

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Columbia Gas of Ohio, Inc. for)
Approval to Implement a Capital) Case No. 11-5351-GA-UNC
Expenditure Program)

In the Matter of the Application of)
Columbia Gas of Ohio, Inc. for) Case No. 11-5352-GA-AAM
Approval to Change Accounting)
Methods)

**MEMORANDUM CONTRA
OF COLUMBIA GAS OF OHIO, INC.
TO THE APPLICATION FOR REHEARING OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

Introduction

On October 3, 2011, Columbia Gas of Ohio, Inc. ("Columbia") filed an Application for Authority to Implement a Capital Expenditure Program and for Approval to Change Accounting Methods ("Application") in the dockets listed above. Columbia sought the Commission's approval to create a capital expenditure program ("CEP") for the period from October 1, 2011, through December 31, 2012, and associated deferral authority ("accounting treatment") retroactive to October 1, 2011. After receiving comments from the parties, the Commission issued a Finding and Order ("Order") on August 29, 2012. In the Order the Commission approved the Application, with modifications as suggested in some of the comments.

On September 28, 2012, the Office of the Ohio Consumers' Counsel ("OCC") filed an Application for Rehearing. The OCC Application for Rehearing contains three arguments, all of which are tied to the OCC's allegation that the Commission erred by failing to "include the actual CEP-related investment

in the calculation of a cap.”¹ The OCC’s arguments are procedurally defective, and are factually incorrect, as explained below. Therefore, the Commission should deny the OCC’s Application for Rehearing.

The OCC’s Arguments Are Not Based On The Record And The OCC Has Failed To Provide Any Rationale For Requiring Additional Evidence

The Commission must base its decisions in each case upon the record before it.² However, the OCC’s three arguments are all based upon data that is not in the record in this case. Nowhere in any parties’ comments filed in this case, including the OCC’s Comments and Reply Comments, is there any mention of the argument that the OCC now attempts to make on rehearing – i.e., the Commission erred by failing to include the actual CEP-related investment in the calculation of a cap. The OCC is instead attempting to augment the record by raising an issue for the first time in its Application for Rehearing.

The Commission should reject this attempted subversion of the Commission’s procedures. The Commission recently faced a similar issue in a FirstEnergy case.³ In that case FirstEnergy argued that the OCC was improperly attempting to augment the record for the first time in an application for rehearing because OCC comments in the case did not reference an argument OCC made on rehearing. The Commission rejected the OCC application for rehearing and agreed with FirstEnergy that there was no information in the docket to support the OCC’s argument.⁴ The Commission should reject OCC’s arguments in the instant case for the same reason.

The statutory basis for the Commission’s rehearing process is Rev. Code § 4903.10. That statute contemplates that there may be instances in which the Commission will grant rehearing and take additional evidence. However, in order to permit the taking of additional evidence the applicant for rehearing must demonstrate that the evidence was evidence that with reasonable diligence could not have been offered earlier. Here, the OCC has made no request for the taking of additional evidence, nor has it made any attempt to explain why the evidence upon which it wants to rely could not, with reasonable dili-

¹ OCC Application for Rehearing (September 28, 2012) at 6.

² *Ideal Transportation, Inc. v. Pub. Util. Com’n.*, 42 Ohio St. 2d 195, syllabus number 2 (1975).

³ *In the Matter of the Application of Bay Shore Unit 1 for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-1042-EL-REN, 2010 Ohio PUC LEXIS 687, Entry on Rehearing (June 16, 2010).

⁴ *Id.* at 5, paragraph 14.

gence, have been submitted prior to the issuance of the Order. Thus, there is simply no reason for the Commission to consider the OCC's arguments, and the OCC's Application for Rehearing should be denied.

The OCC's Arguments Are Meritless And The OCC's Data Analysis Is Flawed

During the comment procedure in this case, the Staff and OCC expressed concern that accrued deferrals proposed by Columbia could result in rate shock when the deferrals ultimately are included in rates.⁵ In response to those concerns Columbia proposed that the deferrals under its CEP be allowed to accrue until the impact from those deferrals on the rates for Columbia's Small General Service ("SGS") customers would exceed \$1.50/month.⁶ Staff agreed with Columbia's proposed limit on the deferrals.⁷

The Order adopted Columbia's proposed limits on the deferrals, and provides that the deferrals under Columbia's CEP be allowed to accrue until the impact from those deferrals on the rates for Columbia's Small General Service ("SGS") customers would exceed \$1.50/month. Accrual of all future CEP-related deferrals will cease once the \$1.50/month threshold is surpassed, until such time as Columbia files to recover the existing accrued deferrals and establish a recovery mechanism.⁸ By tying the deferrals to this specific rate impact threshold, the Commission minimized any customer "rate shock."

While the OCC's Comments expressed concern only about the rate impact of the deferrals, on rehearing the OCC has changed course and argues that the \$1.50/month cap should include not only the rate impact of the deferrals, but also the rate impact of the actual CEP-related investment. While the OCC argument is procedurally improper, for the reasons explained above, the argument also lacks substantive merit.

There is no basis – statutory or otherwise – for the Commission to limit any utility's capital expenditures based upon future rate impacts. In this case, the Commission has found that Columbia's CEP is consistent with Columbia's

⁵ Initial Comments of the OCC (February 17, 2012) at 12; Reply Comments Submitted on Behalf of the Staff (February 27, 2012) at 2-3.

⁶ Supplemental Reply Comments of Columbia (July 26, 2012) at 4-5.

⁷ Sur-Reply Comments of Staff (August 15, 2012) at 8.

