

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) Case No. 08-1344-GA-EXM
Certain Natural Gas Commodity Sales)
Services or Ancillary Services.)

ENTRY ON REHEARING

The Commission finds:

- (1) By opinion and order issued December 2, 2009, (December 2009 order) the Commission approved the terms of a stipulation and recommendation (stipulation) entered into by the parties in this proceeding. The stipulation provided, *inter alia*, that Columbia Gas of Ohio, Inc. (Columbia), would hold an auction to secure natural gas supplies, through a standard service offer (SSO) structure from April 1, 2010 through March 31, 2012, and subsequently through a standard choice offer (SCO) structure beginning April 1, 2012. In addition, the stipulation provided that, prior to the SCO auction, 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 the SCO auction, the stipulating parties supporting the SCO auction agreed to present evidence intended to demonstrate the anticipated benefits from an SCO auction.
- (2) In accordance with the process established in this docket, the Ohio Consumers' Counsel (OCC) and the Ohio Partners for Affordable Energy (OPAE) filed objections to the SCO auction and requested that the Commission suspend Columbia's proposal to conduct an SCO auction in favor of conducting an SSO auction.
- (3) On July 14, 2011, the Commission commenced a hearing for the purpose of allowing parties supporting the SCO auction to present evidence supporting their positions regarding the anticipated benefits from an SCO auction and parties against an SCO auction to present evidence in opposition.
- (4) On September 7, 2011, the Commission issued its second opinion and order (September 2011 order) in this case. In the

September 2011 order, the Commission, *inter alia*, concluded that sufficient evidence had been presented in this case to support the continuation of the stipulation approved in the December 2009 order, which provides for the transition from an SSO to an SCO in 2012. Therefore, the Commission determined that Columbia should proceed with its transition to an SCO.

- (5) Section 4903.10, Revised Code, states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in the proceeding by filing an application within 30 days after the entry of the order upon the journal of the Commission.
- (6) On October 7, 2011, OCC and OP&E (OCC/OP&E) filed a joint application for rehearing of the Commission's September 2011 order, setting forth five grounds for rehearing.
- (7) On October 17, 2011, Columbia and OGMG filed memorandum contra the application for rehearing filed by OCC/OP&E, essentially arguing that OCC/OP&E made no new argument that had not already been considered in the September 2011 order.
- (8) In their first, second, and third assignments of error, OCC/OP&E argue that the Commission erred by determining that Columbia may implement an SCO auction, in violation of the state policy contained in Sections 4929.02(A)(3) and (7), Revised Code, as well as Section 4905.72, Revised Code. OCC/OP&E explain that Sections 4929.02(A)(3) and (7), Revised Code, provide that consumers be given effective choices over the selection of their gas supplies and suppliers, and that retail natural gas competition must provide for willing buyers. According to OCC/OP&E, customers are not given effective choices and selection, and the customers are not willing buyers under the process in the SCO auction because customers are assigned to marketers without the customers' consent. Moreover, OCC/OP&E offer that Section 4905.72, Revised Code, prohibits a public utility from requesting or submitting, or causing to be requested or submitted, a change in the provider of natural gas to a consumer in this state, without first obtaining, or causing to be obtained, the verified consent of the consumer.

- (9) In response to the first three assignments of error, Columbia points that neither OCC nor OP&AE offered any evidence in this case to support their assertions that the SCO auction violates state policy. Likewise, O&MG notes that OCC/OP&AE had an opportunity to present witnesses or evidence at the hearing to support their allegations, but they failed to do so. Columbia indicates that the record in this case is replete with uncontroverted evidence that an SCO auction promotes state policy. Furthermore, Columbia notes that, contrary to the assertions by OCC/OP&AE, even though customers will have a supplier assigned to them, that does not signify the establishment of a retail relationship with the marketer, since the price of the gas is governed by the SCO auction. However, Columbia notes that, if a customer elects to establish a retail relationship with a marketer, the customer may do so under Columbia's Choice program. O&MG also offers that both an SSO and an SCO auction result in default service being priced at the monthly New York Mercantile Exchange (NYMEX), plus the adder product, for the customers that have not shopped, and both the SSO and SCO are the default service for the same group. O&MG points out that Columbia continues to be the provider of last resort under the SCO, and, contrary to the assertions by OCC/OP&AE, the SCO continues to be the default service for customers that make no election. O&MG further states that the Commission determined in its December 2009 order that an SCO auction is consistent with and advances the state policy in Section 4929.02, Revised Code.
- (10) Initially, the Commission notes that, in their first three assignments of error, OCC/OP&AE fail to provide any evidence of record to support their contentions and refute the evidence presented by the proponents supporting an SCO; rather, OCC/OP&AE point to their closing arguments to support their position that the record violates state policy. As stated by Columbia, and referred to in our September 2011 order, under the SCO process, a customer will pay the SCO auction prices; however, the customer may participate in Columbia's Choice program and decide to establish a retail relationship with a marketer. In addition, O&MG appropriately notes that Columbia will continue to be the provider of last resort and that, regardless of whether there is an SSO or an SCO, the default service will be priced at NYMEX, plus the adder product, for nonshopping customers. Thus, the Commission

finds that Sections 4929.02(3) and (7), Revised Code, actually support Columbia's move to an SCO, because, as reflected in the record in this case, the SCO will advance the transition to a competitive market by giving consumers choices regarding their natural gas service provider. The Commission also finds that the assertions by OCC/OPAE that an SCO auction process violates Section 4905.72(B)(1), Revised Code, are unfounded. Section 4905.72, Revised Code, addresses unauthorized changes in the provider of utility services, in violation of the Commission's rules and regulations; Columbia's request in this case is within the parameters of Title 49, Revised Code, and the Commission's rules pertaining to requests for exemptions. However, even if Section 4905.72, Revised Code, were applicable, division (C)(1) of that section provides that division (B)(1) does not apply to the transfer of a customer's service that occurs solely due to the operation of a utility's default provisions in its tariff. Therefore, the Commission concludes that the first three assignments of error set forth by OCC/OPAE are without merit and should be denied.

