BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Motion to Modify the December 2, 2009 Opinion and Order and the September 7, 2011 Second Opinion and Order in Case No. 08-1344-GA-EXM	)))))	Case No. 12-2637-GA-EXM

REPLY COMMENTS OF COLUMBIA GAS OF OHIO, INC. IN RESPONSE TO THE INITIAL COMMENTS OF OHIO PARTNERS FOR AFFORDABLE ENERGY AND COMMENTS BY THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

1. Introduction

In late 2009, the Commission issued an Opinion and Order authorizing Columbia Gas of Ohio, Inc. ("Columbia") to replace its gas cost recovery ("GCR") mechanism with an auction mechanism (first the Standard Service Offer ("SSO"), then the Standard Choice Offer ("SCO")) for supplying commodity gas service to its customers who choose not to participate in Columbia's CHOICE program. *See 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, Opinion and Order (Dec. 2, 2009). Pursuant to a joint stipulation filed by Columbia, PUCO Staff, Ohio Partners for Affordable Energy ("OPAE"), the Office of the Ohio Consumers' Counsel ("OCC"), and other parties, the Commission established a CHOICE/SSO Reconciliation Rider ("CSRR"), which allowed Columbia to recover its incremental SSO and SCO program costs (such as educational expenses and information technology), to recover or pass back to customers "any imbalances between gas costs and recoveries," and to flow-through refunds. (*Id.* at p. 10.) It established Columbia's peak day forecast and a process by which Columbia would allocate capacity to CHOICE and SSO or SCO suppliers. (*Id.* at p. 9.) And, it modified the mechanism by which Columbia shared with its customers any revenues from off-system sales and capacity release. (*Id.* at p. 10.) The stipulation that the Commission approved in that proceeding bound the parties for only a three-year period, after which the parties could seek to modify its terms.

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Columbia's specified levels of peak day demand and peak day capacity portfolio under that prior stipulation will expire on March 31, 2013, along with the off-system sales and capacity release mechanism set in that proceeding (the "prior exemption case"). Consequently, Columbia, along with Commission Staff, Ohio Gas Marketers Group, Retail Energy Supply Association, and Dominion Retail, Inc. ("the Joint Movants") filed a Joint Motion in this proceeding on October 4, 2012 ("Joint Motion"), along with a Joint Stipulation and Recommendation ("Joint Stipulation"), seeking to modify Columbia's peak day capacity portfolio and firm city gate interstate and intrastate pipeline transportation and storage capacity through March 31, 2018. The Joint Motion and Joint Stipulation would add new security requirements for SCO suppliers, reduce Columbia's balancing fee, and charge it directly to customers, rather than suppliers. They would commit Columbia to improving its billing system, so as to allow suppliers to offer new billing and contract options to CHOICE customers. They would establish a process by which Columbia would exit the merchant function for non-residential customers if non-residential customer participation in Columbia's CHOICE program exceeded certain thresholds. Otherwise, Columbia would continue its SCO auctions, its CSRR, and its revenue sharing mechanism for another five years.

OPAE and OCC have now intervened in this proceeding to oppose the Joint Motion and Joint Stipulation. OPAE now argues that the capacity allocation process, CSRR, and revenue sharing mechanism that the Commission approved in the prior exemption case are contrary to public policy and should be abolished. OPAE second-guesses Columbia's capacity portfolio. Both OPAE and OCC argue that the SCO, the commencement of which they opposed in the prior exemption case, offers significant customer benefits that must continue indefinitely. And both intervenors challenge the Joint Movants' legal authority to seek modifications to the prior stipulation.

As explained herein, OPAE and OCC's complaints about the Joint Motion and Joint Stipulation are legally and factually unsupported. The Joint Motion is authorized by both Ohio statute and the plain language of the stipulation in the prior exemption case. The Joint Stipulation is the product of serious bargaining among capable, knowledgeable parties, including the Commission's Staff. The Joint Stipulation would provide benefits to Columbia's customers and the general public. And, the Joint Stipulation would further state policies endorsing deregulation and customer CHOICE. For all of these reasons, as further explained below, the Commission should grant the Joint Motion and approve the Joint Stipulation.

