

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the Ohio)
School Consortium for Clarification or)
Waiver Regarding General Transportation) Case No. 11-6011-GA-WVR
Service Provided by Columbia Gas of Ohio,)
Inc.)

FINDING AND ORDER

The Commission finds:

- (1) By opinion and order issued December 2, 2009, the Commission approved the terms of a stipulation and recommendation (stipulation) entered into by the parties in *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*, Case No. 08-1344-GA-EXM (08-1344). The stipulation, as approved, provided, *inter alia*, that, starting April 1, 2012, nonresidential general transportation customers of Columbia Gas of Ohio, Inc. (Columbia) with loads below 6,000 thousand cubic feet (Mcf) per year would purchase Columbia's standby service in order to continue receiving general transportation service; however, an exception to this requirement was made for public school districts that were taking service as of October 7, 2009, including any new or existing facility placed into service in any such district during the term of the stipulation.
- (2) By entry issued November 22, 2011, in 08-1344, the Commission approved the tariffs which contain the provision requiring standby service for all customers with usage under 6,000 Mcf per year, with the exception of public schools. These tariffs are to become effective April 1, 2012.
- (3) On December 21, 2011, as revised on December 23, 2011, the Ohio School Consortium (School Consortium or applicant) filed an application requesting clarification of or waiver from certain provisions set forth in the stipulation and order in 08-1344, as well as Columbia's tariff. Specifically, the School Consortium asserts that the exception for "public school districts," should include private schools, parochial schools, and libraries that were taking service as of October 7, 2009, as part of the public

bid of the School Consortium; thus, allowing these entities to receive general transportation service without purchasing standby service.

- (4) By entry issued January 30, 2012, a procedural schedule was established for this case giving interested persons until February 10, 2012, to file motions to intervene and setting February 16 and 22, 2012, as the deadlines for the filing of comments and reply comments, respectively.
- (5) On January 12, 2012, the Ohio Consumers' Counsel (OCC) filed a motion to intervene. In support of its motion, OCC states that, as the residential advocate, its participation is necessary to ensure that, if the applicant's request is granted, residential customers do not pay the costs for nonresidential transportation customers. Furthermore, OCC offers that its intervention will not unduly prolong the proceeding and it will contribute to the full development and equitable resolution of the factual issues. No one filed a memorandum contra OCC's motion to intervene. The Commission finds that OCC's motion to intervene is reasonable and should be granted.
- (6) Initially, the Commission notes that, while Columbia did not file a motion to intervene, Columbia filed a memorandum contra the application on January 5, 2012, and reply comments on February 22, 2012. Given Columbia's failure to intervene, Columbia will not be considered a party in this matter; however, for purposes of this order, the Commission will summarize Columbia's perspective as presented in the filings it made in this docket.
- (7) On January 12, 2012, the School Consortium filed a reply to Columbia's memorandum contra and Staff filed comments on the application. In addition, on February 16, 2012, OCC filed comments and on February 22, 2012, the School Consortium filed reply comments.
- (8) As background, the School Consortium explains that 20 years ago, pursuant to state law, governmental agencies, including schools, were permitted to form councils of governments for the purpose of purchasing services in bulk in order to achieve lower prices. Thus, for the past 17 years, several councils have joined together to bid out natural gas service as an ad hoc

association called the Ohio School Consortium. According to the applicant, the single winning bidder pays all of the transportation fees to Columbia so that the School Consortium pays only a single invoice for natural gas service. Currently, the School Consortium consists of more than 200 school districts in Ohio, and the Council of Governments that makes up the School Consortium, in accordance with state law, also includes parochial and private schools, as well as public libraries. The School Consortium's load is approximately 2.8 billion cubic feet per year. The applicant affirms that 90 percent of the School Consortium's load is for Ohio public schools districts, with less than 10 percent of the load going to Catholic schools, private academies, Franklin University, and several public libraries.

