

In the Matter of the Application of )  
Columbia Gas of Ohio, Inc. for Authority ) Case No. 08-606-GA-AAM  
to Defer Environmental Investigation and )  
Remediation Costs. )

OCC filed a Motion to Compel Columbia to respond to OCC’s discovery requests and Columbia filed a Memorandum Contra. OCC now replies to Columbia, which hopefully will result in the Public Utilities Commission of Ohio’s (“PUCO” or “the

Commission”) prompt order for Columbia to provide to Ohio’s utility consumer advocate the information relating to Columbia’s MGP deferrals.

## **II. ARGUMENT**

### **A. Columbia’s obligation to provide responses to OCC’s discovery preceded the resolution of this case.**

Columbia argues that the Company had no obligation to respond to OCC discovery because the data requests were received by Columbia after the issues in the case had been resolved.<sup>1</sup> That begs the question of when the issues in the case were actually resolved. OCC’s discovery requests were served on Columbia on December 29, 2011 and were due on January 23, 2012. However, seventeen days after the responses were due, or February 9, 2012, Columbia filed a Supplement to the Annual Deferral Report. Certainly if Columbia was still making substantive filings with the Commission, subsequent to the date that the discovery responses were due, it is disingenuous for Columbia to argue that the issues in the case had been resolved prior to the discovery responses’ due date.

Moreover, there has been no Commission Entry or Order issued in this case that would indicate that a decision has been made. Therefore, Columbia’s argument rings hollow.

Columbia further argued against discovery in this case because there was no hearing scheduled.<sup>2</sup> However, in a recent Columbia case involving its Capital Expenditure Program (“CEP”), OCC intervened and served discovery. Columbia moved

---

<sup>1</sup> Memo Contra at 2-3.

<sup>2</sup> Memo Contra at 3.

to stay the discovery, arguing discovery to be improper and premature given that the Commission had not yet determined the nature or scope of any future proceedings in the matter.<sup>3</sup> However, the Attorney Examiner denied Columbia's Motion in that case and ordered the utility to answer OCC's discovery despite the lack of a hearing date, by Entry stating:

Upon consideration of Columbia's motion to stay discovery, the attorney examiner finds that, although the Commission will determine what further process may be necessary following the receipt of the comments and reply comments, **the parties should be permitted to continue the discovery process. Section 4903.082, Revised Code, requires the Commission to ensure ample rights of discovery, while Rule 4901-1-17(A), O.A.C, generally provides that discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible. \* \* \* Columbia should provide full responses to OCC's discovery requests and provide copies of all documents requested by OCC.**<sup>4</sup>

The Commission should rely on prior precedent, where a hearing had not been scheduled, and require Columbia to promptly respond to discovery in this case.

**B. OCC's discovery requests were timely.**

Columbia inappropriately argues that OCC's discovery requests were not timely because the Company's responses were not due before the expiration of the 30-day limit for Staff's objections.<sup>5</sup> However, as noted previously, Columbia's responses were due 17 days before Columbia's last substantive filing. Furthermore, the Company's filing of the Supplement to the Annual Deferral Report re-triggered the Staff's allotted 30 days to

---

<sup>3</sup> *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Implement a Capital Expenditure Program*, Columbia Motion to Stay Discovery at 3 (December 19, 2012).

<sup>4</sup> *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Implement a Capital Expenditure Program*, Entry at 3-4 (January 27, 2012). (Emphasis added).

<sup>5</sup> Memo Contra at 4.

object to Columbia's requested deferrals.<sup>6</sup> In light of the time allotted for the Staff to object to Columbia's Supplement to the Annual Deferral Report, OCC's discovery responses were timely in that the issues in the case were not resolved prior to March 12, 2012, or 49 days after the discovery responses were due. Therefore, the Commission should grant OCC's Motion to Compel.

**C. OCC's discovery requests are relevant.**

Columbia takes exception to Interrogatory Nos. 19-33 and Request to Produce Nos. 5 and 6 because they address the Toledo site.<sup>7</sup> In the Company's Supplement to the Annual Deferral Report, Columbia removed the Toledo site from its deferral request.<sup>8</sup> OCC acknowledges that the discovery requests pertaining to the Toledo site are no longer relevant, in light of Columbia's decision not to defer the environmental investigation and remediation costs associated with the Toledo site. However, the remaining discovery that OCC propounded on Columbia (Interrogatory Nos. 1-18 and 34-49; and Request to Produce Nos. 1-4 and 7) pertaining to the remaining sites in which the Company continues to seek deferral authority for the environmental investigation and remediation costs are relevant and the Company should be compelled to respond to those inquiries *post haste*.

---

<sup>6</sup> Entry at 3. (Prior to their deferral on its books, we require Columbia to make an annual finding in this docket detailing the costs incurred in the prior 12-month period covered by the deferrals and the total amount deferred to date. **Unless the Staff files an objection to any of the requested deferrals within 30 days of the filing, deferral authority shall be considered granted.** (Emphasis added).

<sup>7</sup> Memo Contra at 4.

<sup>8</sup> Supplement Deferral Report at 1-2 (February 9, 2012).

### III. CONCLUSION

Through discovery, OCC seeks information from Columbia pertaining to certain costs that Columbia seeks authority to defer for future recovery from its customers. For all the reasons stated above, the Commission should grant OCC's Motion to Compel Discovery in this proceeding, and order Columbia to respond to OCC discover requests 1-18, and 34-49 and Request to Produce 1-4 and 7 *post haste*.

Respectfully submitted,

BRUCE J. WESTON  
INTERIM CONSUMERS' COUNSEL

/s/ Larry S. Sauer

Larry S. Sauer, Counsel of Record  
Joseph P. Serio  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 West Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
614-466-1312 (Sauer)  
614-466-9565 (Serio)  
[sauer@occ.state.oh.us](mailto:sauer@occ.state.oh.us)  
[serio@occ.state.oh.us](mailto:serio@occ.state.oh.us)

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing *Reply* has been served upon the below-named counsel by electronic service 20<sup>th</sup> day of March 2012.

/s/ Larry S. Sauer

Larry S. Sauer

Assistant Consumers' Counsel

### **PARTIES**

William Wright  
Steven Beeler  
Attorney General's Office  
Public Utilities Section  
180 East Broad Street, 6<sup>th</sup> Floor  
Columbus, Ohio 43215  
[william.wright@puc.state.oh.us](mailto:william.wright@puc.state.oh.us)

Stephen B. Seiple  
Assistant General Counsel  
Brooke E. Leslie, Counsel  
Columbia Gas of Ohio, Inc.  
200 Civic Center Drive, P.O. Box 117  
Columbus, OH 43216-0117  
[sseiple@nisource.com](mailto:sseiple@nisource.com)  
[bleslie@nisource.com](mailto:bleslie@nisource.com)

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**3/20/2012 3:30:30 PM**

**in**

**Case No(s). 08-0606-GA-AAM**

Summary: Reply Reply to Columbia Gas of Ohio, Inc. Memo Contra OCC's Motion to Compel by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Sauer, Larry S.