

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
Columbia Gas of Ohio, Inc., for Approval )  
of a General Exemption of Certain Natural ) Case No. 08-1344-GA-EXM  
Gas Commodity Sales Services or Ancillary )  
Services. )

OPINION AND ORDER

The Public Utilities Commission of Ohio (Commission), considering the application, the testimony, and other evidence presented in this matter, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Porter, Wright, Morris & Arthur, LLP, by Daniel R. Conway and Eric B. Gallon, Huntington Center, 41 S. High Street, Suite 3000, Columbus, Ohio 43215, and Stephen B. Seiple, Counsel, Columbia Gas of Ohio, Inc., 200 Civic Center Drive, P.O. Box. 117, Columbus, Ohio 43216, on behalf of Columbia Gas of Ohio, Inc.

Richard Cordray, Ohio Attorney General, Duane W. Luckey, Section Chief, by Anne L. Hammerstein, Assistant Section Chief, and Sarah J. Parrot, Assistant Attorney General, Public Utilities Section, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Commission.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Larry S. Sauer and Joseph P. Serio, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential customers of Columbia Gas of Ohio, Inc.

David C. Rinebolt and Colleen L. Mooney, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio, 45839, on behalf of Ohio Partners for Affordable Energy.

Boehm, Kurtz & Lowry, by David F. Boehm and Michael L. Kurtz, 36 East Seventh Street, Suite 1510, Cincinnati, Ohio 45202, on behalf of Alliance Industries and the Ohio Energy Group, comprised of AK Steel Corporation; Aleris International; ArcelorMittal USA; Brush Wellman, Inc.; Chrysler, LLC; Ford Motor Company; Griffin Wheel Company; Johns Manville; PPG Industries, Inc.; Republic Engineered Products, Inc.; Severstal Wheeling; Sunoco; and Worthington Industries.

Krieg DeVault, LLP, by Steven M. Sherman, One Indiana Square, Suite 2800, Indianapolis, Indiana 46202, on behalf of ProLiance Energy, LLC.

John M. Dosker, 1077 Celestial Street, Suite 110, Cincinnati, Ohio 45202, on behalf of Stand Energy Corporation.

Larry Gearhardt, 280 North High Street, P.O. Box 182383, Columbus, Ohio 43218, on behalf of Ohio Farm Bureau Federation.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43215, on behalf of Ohio Gas Marketers Group, comprised of Commerce Energy of Ohio, Inc.; Hess Corporation; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc.; Direct Energy Services, LLC; SouthStar Energy Services LLC; Constellation NewEnergy-Gas Division, LLC; Exelon Energy Company; and Vectren Retail, LLC.

McNees, Wallace & Nurick, LLC, by Lisa G. McAlister and Joseph M. Clark, Fifth Third Center, 21 East Third Street, 17th Floor, Columbus, Ohio 43215, on behalf of The Timkin Company and The Glen-Gary Corporation.

Bell & Royer Co., LPA, by Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215, and Gary A. Jeffries, Senior Counsel, Dominion Resources Services, Inc., 501 Martindale Street, Suite 400, Pittsburgh, Pennsylvania 15212, on behalf of Dominion Retail, Inc.

Vorys, Sater, Seymou, & Pease, LLP, by W. Jonathan Airey and Gregory D. Russell, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43215, on behalf of Honda of America Mfg., Inc.

Bricker & Eckler, LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215, on behalf of DTE Energy Trading, Inc.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43215, and Stephan A. Ariyan, Associate General Counsel, Sempra Energy Trading LLC, 58 Commerce Road, Stamford, Connecticut 06902, on behalf of Sempra Energy Trading, LLC.

Kravitz, Brown & Dortch, LLC, by Michael Dortch, 65 East State Street, Columbus, Ohio 43215, on behalf of NJR Energy Services Company.

Bracewell & Giuliani, LLP, by David M. Perlman, 2000 K Street NW, Suite 500, Washington, D.C. 20006, on behalf of J.P. Morgan Venture Energy Corporation.

