogatory No. 4. Simply referring to testimony, filed in other PUCO cases, that does not involve Columbia Gas, does not relate to Columbia Gas' application, and does not address the Staff Report issued in response to Columbia Gas' application, is not responsive. While the testimony may shed light on the OCC's "general position" about a Straight Fixed Variable rate design, Interrogatory No. 4 asked for information related to the specific objections the OCC has with Columbia Gas' specific proposal for the same. Again, it is difficult to understand how the information requested could be the subject of attorney-client privilege/attorney work product objections. Columbia Gas is entitled to know the basis for the OCC's challenge of its proposal. Moreover, because it appears the OCC is relying on testimony from other cases for its "general position," it is obligated to do more than simply cite to the other cases. It also must produce the materials or information relied upon, created, utilized, etc., by the persons testifying which are relevant to that general position. Please immediately provide the information requested in Interrogatory No. 4.

Finally, in response to Interrogatory No. 5, the OCC has failed to produce the requested computer files supporting its position on Columbia Gas' proposed implementation of a Straight Fixed Variable rate design in this case. The OCC has not disputed the relevance of this discovery. Instead, the OCC simply interposes the same objections dealing with attorney-client privilege and attorney work product protection, without providing any justification for those objections. The requested information should be produced immediately, along with any data that forms the basis for the calculations referenced in Interrogatory No. 5.


We write this letter in hopes of resolving these discovery issues informally. However, with depositions needing to be scheduled immediately, and the Hearing set for a little more than one month away, the foregoing discovery deficiencies must be remedied promptly, and in any event, no later than the close of business on September 9, 2008. If you do not intend to comply with the foregoing requests, we request the courtesy of a prompt response so that we can raise these matters with the Commission as soon as possible.

Larry S. Sauer, Esq.  
Joseph P. Serio, Esq.  
Michael E. Idzkowski, Esq.  
September 4, 2008  
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We are happy to discuss any of the above issues and look forward to hearing from  
you.

Very truly yours,



Timothy R. Bricker

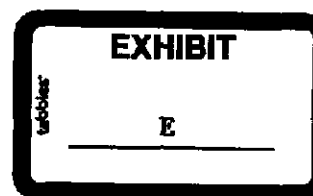
cc: Angela M. Paul Whitfield, Esq.  
David J. Leland, Esq.  
Stephen B. Seiple, Esq.  
Daniel A. Creekmur, Esq.



## NEWS RELEASE

Office of the Ohio Consumers' Counsel  
FOR IMMEDIATE RELEASE

Contact:  
Ryan Lippe (614) 466-7269  
Carah Brody (614) 466-9347  
Erin Biehl (614) 387-2962



### Consumers' Counsel announces enhanced ethics and public records policies

- A copy of the OCC's report to the Inspector General can be found here.

Columbus, Ohio - May 20, 2004 - Consumers' Counsel Janine Migden-Ostrander today issued a report to the Office of the Inspector General that outlines a clear code of conduct and an enhanced records retention schedule.

"We have taken aggressive action to revise office policies and restore public trust in the important and valuable services we provide to Ohio's residential utility consumers," said Migden-Ostrander. "Our new policies address the concerns raised by the Inspector General and make it abundantly clear that our office must avoid any appearances of impropriety. The new rules are strong and will be enforced."

In its report, the Office of the Ohio Consumers' Counsel (OCC) adheres to the recommendations made by the Inspector General on March 23 and announces that:

#### *Regarding public records, the OCC will...*

- Permanently retain documents related to utility cases in electronic format.
- Allow staff members to keep any records for a longer period of time than scheduled upon request and approval by the Consumers' Counsel and Deputy Consumers' Counsel.
- Annually review the OCC's records retention policy.
- Record all public records requests. The OCC's General Counsel will coordinate responses to public records requests with the Consumers' Counsel and Deputy Consumers' Counsel.

Prior to implementing this records retention policy, the OCC must receive the approval of the Department of Administrative Services' Records Administrator, the Ohio Historical Society's State Archivist and the State Auditor. Until the OCC receives approval, all records are being retained.

#### *Regarding ethics issues, the OCC has developed an enhanced Code of Conduct that...*

- Establishes clear rules to ensure that the conduct of the Consumers' Counsel and OCC employees avoids the appearance of impropriety, favoritism or bias. The comprehensive Code of Conduct provides strict guidelines to ensure that representatives of the office act ethically and responsibly when interacting with the utility companies and other stakeholders.
- Prohibits the acceptance of anything of value, including but not limited to money, gifts, food, beverages, promotional items, social event tickets, travel expenses or golf outings. During a working meeting or conference, a meal of minor value may be accepted as long as it is not provided exclusively to the OCC and it is available to all participants.
- If political events are attended by the Consumers' Counsel or OCC employees for the purpose of conducting official business on behalf of residential consumers, the events must be paid for by those individuals. Lobbying in an effort to influence public policy is a critical component of representing consumers. However, it must be accomplished in a manner that avoids the appearance of any ethical conflicts.

**OHIO ETHICS COMMISSION**

Merom Brachman, *Chair*  
Sarah M. Brown, *Vice Chair*



David E. Freel, *Executive Director*

8 East Long Street, 10<sup>th</sup> Floor  
Columbus, Ohio 43215  
Telephone: (614) 466-7090  
Fax: (614) 466-8368  
Web site: [www.ethics.ohio.gov](http://www.ethics.ohio.gov)

May 20, 2004

For more information, contact:  
David Freel, Executive Director or  
Lynn Honeck, Education Coordinator  
(614) 466-7090

**FOR IMMEDIATE RELEASE:**

**ETHICS COMMISSION REVIEWS AND REVISES  
CONSUMERS' COUNSEL POLICY**

At its meeting on May 18, 2004, the Ohio Ethics Commission revised a draft ethics policy submitted by the Ohio Consumers' Counsel. The Commission applauded the Consumers' Counsel's efforts to address and communicate the Ethics Law in a clear and concise manner to employees through such a policy.

The Commission recommended several significant additions describing ethical conflict of interest statutes designed to assure greater protections to the public. The changes make the policy consistent within the Ethics Law and clarify circumstances under which a public employee might be faced with a conflict, in addition to prohibiting gifts and gratuities. Following discussion, the Commission endorsed the policy, contingent upon the amendments. Changes reflect those in a Model Ethics Policy the Commission recommends for public agencies.

"Consumer Counsel's draft contained clear and strong gifts and gratuity restraints. Conflict of interest protections to the public needed to be as apparent," stated David E. Freel, the Commission's Executive Director.

Consumers' Counsel informed the Commission today that she adopted all of the additions suggested by the Commission. The revised policy will be included in the Consumers' Counsel's response to the Ohio Inspector General's March 2004 Investigation Report.

The Ohio Ethics Commission is an independent state agency that applies and administers the Ethics Law for state and local public officials and employees outside of the General Assembly and judiciary. The Commission was created 30 years ago upon the enactment of the Ohio Ethics Law in 1973.