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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of )  
Columbia Gas of Ohio, Inc. for )  
Approval of a General Exemption of )  
Certain Natural Gas Commodity Sales )  
Services or Ancillary Services from ) Case No. 08-1344-GA-EXM  
Chapters 4905, 4909, and 4935 except )  
Sections 4905.10, 4935.01, and 4935.03, )  
and from specified sections of Chapter )  
4933 of the Revised Code. )

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MEMORANDUM CONTRA OF  
COLUMBIA GAS OF OHIO, INC. TO THE  
APPLICATION FOR REHEARING BY THE  
OFFICE OF THE OHIO CONSUMERS' COUNSEL AND  
OHIO PARTNERS FOR AFFORDABLE ENERGY

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Pursuant to Rule 4901-1-35 of the Ohio Administrative Code, Columbia Gas of Ohio, Inc. ("Columbia") submits this memorandum contra the application for rehearing submitted by the Office of the Ohio Consumers' Counsel ("OCC") and Ohio Partners for Affordable Energy ("OPAE") jointly ("Joint Applicants"), filed on October 7, 2011.

1. INTRODUCTION

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.

On October 7, 2009, the parties filed a Stipulation. The Stipulation was signed by all of the parties, with the exception of JP Morgan, NJR Energy, and Sempra Energy Trading LLC, which stated that they do not oppose the Stipulation.

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The Stipulation provided that Columbia will conduct two auctions in order to implement two consecutive one-year long Standard Service Offer ("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 sales customer 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 Stipulation also provided that Columbia will conduct a third auction for the annual period beginning April 2012. This auction will be a Standard Choice Offer ("SCO") auction. The primary difference from the SSO auction being that individual customers will be assigned to the bid winners of the SCO auction.

The Commission approved the Stipulation in an Opinion and Order dated December 2, 2009, and held, "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." The Commission further held that:

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.

On April 15, 2011, Columbia filed a Revised Program Outline, reflecting the operational changes necessary to implement the initial SCO auction in February 2012. On May 9, 2011, the OCC and OPAE filed objections to the SCO auction and requested the suspension of the SCO auction. A hearing commenced on July 14, 2011. Supporters who offered testimony in favor of the SCO included Columbia, Commission Staff ("Staff") and the Ohio Gas Marketers Group ("OGMG") (jointly, "Supporters").

On September 7, 2011, the Commission issued a Second Opinion and Order finding that "[s]ufficient evidence has been presented in this case to support the continuation of the stipulation approved in this case on December 2, 2009, which provides for the transition from an SSO to an SCO in 2012." (Second

Opinion and Order at 19).<sup>1</sup> Joint Applicants filed an Application for Rehearing on October 7, 2011 (“Application”) raising 5 assignments of error.

## **2. ARGUMENT**

### **2.1 Joint Applicant’s First Three Assignments of Error and its Fifth Assignment of Error Are Without Merit and Lack Any Evidentiary Support**

Joint Applicants first three assignments of error assert that Columbia’s SCO auction violates state policy, specifically that found in R.C. 4929.02. Joint Applicants also argue in their fifth assignment of error that Commission erred in failing to address Joint Applicants’ concerns regarding state policy in its Second Opinion and Order.

#### **2.1.1 Joint Applicants Offered No Testimony or Evidentiary Support**

Neither the OCC nor OPAE offered any testimony at the hearing to support their assertions that Columbia’s SCO auction violates state policy. In their brief, Joint Applicants imply that Columbia customers are forced into a relationship with Marketers without consent. (Application at 8). This assertion is not based on any fact in the record, but rather on the Joint Applicant’s self-serving characterization of the matter. To the contrary, Mr. Parisi, OGMG witness, provided uncontroverted testimony that a non-PIPP customer who doesn’t make a selection to choose a retail supplier will continue to get service under the SCO auction. (OGMG Ex. 1 at. 44). The customer is not required to sign a contract, or do anything else for that matter, to continue to receive gas service under the SCO. (OGMG Ex. 1 at 39, 44). While all customers that receive commodity gas supply service under the SCO will have an SCO Supplier directly assigned to provide their gas supply, that does not signify the establishment of a retail relationship with a marketer since the price of the gas is governed by the SCO auction. However, should a customer elect to establish a retail relationship with a marketer, including that marketer to whom it is assigned, the customer can do so under Columbia’s CHOICE program. The option to enroll in the CHOICE program remains intact under the SCO as it did with the SSO and the