Lance M. Keiffer, Assistant Prosecuting Attorney, Lucas County Prosecutor's Office, 711 Adams Street, 2nd Floor, Toledo, Ohio 43624, on behalf of the Northwest Ohio Aggregation Coalition, comprised of the Board of County Commissioners of Lucas County, the Board of Township Trustees of Lake Township in Wood County, the city of Maumee, the city of Northwood, the city of Oregon, the city of Sylvania, the city of Toledo, and the village of Holland.

Craig G. Goodman, 3333 K Street, N.W., Suite 110, Washington, D.C. 20007, on behalf of the National Energy Marketers Association and Wal-Mart Stores, Inc.

Bricker and Eckler LLP, by Glenn S. Krassen and Matthew W. Warnock, 100 South Third Street, Columbus, Ohio 43215, on behalf of The Ohio Schools Council.

#### OPINION:

#### I. BACKGROUND

Columbia Gas of Ohio, Inc. (Columbia) is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

On January 30, 2009, as supplemented on March 26 and 31, 2009, Columbia filed an application pursuant to Section 4929.04, Revised Code, for approval of a general exemption of certain natural gas commodity sales services or ancillary services contained in Chapters 4905, 4909, and 4935, Revised Code. In addition, Columbia requests approval of a proposed Choice/Standard Service Offer (SSO) Reconciliation Rider (CSRR), pursuant to Section 4929.11, Revised Code, which would recover or pass back specified costs from affected customers. Finally, pursuant to Section 4905.13, Revised Code, Columbia requests the applicable accounting authority necessary to implement the CSRR.

By entry issued May 6, 2009, the Commission, *inter alia*, determined that Columbia's application should be considered to be in compliance with the filing requirements set forth in Chapter 4901:1-19, Ohio Administrative Code (O.A.C.). Subsequently, on May 8, 2009, the attorney examiner established the procedural schedule in this matter, including the due date for the filing of comments, the deadline for the filing of motions to intervene, and the times and locations for the local and evidentiary hearings. On April 27, 2009, the Ohio Farm Bureau Federation (Ohio Farm Bureau) filed comments in this matter. The attorney examiner granted the motions to intervene filed by Ohio Farm Bureau; the Office of the Ohio Consumers' Counsel (OCC); Ohio Partners for Affordable Energy (OPAEE); Ohio Gas Marketers Group (Gas Marketers) (comprised of Commerce Energy of Ohio, Inc.; Hess

Corporation (Hess); Integrys Energy Services, Inc.; Interstate Gas Supply, Inc.; Direct Energy Services, LLC; SouthStar Energy Services, LLC; Constellation NewEnergy-Gas Division, LLC; Exelon Energy Company; and Vectren Retail, LLC); DTE Energy Trading, Inc. (DTE); Stand Energy Corporation (Stand); Alliance Industries and the Ohio Energy Group (OEG) (comprised of AK Steel Corporation; Aleris International; ArcelorMittal USA; Brush Wellman, Inc.; Chrysler, LLC; Ford Motor Company; Griffin Wheel Company; Johns Manville; PPG Industries, Inc.; Republic Engineered Products, Inc.; Severstal Wheeling; Sunoco; and Worthington Industries); ProLiance Energy, LLC (ProLiance); The Timkin Company and The Glen-Gary Corporation (Timkin/Glen-Gary); Dominion Retail, Inc. (Dominion); Honda of America Mfg., Inc. (Honda); Sempra Energy Trading, LLC (Sempra); NJR Energy Services Company (NJR Energy); J.P. Morgan Venture Energy Corporation (JP Morgan); Northwest Ohio Aggregation Coalition (NOAC) (comprised of the Board of County Commissioners of Lucas County, the Board of Township Trustees of Lake Township in Wood County, the city of Maumee, the city of Northwood, the city of Oregon, the city of Sylvania, the city of Toledo, and the village of Holland); National Energy Marketers Association (NEMA); Wal-Mart Stores, Inc. (Wal-Mart); and The Ohio Schools Council (OSC).

A technical conference was held in this matter on May 20, 2009, at the offices of the Commission. By entry issued May 8, 2009, Columbia was directed to publish notice of the hearings in this case in each county in which it provides service. On August 17, 2009, Columbia filed the requisite proofs of publication (Co. Ex. 9).