⁸ Order at 12.

obligation under Rev. Code § 4905.22 to furnish necessary and adequate services and facilities, which the Commission found to be just and reasonable.⁹

In its second argument, the OCC argues that the Commission should have explained why it did not include the actual cost of the CEP-related investment in the calculation of the cap.¹⁰ This argument must fail because no party – including the OCC – ever raised the argument prior to the issuance of the Order in this case. The Commission has no duty to respond to arguments that no party has raised.

Much of the OCC's argument with respect to the calculation of the cap centers on the OCC's calculation of the rate impact of the deferrals coupled with the potential rate impact of the underlying capital investments. In data exchanged between the parties to this case, Columbia estimated that the \$1.50 cap would not be reached until 2023.¹¹ In its Application for Rehearing, the OCC calculates that by including in its rate impact calculation the investment underlying the deferrals, the 2023 rate impact would be \$5.25/month.¹²

Even if the OCC's argument had been properly presented, which it was not, and if it had any relevance, which it does not, the OCC has grossly overestimated the rate impact of its position. A cursory examination of the OCC's revenue requirement study¹³ shows that the OCC study contains errors, including, but not limited to: (1) inclusion of costs that would be recovered through rate case proceedings if PISCC had not been approved by the Commission such as return on rate base and annualized depreciation; (2) failure to properly recognize accrued depreciation on investment made by Columbia during the period 2012-2023¹⁴; (3) failure to properly recognize that rate base would be reduced by depreciation on investment made by Columbia prior to 2012¹⁵; (4) failure to properly recognize a non-investor source of funds – i.e., deferred income taxes on investment made by Columbia during the period 2012-2023¹⁶; and, (5) the omission of annualized property taxes. The correction of these errors alone would result in rates that range from \$0.09 per customer per month

⁹ Order at 13.

¹⁰ OCC Application for Rehearing at 7-9.

¹¹ *Id.* at 4.

¹² *Id.* at 6.

¹³ OCC Application for Rehearing, Attachment A.

¹⁴ Results in an overstatement of rate base by over \$85,000,000 in 2023.

¹⁵ Results in an overstatement of rate base by an amount in excess of \$598,000,000 in 2023.

¹⁶ Results in an overstatement of rate base by an amount in excess of \$46,000,000 in 2023.

in 2012 to \$1.79 per customer per month 2023. Thus, if the OCC had properly analyzed the rate impact of its argument, the difference between the cap authorized by the Commission and the cap the OCC would impose is only \$0.29/month – not the difference of \$3.75 used by the OCC in support of its argument.

There is simply no basis for the OCC's argument, and if properly calculated the difference in the rate impact espoused by the OCC and that adopted in the Order is de minimus. This compels denial of the OCC's Application for Rehearing.

Revised Code § 4929.111 Does Not Require A Showing Of Extraordinary Circumstances Before The Commission May Approve Deferrals Associated With A Capital Expenditure Program

The OCC Application for Rehearing contains three headings that summarize the OCC's allegations of error. All three of these headings relate to the OCC's allegation that the Commission failed to include the actual CEP-related investment in the calculation of a cap. However, as an aside the OCC also seems to suggest that the Commission should find the existence of extraordinary circumstances before authorizing the deferrals requested in this case.¹⁷ There is simply no statutory basis for the OCC's suggestion.

Columbia's application was filed pursuant to Rev. Code §§ 4909.18 and 4929.111, and it is this latter statute that specifically authorizes the accounting deferrals requested in this case. Rev. Code § 4929.111(C) states in pertinent part,

If the commission finds that the capital expenditure program is consistent with the natural gas company's obligation under section 4905.22 of the Revised Code to furnish necessary and adequate services and facilities, which services and facilities the commission finds to be just and reasonable, the commission shall approve the application.

And, Rev. Code § 4929.111(D) further provides

¹⁷ OCC Application for Rehearing (September 28, 2012) at 5.

In approving an application under division (C) of this section, the commission shall authorize the natural gas company to defer or recover in an application that the natural gas company may file under section 4909.18, 4929.05, or 4929.11 of the Revised Code, both of the following:

- (1) A regulatory asset for the post-in-service carrying costs on that portion of the assets of the capital expenditure program that are placed in service but not reflected in rates as plant in service;
- (2) A regulatory asset for the incremental depreciation directly attributable to the capital expenditure program and the property tax expense directly attributable to the capital expenditure program.

In the Order, the Commission found that Columbia had satisfied the above statutory criteria.¹⁸ Pursuant to the statute, the Commission therefore was required to approve the CEP and the deferred accounting. Nowhere in the statute is there any requirement that the Commission first find that extraordinary circumstances exist. To require such a finding, as suggested by the OCC, would violate Rev. Code § 4929.111.

Conclusion

The issues raised by the OCC on rehearing are not proper issues for rehearing because the issues are not based on the record in this case. Furthermore, even if the issues were properly before the Commission the proposal espoused by the OCC lacks any basis in statute or rule, and the impact of its proposal is far less than the OCC claims. For the reasons stated herein, the Commission should deny the OCC's Application for Rehearing.

¹⁸ Order at 13.

Respectfully submitted,
COLUMBIA GAS OF OHIO, INC.

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Memorandum Contra of Columbia Gas of Ohio, Inc. sent by electronic mail to the parties listed below on this 8th day of October, 2012.

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Summary: Memorandum Contra of Columbia Gas of Ohio, Inc. to the Application for Rehearing of the Office of the Ohio Consumer's Counsel electronically filed by Cheryl A MacDonald on behalf of Columbia Gas of Ohio, Inc.