2. The Joint Motion Is Permitted By Law And This Commission's Prior Orders

2.1. The Stipulation In The Prior Exemption Case Explicitly Contemplates The Filing Of Motions To Modify The Exemption

OPAE seeks to avoid a consideration of the merits of the Joint Motion and Joint Stipulation altogether, by arguing that the Joint Movants have failed to meet the legal requirements for obtaining a modification of an order granting an exemption under Section 4929.04, Revised Code. (OPAE Comments at p. 8.) The Joint Motion complies, however, with both the mechanism for modifying exemption orders that was established in the prior exemption case and the mechanism set forth in statute.

As explained in the Joint Motion (and acknowledged, but then ignored, by OPAE), the joint stipulation approved in Case No. 08-1344-GA-EXM explicitly authorized its signatory parties to "propose changes to the Agreement to become effective after the end of the initial term." (Joint Stipulation and Recommendation, Case No. 08-1344-GA-EXM, at p. 8 (Oct. 7, 2009).) That stipulation also authorized the Commission to modify the stipulation after the expiration of its initial term in March 2013. (*See id*.) Consistent with this language, the Joint Motion proposes changes to become effective after the March 2013 and asks the Commission to modify its prior orders approving that stipulation in order to effectuate those changes.

OPAE makes the specious argument that Columbia made a "written commitment[,]" in the stipulation approved in the prior Exemption Case, "not to modify the program [outline] substantively and not to propose to exit the merchant function as a part of the program." (OPAE Comments at p. 7.) OPAE's characterizations of the prior stipulation, however, blatantly misstate the parties' agreement. The parties to the prior joint stipulation did not commit not to modify the program outline substantively. They agreed, instead, that the "implementation of the Program Outline may be amended by the signatory parties without subsequent Commission approval so long as the amendments are non substantive[.]" (Joint Stipulation and Recommendation, Case No. 08-1344-GA-EXM, at p. 8 (Oct. 7, 2009).) Columbia also did not commit not to exit the merchant function. Instead, Columbia stated that it "ha[d] not expressed a present intent to, nor does this Agreement contemplate that Columbia seeks to, exit the merchant function." (*Id.* at p. 9.) Thus, there is nothing in the joint stipulation filed in Columbia's prior exemption case that prohibits the filing of a motion like the Joint Motion filed here. To the contrary – the Joint Motion filed in this proceeding is explicitly permitted by the joint stipulation approved in the prior exemption case. OPAE's arguments effectively rewrite the prior joint stipulation to create limitations that the stipulation's plain language simply did not include.

The Joint Motion is also consistent with Ohio statute, which authorizes "any person adversely affected by [an] exemption" to move for a modification to that exemption order "after notice and hearing[,]" if "[t]he commission determines that the findings upon which the order was based are no longer valid and that the * * * modification is in the public interest[.]" Section 4929.08(A), Revised Code. The Commission has twice granted natural gas companies' motions to modify prior orders granting exemptions pursuant to Section 4929.08, based on showings like those laid out in the Joint Motion. *See In the Matter of the Application to Modify, in Accordance with Section 4929.08, Revised Code, the Exemption Granted to The East Ohio Gas Company d/b/a Dominion East Ohio in Case No. 07-1224-GA-EXM*, Case No. 11-6076-GA-EXM, Opinion and Order, at 5 (Feb. 14, 2012); *In the Matter of the Application and Joint Stipulation and Recommendation of Vectren Energy Delivery of Ohio, Inc., for Approval of its Exemption Authority Granted in Case No. 07-1285-GA-EXM*, Case No. 12-483-GA-EXM, Opinion and Order, at 5 (May 16, 2012).

Under both Section 4929.08 and the stipulation approved in the prior exemption case, the Joint Motion and the movants' Joint Stipulation are properly before this Commission.

2.2. The SCO Study Ordered In Case No. 08-1344 Does Not Preclude Approval Of The Joint Motion

OCC and OPAE also note that, in its Second Opinion and Order in the prior exemption case, the Commission ordered PUCO Staff to study "customer migration from the SCO to the Choice program" and "the types of products and services offered to customers that provide added value to participating in the Choice program" no later than September 1, 2013. Second Opinion and Order, Case No. 08-1344-GA-EXM, at p. 13 (Sept. 7, 2011). This should not, however, prevent the timely consideration of the Joint Motion filed in this proceeding.

First of all, an SCO auction is scheduled for early next year. Columbia needs to know the ground rules for that auction in advance – significantly before the prior stipulation expires on March 31, 2013. When the Commission issued the Second Opinion and Order on September 7, 2011, it knew that the first SCO auction covered only a one-year period and that a second SCO auction would be necessary before the deadline for the ordered SCO migration study. The Commission also knew that the prior stipulation would expire on March 31, 2013, and that the parties had reserved the right to petition for revisions to be effective after March 2013. Thus, the Commission's order that its Staff study the SCO and CHOICE programs by September 1, 2013, cannot be interpreted to prohibit a Joint Motion that the Commission's orders also authorized.