Local hearings were held on June 9, 11, 23, and 25, 2009, in Columbus, Parma, Toledo, and Athens, Ohio. There were no public witnesses in Columbus or Toledo, Ohio and there was one public witness that testified at the local hearing in Athens, Ohio, and one public witness that testified at the local hearing in Parma, Ohio. While the evidentiary hearing was initially scheduled to commence on August 24, 2009, the hearing was rescheduled several times at the request of the parties; thus, the evidentiary hearing was held on October 7, 2009. At the October 7, 2009, hearing, Columbia submitted a Stipulation and Recommendation (Stipulation), which had been filed in this docket on that same day (Joint Ex. 1). The Stipulation was executed by Columbia, Staff, and all of the intervenors, with the exception of JP Morgan, NJR Energy, and Sempra. At the October 7, 2009, hearing, counsel for Sempra represented that Sempra did not oppose the Stipulation. In addition, by letters filed in this docket on October 7 and 9, 2009, NJR Energy and JP Morgan, respectively, stated that they do not oppose the Stipulation. At the hearing held on October 7, 2009, Staff presented testimony in support of the Stipulation. No party testified against, or otherwise objected to, the Stipulation.

## II. GOVERNING STATUTES

Section 4929.04, Revised Code, authorizes the Commission, upon the application of a natural gas company such as Columbia, to exempt any commodity sales service or ancillary service from all provisions of Chapter 4905, Revised Code (with the exception of Section 4905.10, Revised Code); all provisions of Chapter 4909, Revised Code; all provisions of Chapter 4935, Revised Code (with the exception of Sections 4935.01 and 4935.03, Revised Code); and from any rule or order issued under those chapters or sections.

Section 4929.04, Revised Code, delineates the standards for the Commission's review, as well as the regulatory policy that we are to follow in determining whether to approve applications under that section. Section 4929.04(A), Revised Code, provides that we shall approve the exemption upon a finding, after hearing, that an applicant is in substantial compliance with the policy of this state specified in Section 4929.02, Revised Code, and that either (1) it is subject to effective competition with respect to the commodity sales service or ancillary service, or (2) customers of the commodity sales service or ancillary service have reasonably available alternatives.

Section 4929.04(B), Revised Code, provides that, in determining if the conditions in subsections (1) or (2) exist, the Commission shall consider, among other issues:

- (1) The number and size of alternative providers of the commodity sales service or ancillary service.
- (2) The extent to which the commodity service or ancillary service is available from alternative providers in the relevant market.
- (3) The ability of alternative producers to make functionally equivalent or substitute services readily available at competitive prices, terms and conditions.
- (4) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

Section 4929.02, Revised Code, sets forth the state policies to be considered, as follows:

- (1) Promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods.

- (2) Promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs.
- (3) Promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers.
- (4) Encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods.
- (5) Encourage cost-effective and efficient access to information regarding the operation of the distribution systems of natural gas companies in order to promote effective customer choice of natural gas services and goods.
- (6) Recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment.
- (7) Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. of the Revised Code.
- (8) Promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods.
- (9) Ensure that the risks and rewards of a natural gas company's offering of nonjurisdictional and exempt services and goods do not affect the rates, prices, terms, or conditions of nonexempt, regulated services and goods of a natural gas company and do not affect the financial capability of a natural gas company to comply with the policy of this state specified in this section.
- (10) Facilitate the state's competitiveness in the global economy.
- (11) Facilitate additional choices for the supply of natural gas for residential consumers, including aggregation.

### III. SUMMARY OF THE APPLICATION

#### A. General

Columbia states that, by order issued January 23, 2008, the Commission approved a joint stipulation and recommendation in *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Columbia Gas of Ohio, Inc., and Related Matters*, Case No. 04-221-GA-GCR, et al. (04-221). As part of the settlement in 04-221, Columbia committed to filing, on or before February 1, 2009, an application proposing to implement a wholesale gas supply auction by no later than April 1, 2010. Columbia explains that the instant application is the result of a development process engaged in by Columbia's post-2010 stakeholder group, which has been meeting regularly since April 2007 (Co. Ex. 1 at 2).