- (11) In their fourth assignment of error, OCC/OPAE contend the Commission erred because the parties supporting the SCO auction failed to meet their burden to prove that the anticipated benefits from an SCO auction are real. Specifically, OCC/OPAE assert that Columbia made no attempt to present evidence demonstrating the quantifiable benefits from an SCO auction and OGMG relied on a self-serving survey to establish anticipated benefits of an SCO auction. In addition, OCC/OPAE state that Staff's analysis of anticipated benefits is flawed, because the analysis: disregarded significant market conditions that could have impacted prior auctions; did not provide the same depth as the prior staff report analyzing the transition to the SSO auction; and overstated the value marketers place on the SCO auction model. Furthermore, OCC/OPAE maintain that there can be no anticipated benefits of an SCO auction if the auction violates the provisions of the statute and the customers are required to pay higher future costs.
- (12) Columbia takes issue with OCC/OPAE's fourth assignment of error noting that, not only are the assertions false, but they impose a standard not set forth by the Commission. Columbia points out that, throughout the hearing and the application for

rehearing OCC and OP&E attempt to impose a fabricated standard of their own creation, that the SCO must have "objective quantifiable benefits." However, Columbia states that nowhere in the statute or any Commission order is this standard articulated. In addition, O&MG offers that OCC/OP&E have raised no new issue in this assignment of error that the Commission did not consider in its September 2011 order.

- (13) In our September 2011 order, we reiterated the provision of the stipulation approved on December 2, 2009, to which both OCC and OP&E were signatory parties, which provided: should a party petition to suspend the SCO auction in favor of another SSO auction, the parties supporting the SCO auction would present evidence intended to demonstrate the anticipated benefits from an SCO auction. OCC/OP&E continue to argue that there should be quantifiable, tangible benefits for Columbia's SCO auction that is to take place in the future; however, as pointed out in our September 2011 order, even OCC's witness agreed that it is not possible to have tangible benefits for an event that happens in the future (Tr. II at 299). Moreover, our September 2011 order set forth significant evidence of record, some of which reflected that SCO auctions for other Ohio local distribution companies have resulted in benefits and savings to customers. Such evidence was not refuted on the record; rather, OCC/OP&E assert that the Commission should rely on their unsubstantiated closing arguments in reaching a decision on rehearing. OCC/OP&E raised nothing new on rehearing that was not thoroughly considered in our September 2011 order. Accordingly, we find that their fourth assignment of error is without merit and should be denied.
- (14) Finally, in their fifth assignment of error, OCC/OP&E argue that the Commission failed to comply with the requirements of Section 4903.09, Revised Code, which requires the Commission to provide specific findings of fact and written opinions that are supported by the record. For example, OCC/OP&E submit that the Commission erred by not filing findings of fact and written opinions regarding the issue of whether customers are willing buyers, in accordance with Section 4929.02(A)(7), Revised Code.

- (15) Columbia asserts that OCC/OPAE's fifth assignment of error is flawed because the only statements OCC/OPAE point to in the record to support their assertions are in the closing statements made by OCC and OPAE, and it would be improper for the Commission to use these arguments as evidentiary support. Furthermore, Columbia notes that, contrary to the assertions by OCC/OPAE, Section 4903.09, Revised Code, does not require the Commission to set forth every single factual issue in the record upon which its decision is based and does not require the Commission to make findings based on opinions made in closing arguments. OGMG agrees that the Commission's September 2011 order provides the basic rationale and citations to the record in support of its decision and, thus, there is no violation of Section 4903.09, Revised Code.
- (16) The Commission's summary of the evidence presented in this case and our conclusions set forth in the September 2011 order are quite extensive and thorough, and they address and resolve every issue raised by the parties. OCC/OPAE's assertion on rehearing that the Commission did not provide specific findings of fact and an opinion that is supported by the record is clearly without merit. Accordingly, the Commission finds OCC/OPAE's fifth assignment of error should be denied.

It is, therefore,

ORDERED, That the application for rehearing filed by OCC/OPAE be denied in its entirety. It is, further,

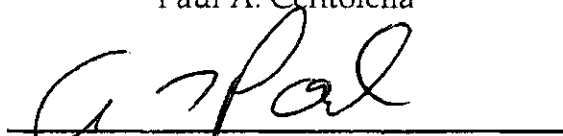
ORDERED, That a copy of this entry on rehearing be served upon all parties of record.

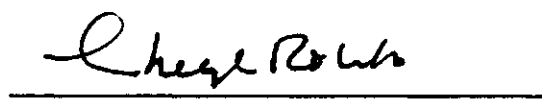
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


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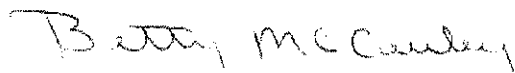

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