The earliest that Columbia could exit the merchant function for CHOICE-eligible non-residential customers is April 1, 2014. That exit could occur in April 2014, moreover, only if the percentage of Columbia's CHOICE-eligible non-residential customers participating in CHOICE was at least 70% for at least three consecutive months before June 1, 2013. (*See* Joint Motion at p. 7.) As of September 2012, only 49% of Columbia's CHOICE-eligible commercial customers and 25% of Columbia's CHOICE-eligible industrial customers were participating in CHOICE. (*See* OPAE Comments, Attachment A.) Thus, an exit for non-residential customers is highly unlikely to occur in April 2014. Even if Columbia's CHOICE suppliers were to increase combined non-residential participation to 70% in the next seven months, and sustain that participation for at least three months, Columbia still could not exit the merchant function for non-residential customers until well after PUCO Staff produced its SCO study.

Additionally, Columbia cannot file an application to exit the merchant function for its residential customers until at least one year after Columbia exits the merchant function for its non-residential customers (*see* Joint Motion at p. 8) – or, in other words, until April 1, 2015, at the very earliest. The Commission will have the benefit of its SCO study for at least a year and a half before it would ever see such an application. Consequently, the Commission's prior direction that its Staff study customer migration from the SCO to the CHOICE program is no reason to delay consideration of the Joint Motion and Joint Stipulation.

3. **Columbia Requires An Expedited Ruling On The Non-Exit-Related Provisions Of Its Joint Motion To Prepare For Its 2013 SCO Auction**

OCC also argues that the Commission should deny the Joint Movants' request for an expedited ruling on the non-exit-related provisions of the Joint Motion. Of all of the provisions of the Joint Motion that Columbia described as requiring expedited consideration, OCC challenges only one: Columbia's capacity contracts. OCC notes that Columbia has already renewed some of its capacity contracts, which had contract notice dates of September 30, 2012. (OCC Comments at p. 16.)

As OCC may have noted, however, not all of Columbia's capacity contracts have been renewed. Columbia must still act on its North Coast and Tennessee Gas contracts. Moreover, there are several other aspects of the Joint Motion that must be considered and ruled upon in order for Columbia to plan and hold its 2013 SCO Auction. In order to provide potential suppliers accurate educational materials, to perform required credit checks, as well as to enable the potential suppliers to make applications to participate and develop their bidding strategies, Columbia must know, *inter alia*, whether the Commission has approved the proposed changes to the Balancing Fee and Columbia's peak day capacity portfolio and the new $.10 per Dth SCO supplier security requirement. Thus, the fact that Columbia has renewed some of its capacity contracts does not change the time-sensitive nature of the non-exit-related provisions of the Joint Motion.

4. The Joint Stipulation Is A Product Of Serious Bargaining Among Capable, Knowledgeable Parties

OCC next argues that its refusal to sign the Joint Stipulation should prevent the stipulation's approval. (*See* OCC Comments at pp. 1, 18.)

The Joint Stipulation was signed by Columbia; Commission Staff; the Ohio Gas Marketers Group; Retail Energy Supply Association; and Dominion Retail, Inc. after half a year of spirited and time-consuming negotiation. Members of Columbia's stakeholder group met for six months, starting in March 2012, before finally reaching agreement on the principles set forth in the Joint Stipulation. And, each of the parties was represented by counsel with substantial experience in Commission hearings.

OCC argues that the fact that OCC and OPAE declined to join the stipulation "should give the Commission pause sufficient for rejecting the settlement." (OCC Comments at p. 6.) Testimony will show that Columbia, at a stakeholder meeting attended by OCC on June 5, 2012, asked each stakeholder to respond to the most recent settlement offer that Columbia had distributed. Notwithstanding the opportunity to join in a number of negotiation sessions through the summer, OCC waited until October 3, 2012 to respond. By that time, Columbia, the marketers and others had concluded negotiations and reached a stipulation filed by joint motion the next day. Fortunately, the Commission has refused to apply "a test under which a stipulation may be approved by the Commission only if the stipulation is agreed to by a representative of all residential customers in the Companies' service territory," holding: "we will not require any single party, including OCC, to agree to a stipulation in order to meet the first prong of the three-prong test." *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order, at p. 26 (July 18, 2012). Simply put, the OCC cannot exercise veto power over a proposed stipulation simply by withholding its signature.