In this application, Columbia seeks approval to implement two consecutive one-year long SSO periods, beginning in April 2010, with the intent of acquiring gas supplies for both Columbia's percentage of income payment plan (PIPP) load and its SSO load (i.e., all customers not served by Choice or Transportation Service (TS) suppliers). During these periods, Columbia will obtain gas supplies from alternative suppliers and pass the price of that gas on to its sales customers at a monthly SSO rate (Co. Ex. 1 at 3). The SSO service is a sales service that is regulated by the Commission and that will replace Columbia's gas cost recovery (GCR) service (Jt. Ex. 2 at 15).

### IV. SUMMARY OF THE STIPULATION

As mentioned earlier, at the hearing in this matter on October 7, 2009, Columbia submitted a Stipulation. The Stipulation was signed by all of the parties, with the exception of JP Morgan, NJR Energy, and Sempra, which stated that they do not oppose the Stipulation.

Pursuant to the Stipulation, the parties agree, *inter alia*, to a revised Program Outline that was filed on November 12, 2009 (Jt. Ex. 2). As set forth in the Stipulation and the revised Program Outline, the parties agree, *inter alia*, that:

- (1) The process that Columbia and various parties have undertaken since the Commission's approval of the joint stipulation in 04-211, culminating with the application in this case, as modified by the Stipulation in this case, satisfies the requirements of the joint stipulation in 04-221, as well as the Commission's order in 04-221 (Jt. Ex. 1 at 5-6).
- (2) Columbia will conduct two auctions in order to implement two consecutive one-year long SSO periods, starting in April 2010

and April 2011. Through those auctions, Columbia will obtain commodity gas supplies from alternative suppliers for both its PIPP and SSO requirements and pass the price of the gas on to its sales customers at a monthly SSO rate. Bid winners of the SSO auctions will be assigned an undivided percentage of the standard service customers' demand. The winning bid price will be subject to Commission approval (Jt. Ex. 1 at 9; Jt. Ex. 2 at 13, 15).

- (3) Columbia will conduct a third auction for the annual period beginning April 2012. This auction will be a standard choice offer (SCO) auction.<sup>1</sup> Bid winners of the SCO auction will be assigned to individual customers. The winning bid price will be subject to Commission approval (Jt. Ex. 1 at 9; Jt. Ex. 2 at 14-15).
- (4) Columbia will utilize an independent auctioneer to conduct a descending clock auction (Jt. Ex. 2 at 16).
- (5) The forecasted SSO/SCO requirements will be divided into 16 equal tranches; based upon current estimates, one tranche would equal approximately 5.0 billion cubic feet (Bcf). A maximum of four tranches will be awarded to any individual bidder; this limit also applies to bidders that are affiliated with and/or have an interest equal to or greater than 10 percent in other bidders (Jt. Ex. 2 at 15).
- (6) The SSO/SCO price each month will be based on the New York Mercantile Exchange (NYMEX) natural gas futures final settlement price for such month, plus the retail price adjustment, which would be determined in the respective SSO/SCO auctions. The result will be a price per thousand cubic feet (Mcf) (Jt. Ex. 2 at 16, 18).
- (7) The implementation of the Program Outline may be amended by the parties, without subsequent Commission approval, so long as the amendments are nonsubstantive (Jt. Ex. 1 at 8).
- (8) The parties and interested stakeholders will meet no later than April 20, 2010, to review the auction process, and they will also

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<sup>1</sup> DTE, OPAE, and OCC state, in the Stipulation, that, "while they support the Stipulation, that support should not be interpreted as support for SCO auctions in general, or in this Stipulation." Hess states that, while it supports the Stipulation as a whole, it does not support the proposed SCO auction.



meet in mid-summer 2010 to discuss the need for changes for the second auction (Jt. Exs. 1 and 2 at 9).