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<sup>1</sup> The Commission made subsequent findings related to cash deposits and capacity raised by OGMG and North Coast; however, Joint Applicants do not address these issues in their Application.

GCR. The Joint Applicants have failed to demonstrate that this constitutes a violation of state policy.

Further, Joint Applicants erroneously state that the Commission failed to address the “willing buyer, willing seller” argument in its Second Opinion and Order in violation of R.C. 4903.09. (Application at 34, 35) This argument is flawed for several reasons. First, and perhaps most importantly, an attorney’s statements during closing argument are not considered fact or testimony. *State v. Nields* (2001) 93 Ohio St. 3d 6. As such, it would be improper for a trier of fact to use statements in a closing argument as evidentiary support.

Second, R.C. 4903.09 reads:

In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

Nothing in R.C. 4903.09 requires the Commission to set forth every single factual issue in the record upon which its decision rests and certainly doesn’t require the Commission to make findings based on *opinions* made in closing argument. All that is required is that the commission set forth “some factual basis and reasoning based thereon in reaching its conclusion.” *Allnet Communications Serv., Inc. v. Pub. Util. Comm.* (1994), 70 Ohio St.3d 202, 209, See, also, *Ohio Domestic Violence Network v. Pub. Util. Comm.* (1994), Ohio St. 3d 311, 323.

#### 2.1.2 The Record is Replete with Uncontroverted Evidence that an SCO Promotes State Policy

In his pre-filed testimony, Mr. Parisi detailed how the SCO auction promotes the state energy policy. Specifically, under an SCO, residential customers shall receive significant information regarding the “actual supply source of the commodity; the existence of a competitive market; the availability of alternative suppliers; and the ability of someone other than the utility to provide natural gas commodity.” (OGMG Ex. 1, at 6-7). Mr. Parisi continued to detail throughout his testimony and upon cross-examination how an SCO auction creates an increase in competition and an increase in customer choices, which are two of the pillars of the state energy policy set forth in R. C. 4929.02.

Neither the OCC nor OPAE offered any admissible *evidence* to refute Mr. Parisi's testimony. As such, the Commission did not err in finding that SCO promotes the state energy policy.

## **2.2 Joint Applicant's Fourth Assignment of Error Lacks Merit and Ignores the Evidence in the Record**

Joint Applicants assert that the supporters of the SCO auction failed to meet their burden of proving "that the anticipated benefits from and SCO auction are real." (Application at 9). Not only is this assertion false, but it imposes a standard not set forth by the Commission. Throughout the hearing and their Application, Joint Applicants attempt to impose a fabricated standard of their own creation – i.e., an alleged requirement "objective quantifiable benefits" of the SCO. Nowhere in the Revised Code or any Commission order is this standard articulated. Rather, in the December 2, 2009 Opinion and Order, the Commission directed the parties supporting the SCO to "present evidence intended to demonstrate the *anticipated* benefits from an SCO auction."