The applicant acknowledges that the order in 08-1344 permitted Columbia to require all general transportation customers with a load below 6,000 Mcf per year to purchase standby service starting April 1, 2012¹; however, public schools were an exception to this requirement. The School Consortium believes that the purpose of this exemption provision was to grandfather those participating in the school program, as nowhere in the stipulation is there language that strips out the intended grandfathering of the schools participating in the bid programs because the schools are private or have a religious affiliation. The applicant notes that Columbia has notified the members of the School Consortium, who are not Ohio school districts, that they will need to sign up for standby service. However, the School Consortium points out that neither the stipulation, nor the order in 08-1344, defines public schools. The applicant argues that the School Consortium's load fits the definition of public schools, since its load is primarily used by public schools, is conducted through a single pool, and is paid collectively.

The School Consortium notes that the Commission has approved preferential rate treatment for schools and such treatment has been held as not unconstitutional given the unique financial circumstances of schools. *County Commissioners Association v. Public Utilities Commission* (1980), 63 Ohio St. 2d 243. Moreover, pursuant to Section 4905.34,

¹ According to the applicant, standby service is currently \$0.80 per Mcf.

Revised Code, the applicant notes that Columbia could lawfully provide service at a reduced rate.

Therefore, the School Consortium requests that the Commission interpret the term public schools or grant a waiver such that all members of the School Consortium, including parochial schools, private schools, and public libraries, that were members of the consortium and taking service on October 7, 2009, as part of the public bid of the School Consortium, be permitted to continue with general transportation service, regardless of backup service.

- (9) Staff recommends that the Commission grant the applicant's request for waiver and permit the School Consortium to continue to purchase natural gas as it is currently configured. In support of its position, Staff understands that, with the transition to a standard choice offer (SCO) auction beginning April 1, 2012, the stipulation in 08-1344 provided for a change in the eligibility requirements for non-Choice transportation service customers, such that a nonresidential customer consuming less than 6,000 Mcf per year would be required to purchase standby service. However, "in order to eliminate the potential burden this additional charge would place on already cash-strapped school systems" the stipulation in 08-1344 created an exemption for public school districts that are receiving transportation service as of the date of the stipulation. While Staff believes the meaning of public schools is clear in the stipulation and does not need clarification, Staff recommends the Commission grant the School Consortium's request for a waiver of the tariff provisions for the nonpublic members of the consortium. Staff states that it is persuaded by the facts of this case, namely the arguments that the consortium is predominately made up of public schools, has been purchasing gas as a single entity, from a single provider, and that it pays a single invoice for such service. Staff believes that, to strictly enforce the tariff language limiting the exemption to public schools would amount to kicking the nonpublic schools out of the School Consortium. Staff argues that this is an unforeseen and unintended consequence of the term "public schools" that is not in the public interest.
- (10) Columbia believes that the applicant's request should be denied for several reasons. First, allowing a change this late in

the process would require Columbia to make numerous manual adjustments that have already been made, thus, placing additional burden on Columbia and its customers. Second, Columbia asserts that the language in the stipulation in 08-1344 clearly does not allow for parochial schools and libraries to circumvent the tariff, and historical practice alone is not sufficient reason to continue the practice. Columbia emphasizes that nothing in the tariff or in the new requirements prohibits the School Consortium from continuing to purchase supplies as a group. Third, Columbia opines that allowing the School Consortium a waiver would create a dangerous precedent with unpredictable and perhaps unlimited results. Because Columbia lacks reliable information as to the members of the School Consortium, Columbia states that the group may include other members that do not fit into the public or parochial school categories. Finally, according to Columbia, allowing the School Consortium a waiver would give its members preferential treatment over other similarly-situated customers in the state.

- (11) OCC states that, having signed the stipulation in 08-1344 that Columbia now seeks to enforce, OCC will respect Columbia's reliance on the settlement that Staff says is clear on the meaning of the term "public schools." However, if the Commission grants the request by the School Consortium, such decision should not impair the status of residential consumers under the stipulation, pointing out that OCC agreed to the settlement in 08-1344 with the understanding that it would not cost Ohio consumers. Under the stipulation, residential customers were not paying for standby service, thus, under no circumstances should residential customers be responsible for addition costs, such as Columbia's potential loss of standby service revenues if the applicant's request is granted.
- (12) The School Consortium agrees with OCC's position, noting that, with the introduction of the standard service offer auction in 08-1344, Columbia eliminated the gas cost recovery calculation and replaced it with a calculation where Columbia recovers/refunds the cost of pipeline capacity and commodity. Thus, the amount of capacity Columbia purchases from upstream pipelines for Choice and SCO customers has been fixed, and that capacity is assigned to the Choice and SCO customers. As transportation customers, no capacity was set