- (9) Columbia has not expressed a present intent to, nor does this Stipulation contemplate that Columbia seeks to, exit the merchant function (Jt. Ex. 1 at 9).
- (10) In succeeding auctions, all customers who are not participating in the Choice program or a governmental aggregation group will be part of the next auction. Any customer who is in the Choice program and whose contract ends must either find a new supplier or be placed back in the then-current auction program, e.g., SSO or SCO service (Jt. Ex. 1 at 9).
- (11) Prior to the SCO auction date, any party may petition the Commission to suspend the SCO auction in favor of another SSO auction. In the event a party files an objection to an SCO auction, the parties supporting the SCO auction agree to present evidence intended to demonstrate the anticipated benefits from an SCO auction (Jt. Ex. 1 at 9).
- (12) Prior to each auction, Columbia shall hold an educational meeting and make available to all potential bidders, through its website or other methods, information which describes and details the historic and projected commodity load by customer class (Jt. Ex. 2 at 21).
- (13) All gas cost-related payments shall be credited to the CSRR. The Choice/SSO/SCO suppliers shall pay a nontemperature balancing and peaking service fee of \$0.32. Annually, through the CSRR, there shall be a true-up between the actual cost of the retained assets held to provide balancing/peaking service with the revenues received from the balancing/peaking service fee (Jt. Ex. 1 at 10; Jt. Ex. 2 at 28-29.)
- (14) Columbia shall be authorized to apply a late payment fee of 1.5 percent on the balance due Columbia from a supplier (Jt. Ex. 1 at 10; Jt. Ex. 2 at 29).
- (15) For the three years of the SSO/SCO auctions, Columbia shall allocate capacity to the temporarily assigned Choice/SSO/SCO suppliers utilizing is peak day forecast of 2,037,600 decatherms (Dth). There will be no contract capacity review during the term of the Stipulation (Jt. Ex. 1 at 10; Jt. Ex. 2 at 31).

- (16) Only the initial SSO suppliers will be required to purchase the natural gas left in storage. Columbia will sell between two percent and four percent of SSO suppliers' April 1, 2010, assigned Columbia Gas Transmission (TCO) firm storage service, storage contract quantity on April 1, 2010. Any amount in excess of the quantity transferred to SSO suppliers will be sold to market or remain in Columbia's retained TCO firm storage service. Any variance between the revenue associated with the sale of inventory to an SSO supplier and the book value of the gas sold will be flowed through the CSRR (Jt. Ex. 1 at 11; Jt. Ex. 2 at 35).
- (17) In order to ensure system reliability, Columbia shall establish certain minimum volume-in-storage recommendations based on Columbia's historical planning practices (Jt. Ex. 2 at 44).
- (18) With regard to customer eligibility: under the SSO auctions, there is no change from the current eligibility; and, under the SCO auction, there are certain thresholds for Choice/SSO customer accounts and TS customer accounts (Jt. Ex. 1 at 12, Jt. Ex. 2 at 53).
- (19) A stakeholder group approach will be used to develop the initial customer education and the costs of the customer education program will be recovered through the CSRR (Jt. Ex. 2 at 55).
- (20) During the SSO/SCO periods, customer migration to and from the Choice program each billing cycle will be allowed. Customers who move into the service area will be permitted to enroll immediately in the Choice program without a mandatory stay with SSO/SCO service (Jt. Ex. 2 at 56).
- (21) The CSRR will provide for the recovery of incremental SSO and SCO program costs; the recovery from or pass back to all affected customers of any imbalances between gas costs and recoveries; the flow-through of refunds; and the flow-through of that portion of the Off-System Sales and Capacity Release (OSS/CR) Incentive Sharing Mechanism. OSS/CR revenues being shared with customers through the Choice Program Sharing Credit. The initial CSRR rate shall be \$.025 per Mcf for the educational expenses, information technology, and other

implementation costs. There will be an annual financial audit and true-up (Jt. Ex. 1 at 3, 15; Jt. Ex. 2 at 65-67).

