

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Annual Application of )  
Columbia Gas of Ohio, Inc. for an ) Case No. 09-1036-GA-RDR  
Adjustment to Rider IRP and Rider DSM )  
Rates. )

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POST-HEARING BRIEF IN SUPPORT OF THE STIPULATION  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

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I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC"), an intervenor in the above-captioned proceeding, hereby files this Brief on the Application of Columbia Gas of Ohio, Inc. ("Columbia" or "Company"). Columbia proposed to increase the rates it charges customers for systematic repair and/or replacement of 1) customer-owned service lines, and prone to failure risers; 2) cast iron, wrought iron, unprotected coated steel and bare steel pipe in its distribution system; and 3) the installation of Automatic Meter Reading Devices, as initially proposed in Columbia's recent rate case.<sup>1</sup>

Columbia's proposed increase would be collected from customers via the Infrastructure Replacement Program Rider ("Rider IRP"), per the Application that Columbia filed on February 26, 2010. Rider IRP is supposed to provide for the recovery of costs, from customers, incurred for:

- (a) The future maintenance, repair and replacement of customer-owned service lines that have been determined by Columbia to present an existing or probable hazard to persons and property, and the systematic replacement, over a period of approximately three

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<sup>1</sup> *In re Columbia Rate Case* ("2008 Columbia Rate Case"), Case No. 08-72-GA-AIR, et al., Prepared Direct Testimony of Steven Vitale at 7 (March 17, 2008).

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years, of certain risers prone to failure if not properly assembled and installed. The replacement of customer-owned service lines and prone-to-failure risers was previously approved by the Commission in its opinion and order dated April 9, 2008, in Case No. 07-478-GA-UNC; (b) The replacement of cast iron, wrought iron, unprotected coated steel, and bare steel pipe in Columbia's distribution system, as well as Columbia's replacement of company-owned and customer-owned metallic service lines identified by Columbia during the replacement of all the above types of pipe (referred to as the Accelerated Mains Replacement Program or AMRP); and (c) The installation, over approximately a five-year period, of Automatic Meter Reading Devices ("AMRD") on all residential and commercial meters served by Columbia.<sup>2</sup>

Pursuant to the Stipulation and Recommendation ("Stipulation") filed on October 24, 2008, in Case No. 08-72-GA-AIR et al., and the Opinion and Order of the Public Utilities Commission of Ohio ("Commission" or "PUCO") dated December 3, 2008, the Rider IRP rates are subject to increases that customers may have to pay, up to a cap, in each year 2009 through 2013.<sup>3</sup>

In addition, Columbia has filed for the collection of costs related to the implementation of a demand side management ("DSM") program. The program is intended to allow customers to reduce bills through various conservation programs as set forth in Case No. 08-833-GA-UNC.<sup>4</sup>

On November 30, 2009, Columbia submitted a pre-filing notice of its intent to file an Application for approval of an increase in the IRP rider rates and DSM Rider rate.

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<sup>2</sup> Opinion and Order at 8 (December 3, 2008); See also the Direct Testimony of David Roy at 4 (recovery of AMRD-related costs will first be addressed in February 2010.) (February 27, 2009).

<sup>3</sup> Id. at 9.

<sup>4</sup> *In re DSM Case*, Case No. 08-833-GA-UNC, Application (July 1, 2008), and approved by the Commission in Finding and Order (July 23, 2008).

OCC filed its Motion to Intervene in this case on December 30, 2009. The OCC Motion to Intervene was granted by an Attorney Examiner Entry dated March 5, 2010 ("Entry").

On April 14, 2010, the Stipulation was executed by all Parties in this case, including the Company, the Commission Staff ("Staff"), OCC and Ohio Partners for Affordable Energy ("OPAE"), and was filed with the Commission.<sup>5</sup>

On April 15, 2010, the Commission held an evidentiary hearing on the Stipulation and heard supporting testimony from Company witness Noel.<sup>6</sup>

## II. THE APPLICABLE LAW

The standard of review for consideration of a Stipulation has been discussed in a number of Commission cases and by the Ohio Supreme Court. See, e.g., *CG&E ETP Case*, PUCO Case No. 99-1212-EL-ETP, et al., at 65 (July 19, 2000). Among other places, the Ohio Supreme Court has addressed its review of stipulations in *Consumers' Counsel v. Pub. Util. Comm.*, (1992), 64 Ohio St. 3d 123, 125. Citing *Akron v. Pub. Util. Comm.* (1978), 55 Ohio St.2d 155, 157, the Ohio Supreme Court stated in *Consumers' Counsel* that:

The Commission, of course, is not bound to the terms of any stipulation; however, such terms are properly accorded substantial weight. Likewise, the commission is not bound by the findings of its staff. Nevertheless, those findings are the result of detailed investigations and are entitled to careful consideration.

In *Duff v. Pub. Util. Comm.* (1978), \* \* \* in which several of the appellants challenged the correctness of a stipulation, we stated:

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<sup>5</sup> Joint Ex. No. 1 Stipulation and Recommendation (April 14, 2010).

<sup>6</sup> COH Ex. No.12, Prepared Supplemental Direct Testimony of Stephanie D. Noel (April 14, 2010).

A stipulation entered into by the parties present at a commission hearing is merely a recommendation made to the commission and is in no sense legally binding upon the commission. The commission may take the stipulation into consideration, but must determine what is just and reasonable from the evidence presented at the hearing.<sup>7</sup>

The Court in *Consumers' Counsel* considered whether a just and reasonable result was achieved with reference to criteria adopted by the Commission in evaluating settlements:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit ratepayers and the public interest?
3. Does the settlement package violate any important regulatory principle or practice?<sup>8</sup>

### III. ARGUMENT

#### A. The Stipulation Is A Product Of Serious Bargaining Among Capable, Knowledgeable Parties With Diverse Interests.

In this case, the Signatory Parties to the Stipulation include the Company, Staff, OCC and OPAE. These organizations each have extensive experience in Commission proceedings and experience in Columbia's infrastructure replacement ("IRP") and demand side management ("DSM") programs.