The supporters of the SCO created a record, through testimony and exhibits, detailing the anticipated benefits of the SCO. First, OGMG, which is comprised of seven different gas marketers, presented evidence that suppliers find an SCO more beneficial and more attractive, thus increasing supplier participation in the auction. (OGMG Ex. 1 at 3-7). In their Application, the Joint Applicants assert that large wholesale suppliers may not want to participate in an SCO because of the certification process required under the SCO, thus the SCO auction could lead to fewer bidders and become less competitive. (Application at 14, OCC Ex. 1 at 12). Joint Applicants provide no basis for this assertion even though it had ample opportunity to provide support from the wholesale suppliers it claims may not want to participate.<sup>2</sup>

Further, the results of the auctions conducted by other LDCs demonstrate the greater value the marketers place on the SCO auction, as opposed to an SSO-only auction. Staff witness Mr. Puican offered ample testimony, based on the results of the auctions conducted by LDCs that have held an SCO auction, to support the assertion that marketers prefer an SCO auction. For example, he provided evidence of the increased levels of marketer participation in the DEO auctions when the SCO auction was implemented. Joint Applicants try to

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<sup>2</sup> In its application, Join Applicants name BP Energy Company, Virginia Power Energy Marketing, Inc. and J.P. morgan Venturers Energy Corporation as wholesale suppliers who may not want to participate in an SCO.

discredit Mr. Puican's analysis by asserting that he failed to take into account other factors that *could have* had an impact on marketer participation. (Application at 26). However, Joint Applicant's attempt to discredit Mr. Puican is speculative and unpersuasive.

The supporters of the SCO also presented evidence that customers benefit from an SCO because there is an increase in the amount of information about gas supply options provided to customers through an SCO. This benefit aligns closely with the state energy policy and helps customers make informed choices when it comes to gas supply. Joint Applicants assert, without an ounce of support, that the increase in information may confuse customers. However, the OCC acknowledged that it is part of the stakeholder group that develops customer education under Columbia's program outline. (Tr. II at 293). As such, the OCC, should it be willing, can help develop a customer education program that serves to eliminate any customer confusion.

Finally, the supporters of the SCO offered concrete evidence reflecting that the SCO auctions conducted by both DEO and Vectren have continually resulted in a lower bid price. (Tr. 1 at 84-86). The Commission is responsible for ensuring the lowest possible price for gas commodity and an SCO auction creates a competitive environment to achieve that result.

Joint Applicants attempt to discredit the clearly demonstrated anticipated benefits of the SCO by arguing customers will be forced to pay a higher sales tax as a result of the SCO. As argued in the hearing and determined by the Commission, taxes are outside of the Commission's jurisdiction. (Second Opinion and Order at 12). The type of taxes assessed to a customer is determined by the legislature and not by the Commission.

Further, even if the Commission were to address the tax issue, Mr. Puican testified that, if the auction participants in Columbia's SCO auction bid a premium of at least \$0.13 per Mcf lower than the SSO auction bid, the premium would more than offset the tax impact. (Staff Ex. 1 at 8-9). According to his testimony, Mr. Puican anticipates that Columbia's SCO auction will produce this result. (Staff Ex. 1 at 9).

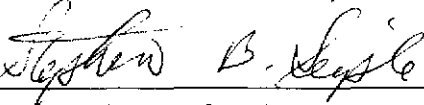
The supporters of the SCO clearly created a record proving the *anticipated benefits* of an SCO auction. Mr. Parisi, Mr. Puican and Mr. Cahaan presented empirical data to support their positions that an SCO is favorable to the

consumer. Joint Applicants simply do not want an SCO and have chosen to ignore the evidence contained in the record in order to espouse their views.

### 3. CONCLUSION

Joint Applicants have not raised any arguments that would require the Commission to arrive at a different conclusion than set forth in its September 7, 2011 Second Opinion and Order. For the reasons discussed herein, the Joint Applicants' application for rehearing should be denied.

Respectfully submitted,  
**COLUMBIA GAS OF OHIO, INC.**

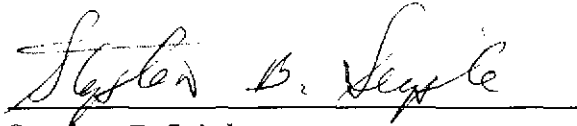
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## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra of Columbia Gas of Ohio, Inc. was served upon all parties of record by regular U.S. Mail this 17th day of October, 2011.



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