- (22) Columbia will provide monthly program statistics, including the: monthly CSRR rate; number of SSO/SCO and Choice customers; SSO/SCO and Choice volumes by rate schedule; participation rates by rate schedule; and the number of SSO/SCO suppliers and their market share (Jt. Ex. 2 at 12).
- (23) The Stipulation will commence upon approval of the Commission and will have an initial term until March 31, 2013; after which the provisions of the Stipulation, including the method of supplying commodity for SSO and PIPP service shall continue until modified by the Commission (Jt. Ex. 1 at 8).
- (24) Proposed tariff revisions will be filed for Commission review within 30 days of the filing of the Stipulation (Jt. Ex. 1 at 15).
- (25) With regard to Columbia's commodity sales service, Columbia should be granted exemptions as set out in Section 4929.04, Revised Code, including Chapter 4905, Revised Code (with the exception of 4905.10, Revised Code), Chapter 4909, Revised Code, and Chapter 4935, Revised Code (with the exception of Sections 4935.01 and 4935.03, Revised Code), and any rule or order issued under those chapters and sections. This will exempt Columbia from GCR audits and long-term filing requirements; however, Columbia will prepare a design-day peak forecast and update it annually. The parties are not waiving their rights and remedies as provided under Sections 4929.04(F) and 4929.04(G), Revised Code (Jt. Ex. 1 at 16).
- (26) At the end of the initial term of the Stipulation, March 31, 2013, if it appears that Columbia will not be returning to the GCR mechanism, Columbia may apply for, and the parties will support, recovery of the base chip portion of the transition adjustment from the prior purchase gas adjustment mechanism to the GCR mechanism<sup>2</sup> (Jt. Ex. 1 at 16).
- (27) Columbia shall be granted waivers of the Commission's GCR rules so that it can calculate its refund and reconciliation, balance, and actual adjustments through March 31, 2010, in

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<sup>2</sup> OCC reserves the right to oppose Columbia's base chip application in conjunction with its opposition of an SCO auction.

order to minimize the over or under-recovery amount that will be applied to the CSRR. Effective April 1, 2010, Columbia shall be authorized to modify its accounting for storage gas to provide for the use of a monthly-weighted average cost accounting method (Jt. Ex. 1 at 16-17).

- (28) Over three winter heating season, 2010-2011 through 2012-2013, Columbia shall provide \$1,800,000 to establish and administer a customer assistance fund for bill payment assistance: when funds from the Home Energy Assistance Program (HEAP) and/or Emergency-HEAP (E-HEAP) are not available for customers whose incomes are at or below 200 percent of the federal poverty guidelines and who are facing service termination; and for non-PIPP customers whose household incomes are at or below 200 percent of the federal poverty guidelines (Jt. Ex. 1 at 17).

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. See, *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 2004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559 (1994) (citing *Consumers' Counsel, supra*, at 126). The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (*Id.*).

A. Serious Bargaining

At the hearing held on October 7, 2009, Steve Puican, Co-Chief of the Rates and Tariffs/Energy and Water Division in the Commission's Utilities Department, testified in support of the Stipulation. Mr. Puican testified that the Stipulation was the product of serious bargaining among capable and knowledgeable parties, stating that it was the product of discussions among an extremely diverse group of participants that have many years of experience in such matters. In addition, the witness noted that no one opposed the Stipulation (Tr. II at 15).

The Commission notes that the signatory parties represent a wide diversity of interests including the utility, residential consumers, marketers, industrial consumers, and the Staff. Moreover, no party opposes the Stipulation and no party has argued that the Stipulation was not the result of serious bargaining. Further, we are aware that the signatory parties routinely participate in complex Commission proceedings and that counsel for many of the signatory parties have extensive experience practicing before the Commission in utility matters. On the basis of the evidence before us, we find that the Stipulation appears to be the product of serious bargaining among capable, knowledgeable parties.

B. Benefit to Ratepayers and the Public Interest

Mr. Puican also stated that he believes the Stipulation, as a whole, benefits Columbia's ratepayers and the public interest, noting that the proposal replicates a model already in place for two other companies that have been successful. The witness stated that he believes this approach is preferable to the current GCR mechanism because it applies a more immediate market-based price and eliminates the need for GCR-based true-ups and lag adjustments (Tr. II at 16).