OCC further suggests that the lesser number of signatory parties to the Joint Stipulation in this proceeding, as compared to the joint stipulation and recommendation filed in Case No. 08-1344-GA-EXM, shows that the negotiations for the Joint Stipulation did not involve a representative set of stakeholders. (OCC Comments at p. 7.) As OCC indicates, the joint stipulation in the prior action was signed by a variety of parties, including Columbia, Commission Staff, the OCC, OPAE, the Ohio Gas Marketers Group, Dominion Retail, Inc., DTE Energy Trading, Inc., Stand Energy Corp., Proliance Energy, the National Energy Marketers Association, The Timken Company, Glen Gery Corporation, Honda of America Manufacturing, the Northwest Ohio Aggregation Coalition, the Ohio Energy Group, the Ohio Farm Bureau Federation, The Ohio Schools Council, and Wal-Mart Stores, Inc. (*See id.* at p. 6.) All of those signatories were invited to participate in the stakeholder group meetings for the stipulation in this proceeding, but chose not to do so.

The fact that so many parties to the original joint stipulation did not choose to participate in this proceeding is not grounds for denying the Joint Stipulation. Nor should it be surprising. Except for the exit-the-merchant-function provisions, the joint stipulation in this proceeding simply continues the program approved in the prior proceeding, with only minor changes to the SCO supplier security requirements, balancing fee, capacity contracts, and weather information provided to SCO suppliers, and with some improvements to Columbia's billing system. Thus, the fact that most of the signatory parties to the original stipulation chose not to participate in the negotiations leading up to the Joint Stipulation, to intervene in this proceeding, or, if they did intervene, to file comments on the Joint Motion, demonstrates a broadly held recognition that the modifications sought in this proceeding are generally limited and non-controversial.

5. The Joint Stipulation Will Benefit Ratepayers And The Public Interest

5.1. Columbia's Negotiation Of Pipeline Capacity Contracts Benefits Ratepayers

The joint stipulation that this Commission approved in Columbia's prior exemption case set a peak day demand of 2.0376 MMDth (million decatherms) for the term of the agreement; stated that Columbia would retain its then-existing peak day capacity portfolio, with two modifications; and explained that "all assignable storage and transportation capacity [would] be allocated on a monthly basis consistent with changes in the CHOICE/SSO/SCO supplier customer groups." (Joint Stipulation and Recommendation at p. 11, Case No. 08-1344-GA-EXM (Oct. 7, 2009).) The Joint Stipulation filed in this case would adjust Columbia's firm city gate interstate and intrastate pipeline transportation and storage capacity and modify its peak day capacity portfolio, but would leave the previously approved capacity allocation process largely unchanged. (Joint Stipulation at p. 4.) Nonetheless, OPAE is now arguing that the Commission-approved system, under which Columbia contracts for natural gas transportation capacity and allocates it to CHOICE and SCO suppliers, is anti-competitive and should be abolished. (OPAE Comments at pp. 12-13, 15.)

OPAE's arguments are not properly raised here. Under the terms of the approved stipulation in the prior exemption case, the provisions of that stipulation continue after the term of that stipulation "until modified by the Commission." The parties to that stipulation, including OPAE, "reserve[d] the right to propose changes to the Agreement to become effective after [March 31, 2013]." (Joint Stipulation and Recommendation at p. 11, Case No. 08-1344-GA-EXM (Oct. 7, 2009).) If OPAE wanted to rescind the capacity contract and allocation provisions of the existing stipulation, the proper mechanism to accomplish that would have been either a motion to modify the prior exemption orders or a complaint case under Section 4929.08(A), Revised Code, and Rule 4901:1-19-12, Ohio Admin. Code. OPAE did not file either. OPAE cannot seek to modify a stipulation that it signed, and that the Commission approved, in the prior exemption case simply by requesting the change in comments on the Joint Motion.

Regardless, OPAE's criticisms of Columbia's capacity allocation process are misguided. The current mechanism by which Columbia contracts for transportation capacity and allocates that capacity to SCO and CHOICE suppliers benefits customers and the general public.