In addition, the Stipulation was not entered into lightly. There were extensive negotiations.<sup>9</sup> The bargaining conducted by the Parties was not superficial as demonstrated by the Stipulation that encompassed numerous provisions and attachments.

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<sup>7</sup> *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 123, 125.

<sup>8</sup> *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 123, 126.

<sup>9</sup> Entry at 2-3 (March 5, 2010); See also Entry (April 2, 2010), Entry (April 6, 2010) and Entry (April 9, 2010).

Per precedent for approving settlements, the signatories reflect diverse interests<sup>10</sup> including OCC's representation of all residential consumers. The compromise that was reached in the Stipulation is the product of a determined effort to resolve all outstanding issues presented in this proceeding that will yield significant benefits to Columbia's residential consumers, such as adjustments decreasing COH's revenue requirement in the amount of \$1.8 million<sup>11</sup> thereby reducing the IRP rider rate to \$1.62 per month,<sup>12</sup> a \$0.08 reduction to the rate proposed by COH in its Application.<sup>13</sup> The resulting IRP Rider rate, under the Stipulation, is below the established cap and served as one of the grounds for OCC's support.

Thus, the Stipulation meets the first criterion for reasonableness recognized by the Supreme Court of Ohio and the Commission.

**B. As A Package, The Stipulation Benefits Customers And The Public Interest.**

The Stipulation benefits COH's residential customers and the public interest by promoting energy efficiency measures. COH's demand side management programs offer residential and small commercial customers energy saving programs designed to reduce

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<sup>10</sup> See In the Matter of the Restatement of the Accounts and Records of The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, and Columbus & Southern Ohio Electric Company. Case No. 84-1187-EL-UNC, Opinion and Order at 7 (November 29, 1985).

<sup>11</sup> Joint Ex. No. 1, Stipulation at 2 (April 14, 2010).

<sup>12</sup> Joint Ex. No. 1, Stipulation at Attachment 2A.

<sup>13</sup> COH Ex. No. 2, Application at Attachment A (February 26, 2010). (COH proposed a \$1.70 IRP Rider rate for Small General Service Customers – primarily residential customers). See also COH Ex. No. 12, Supplemental Direct Testimony of Stephanie D. Noel at 6 (April 14, 2009) ("The revenue increase is \$1.8 million less than what [COH] had requested in its Application.").

natural gas consumption.<sup>14</sup> In turn by installing energy efficiency measures the consumer will realize lower natural gas bills.

The Stipulation will also enhance future IRP filing requirements intended to improve the information available to parties,<sup>15</sup> and improve the opportunity for COH to flow operation and maintenance savings back to consumers.<sup>16</sup>

The Stipulation benefits customers and the public interest. Thus, the Stipulation meets the second criterion for reasonableness recognized by the Supreme Court of Ohio and the Commission.

**C. The Stipulation Does Not Violate Any Important Regulatory Principle Or Practice.**

The Stipulation does not violate any important regulatory principle or practice because it assures that Columbia's cost recovery is consistent with the Commission's Order, in the 2008 Columbia Rate Case, that implemented the IRP program. The 2008 Columbia Rate Case Opinion and Order stated:

While we are willing to approve the establishment of the rider, our understanding of the projects to be recovered under the rider are projects that would not otherwise be funded by Columbia's existing capital replacement program (Columbia Ex. 13 at 18.) **Our intent is that Rider IRP should not be used to recover investment costs that would routinely be included in and funded by the company's existing capital replacement program.**<sup>17</sup>

The Stipulation addresses this issue by stating:

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<sup>14</sup> Joint Ex. No. 1, Stipulation at 4-5 (April 14, 2010).

<sup>15</sup> Joint Ex. No. 1, Stipulation at 4 (April 14, 2010).

<sup>16</sup> Joint Ex. No. 1, Stipulation at 3 (April 14, 2010).

<sup>17</sup> *In re Columbia Rate Case ("2008 Columbia Rate Case")*, Case No. 08-72-GA-AIR, et al., Opinion and Order at 14 (December 3, 2008) (emphasis added).

In Columbia's annual Rider IRP applications authorized by the 2008 Rate Case Order, Rider IRP should not be used to recover investment costs that would routinely be included in and funded by Columbia's existing capital replacement program. Columbia shall provide evidence in its annual Rider IRP applications to show that the rider was not used to recover the costs of projects that otherwise would have been included in its capital replacement program.<sup>18</sup>

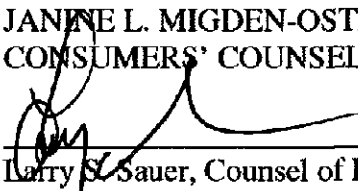
The Stipulation complies with the Commission's existing regulatory principles and practices. Thus, the Stipulation meets the third criterion for reasonableness recognized by the Supreme Court of Ohio and the Commission.

#### **IV. CONCLUSION**

As discussed above, the Stipulation is a product of serious bargaining among capable, knowledgeable parties with diverse interests, as a package benefits customers and the public interest and does not violate any important regulatory principle or practice. Thus, the Stipulation meets the criteria for reasonableness, and the PUCO should approve the Stipulation without modification.

Respectfully submitted,

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<sup>18</sup> Joint Ex. No. 1, Stipulation at 4 (April 14, 2010).

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the *Office of the Ohio Consumers' Counsel's Post-Hearing Brief* was served via electronic mail to the parties of record identified below, on this 22nd day of April 2010.

  
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