aside for the parochial schools and public libraries that are part of the School Consortium's pool. Therefore, the School Consortium states that, should the parochial schools and public libraries now buy standby service, Columbia would have to purchase additional capacity. In turn, Columbia would bill the parochial schools and libraries for the additional capacity via the standby service rate and the new charges and revenues from the standby service rate would go through the reconciliation rider. Therefore, according to the applicant, residential customers should be unaffected by the outcome of this matter.

- (13) The issue before the Commission in this case is whether the private schools, parochial schools, and libraries that were taking service as of October 7, 2009, as part of the public bid of the School Consortium are included or should be included in the exception provided for "public school districts," set forth in the stipulation in 08-1344. Upon consideration of the application filed by the School Consortium and the comments submitted in this docket, the Commission finds that it is reasonable and in the public interest to grant the applicant's request for relief. For the past 17 years, well before approval of the stipulation in 08-1344, the School Consortium has purchased transportation service as a group selecting one successful bidder and paying one invoice on behalf of all consortium members. Therefore, we believe it is reasonable to assume that the purpose underlying the exemption for public schools in 08-1344 grandfathered the School Consortium's program, which was created in accordance with Ohio law. The argument that the School Consortium acquiesced to the change over the last three years by not questioning the definition of the exemption for public schools is not persuasive, given that the School Consortium has been obtaining natural gas service in the same fashion for the past 17 years and it was not until recently that certain of its members were notified that a change was about to take place. However, even if the exemption provision in 08-1344 was found to not be applicable to the facts in this case, the Commission believes that the public interest dictates that a waiver of the requirement to purchase standby service would be necessary in this situation. As supported by the comments, no harm will come to the other customer classes as a result of our approval of this application. In keeping with the provisions of the stipulation in 08-1344, the School

Consortium has only requested that members as of October 7, 2009, be given the exemption for public schools provided for in the 08-1344 stipulation, and entities that have become or may become members of the School Consortium after that cutoff date are not and will not be eligible for exemption. Moreover, given the specific facts surrounding this case and the circumstances of the School Consortium, the Commission does not see that granting the waiver will in anyway create preferential treatment of the applicant or open the door for private institutions to request a waiver. Therefore, based on the specific facts of this case, the request for clarification or in the alternative request for waiver filed by the School Consortium should be granted. Accordingly, private schools, parochial schools, and libraries that were taking service as of October 7, 2009, as part of the public bid of the School Consortium school districts, should be considered eligible as a transportation customer without purchasing backup service.

- (14) As a final matter, the Commission finds that, in order to address the issue about uncertainty of the consortium's members, the School Consortium should provide Columbia and Staff with a complete list of its members on October 7, 2009, that are subject to the exception.

It is, therefore,

ORDERED, That OCC's motion to intervene be granted. It is, further,

ORDERED, That, in accordance with finding (13), the request for clarification or, in the alternative, request for waiver filed by the School Consortium be granted. It is, further,

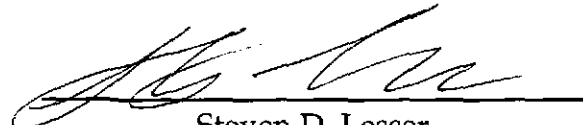
ORDERED, That, in accordance with finding (14), the School Consortium provide Columbia and Staff with a list of its members on October 7, 2009. It is, further,

ORDERED, That a copy of this finding and order be served upon all interested persons of record in this case.


THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella


Steven D. Lesser

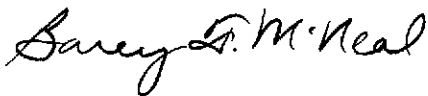

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Entered in the Journal

MAR 14 2012



Barcy F. McNeal
Secretary