We find that the settlement, as a package, benefits ratepayers and the public interest. Upon consideration of the application, as modified by the Stipulation, and the testimony provided by Mr. Puican, the Commission believes that the public interest will be served by approval of the Stipulation. The safeguards afforded the Commission, the ability of the Commission to reject an auction result and the ability of the Commission, at any time during the SSO or SCO phases, to require that Columbia return to the GCR rate

in the event the Commission believes it is no longer in the best interest to continue the SSO or SCO, provide us assurance that the public welfare will be protected.

C. Violation of Important Principles or Practices

Mr. Puican, testified that the Stipulation provides benefits to customers without harming the interest of any party and without the need for additional litigation. The witness stated that the Stipulation complies with the requirements of Section 4929.04, Revised Code, as well as the Commission's decisions in previous cases (Tr. II at 16). In addition, Columbia's witness, Thomas Brown, offered that the Stipulation is in compliance with the state's natural gas policies set forth in Section 4929.02, Revised Code (Co. Ex. 3 at 18-25).

Columbia's application, as amended by the Stipulation, requests approval of the proposed CSRR, under Section 4929.11, Revised Code, which would recover incremental implementation costs, and recover or pass back specified costs from affected customers. Chapter 4929, Revised Code, permits the Commission to consider applications for automatic adjustment mechanisms, as described in Section 4929.11, Revised Code. We find that the proposed CSRR rider is a mechanism that would automatically adjust Columbia's rates or charges and that it would fluctuate automatically in accordance with changes in specified costs. Thus, it is permissible under the terms of Section 4929.11, Revised Code. We also find that the accounting authority necessary to implement the CSRR is permissible pursuant to Section 4905.13, Revised Code.

The Commission finds that the Stipulation does not violate any important regulatory principles or practices and satisfies the policy requirements established in Chapter 4929, Revised Code. Upon review of the evidence of record, the Commission agrees that this application, as modified by the Stipulation, complies with and supports the policy of the state of Ohio. Furthermore, the Commission notes that Columbia has complied with all of the procedural requirements for these types of cases and, in fact, no party has argued that Columbia has violated any statutory or rule requirements.

III. CONCLUSION

The Commission has reviewed the Stipulation submitted in this case and has determined that it should be approved in its entirety. By virtue of that adoption, the application and Exhibits I through VI of the application, as amended by the Stipulation, and the Program Outline filed on November 12, 2009, are also approved.

Upon review of this application, the Stipulation, and the testimony on record, it is the Commission's conclusion that Columbia has met the burden of proof set forth in Section 4929.04, Revised Code. We further find that the SSO and SCO auctions represent a

reasonable structure through which to test the potential benefits of market-based pricing of the commodity sales by the company. Columbia is, therefore, authorized to proceed with the auctions. In granting this authority, the Commission reserves all authority to exercise oversight during the process, including the ability to order any studies or reviews of the company, the auctions, or the procedures as it deems appropriate. We also specifically reserve the right to reject an auction result and the ability to, at any time during the SSO or SCO phases, require that Columbia return to the GCR rate in the event that we believe it is no longer in the best interest to continue the SSO or SCO services. Accordingly, in accordance with Rule 4901:1-19-10(A), O.A.C., Columbia shall file a notice of intent to implement the SSO and SCO services, along with its proposed revised rate schedules, within 30 days of this order, or 20 days of any decision on rehearing, whichever is later.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Columbia is a natural gas company as defined by Section 4905.03(A)(6), Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.
- (2) On January 30, 2009, as supplemented on March 26 and 31, 2009, Columbia filed an application pursuant to Section 4929.04, Revised Code, for approval of a general exemption of certain natural gas commodity sales services or ancillary services contained in Chapters 4905, 4909, and 4935, Revised Code. In addition, Columbia requests approval of a proposed CSRR, pursuant to Section 4929.11, Revised Code, which would recover or pass back specified costs from affected customers. Finally, pursuant to Section 4905.13, Revised Code, Columbia requests the applicable accounting authority necessary to implement the CSRR.
- (3) By entry issued May 6, 2009, the Commission determined that Columbia's application should be considered to be in compliance with the filing requirements set forth in Chapter 4901:1-19, O.A.C.
- (4) Comments were due by June 25, 2009. Ohio Farm Bureau filed comments in this matter.
- (5) Intervention was granted to: Ohio Farm Bureau; OCC; OP&E; Gas Marketers; DTE; Stand; OEG; ProLiance; Timkin/Glen-

Gary; Dominion; Honda; Sempra; NJR; J.P. Morgan; NOAC; NEMA; Wal-Mart; and OSC.

- (6) A technical conference was held on May 20, 2009.
- (7) Local hearings were held on June 9, 11, 23, and 25, 2009, in Columbus, Parma, Toledo, and Athens, Ohio. There were no public witnesses in Columbus or Toledo, Ohio and there was one public witness that testified at the local hearing in Athens, Ohio, and one public witness that testified at the local hearing in Parma, Ohio.
- (8) The evidentiary hearing was held on October 7, 2009.
- (9) At the October 7, 2009, hearing, Columbia submitted a Stipulation signed by Columbia, staff, and all of the intervenors, with the exception of JP Morgan, NJR Energy, and Sempra. At the hearing, it was represented that Sempra did not oppose the stipulation. In addition, NJR Energy and JP Morgan filed letters stating that they do not oppose the Stipulation. No party testified against, or otherwise objected to, the Stipulation.
- (10) The Stipulation presented in this proceeding should be adopted in its entirety. By virtue of that adoption, the application and Exhibits I through VI of the application, as amended by the Stipulation, and the Program Outline filed on November 12, 2009, are also approved.

ORDER:

It is, therefore,


ORDERED, That the Stipulation submitted in this proceeding be adopted in its entirety. By virtue of this adoption, the application and Exhibits I through VI of the application, as amended by the Stipulation, and the Program Outline filed on November 12, 2009, are also approved. It is, further,

ORDERED, That Columbia shall file a notice of intent to implement the SSO and SCO services, along with its proposed revised rate schedules, within 30 days of this order, or 20 days of any decision on rehearing, whichever is later. It is, further,



ORDERED, That a copy of this opinion and order be served upon each party of record and all other interested persons of record in these proceedings.

THE PUBLIC UTILITIES COMMISSION OF OHIO

  
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Alan R. Schriber, Chairman

  
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Paul A. Centolella

  
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Ronda Hartman Fergus

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Valerie A. Lemmie

  
\_\_\_\_\_  
Cheryl L. Roberto

CMTP/vrm

Entered in the Journal  
**DEC 02 2009**

  
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Renee J. Jenkins  
Secretary

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

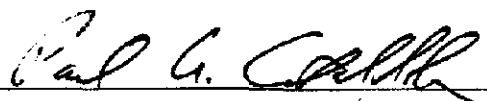
In the Matter of the Application of )  
Columbia Gas of Ohio, Inc., for Approval )  
of a General Exemption of Certain Natural ) Case No. 08-1344-GA-EXM  
Gas Commodity Sales Services or Ancillary )  
Services. )

CONCURRING OPINION OF COMMISSIONER PAUL A. CENTOLELLA

I concur in the Commission's decision and note that for the first time in such a case some parties have indicated that their support for a Stipulation should not be interpreted as support for an SCO auction. These parties have reserved the right to seek further review of the transition from an SSO to an SCO auction. To the extent parties pursue further review, I would encourage them to provide data and address how best to evaluate responses to the following questions:

1. To what extent will an SCO auction result in consumers migrating to fixed price contracts?
2. How have the costs of available fixed price contracts compared to the cost of SSO service?
3. What evidence is available regarding the extent to which consumers understand that a fixed price contract may include a hedging premium that could tend to increase their bills?
4. To the extent consumers understand that a hedging premium may increase their bills, how satisfied are consumers with such fixed priced contracts?
5. What additional educational support, if any, would be beneficial in helping consumers understand the implications of different types of contracts?
6. What services are gas marketers providing to help consumers use gas more efficiently and manage their energy bills?

Any transition from SSO to SCO auctions should support the policies of the State and the development of efficient markets. Responses to the questions listed above will help the Commission evaluate whether there are trade-offs between market structures which support the emergence of competitive retail suppliers and promoting efficient pricing that reflects underlying market conditions and how an SCO auction influences the achievement of different policy objectives.

  
Paul A. Centolella