In the revised program outline that this Commission approved in the prior exemption case, Columbia explained the four primary benefits of having Columbia negotiate upstream pipeline transportation and storage capacity contracts:

- It allows Columbia to efficiently and effectively manage "a widely-dispersed natural gas distribution network with over 840 points of receipt from capacity providers (excluding main line tap points of delivery) without the burdensome requirement of overseeing supplier contracts for all customers to ensure system integrity;"

- It allows Columbia to release capacity to follow customers who migrate to or from CHOICE suppliers;

- It facilitates "[u]tilization of a level playing field approach to system management including, but not limited to, assignment of capacity, balancing the system, and management of local gas and operationally retained capacity;" and

- Because Columbia can recall assigned capacity from defaulting CHOICE or SCO suppliers, it enhances "reliability in the provision of firm services[.]"

(Revised Program Outline, § 18, Case No. 08-1344-GA-EXM (Apr. 15, 2011).) The revised program outline filed in this proceeding explains that Columbia's management of capacity contracts has the additional benefit of "[m]inimizing barriers to entry for potential suppliers interested in providing supplies to Columbia's customers through the CHOICE or SCO programs." (Revised Program Outline, § 18.A.2.e. (Oct. 31, 2012).)

Ensuring the stability of the transportation system and making it easier for new suppliers to offer service to Columbia customers outweighs the increased costs that OPAE hypothesizes may result if marketers cannot "compete based on transportation costs[.]" (OPAE Comments at p. 12.) OPAE's request to abolish entirely Columbia's capacity allocation process should be denied.

5.2. Columbia’s Extension Of Certain Of Its Upstream Interstate Contracts Benefits Ratepayers

OPAE raises a second, equally invalid argument regarding Columbia's capacity portfolio. OPAE suggests that Columbia should not have extended its capacity contracts for five years because that will prevent Columbia from taking advantage of shale gas development in Ohio during that period. OPAE further suggests that, by extending Columbia's upstream interstate capacity contracts for five years, Columbia will either "choke off the use of shale gas" in Ohio or, if marketers choose to use shale gas, leave Columbia with unneeded capacity. (OPAE Comments at p. 11.)

As Columbia witness Michael D. Anderson will explain in his pre-filed direct testimony in this proceeding, there are currently no capacity options in the Marcellus and Utica Shale regions that can meet Columbia's needs. The pipelines operated by Columbia Gas Transmission, LLC (“TCO”) provide the only available service to the vast majority of Columbia's markets. Given the large number of points of delivery that serve Columbia's distribution systems (over 840), Columbia's diverse service territory and the temperature-sensitive demand of the vast majority of customers that Columbia contracts for capacity to serve, the TCO capacity provides the most efficient, cost effective means to serve its customers. With the possible limited exception of small Columbia markets in the Ohio River valley area, shale gas supplies do not flow on TCO’s system to a point where they can be delivered into the majority of Columbia’s markets. And, while Columbia is aware of at least four potential projects that might, some day, move gas west from the Marcellus/Utica region, many of these projects are uncertain to move forward, and none of them offers costs comparable to the Columbia Gulf capacity that currently provides a majority of the supplies delivered to Columbia’s CHOICE and SCO customers. Columbia simply has no options based on Ohio shale gas that would allow it to provide capacity to its CHOICE and SCO suppliers, much less meet its supplier of last resort responsibilities, in a cost-effective and reliable way.

OPAE's remaining criticisms are equally unsupported. OPAE fails to explain why or how Columbia's renewal of gulf pipeline capacity contracts would stop the development of shale gas in Ohio. (*See* OPAE Comments at p. 11.) And even OPAE acknowledges that, if Columbia's CHOICE or SCO suppliers do choose to market Ohio shale gas rather than relying on Columbia's reserved capacity, and Columbia instead sells that capacity off-system, Columbia's customers will receive a share of the revenues from those sales. (*Id.*) Either way, Columbia's customers would benefit. OPAE has failed to demonstrate a sufficient basis for second-guessing Columbia's capacity planning.

5.3. Columbia's Off-System Sales And Capacity Release Revenue Sharing Mechanism Benefits Ratepayers And The Public Interest

Next, OCC and OPAE oppose a continuation of the off-system sales and capacity release revenue sharing mechanism that is currently in place.

In 2009, the Commission approved the joint stipulation in Columbia's prior exemption case, which set an off-system sales and capacity release revenue sharing mechanism for the period from April 2010 through March 2013. Under that approved stipulation, Columbia retains the first $2 million of revenues from off-system sales each year. Columbia shares the next $18 million of revenues from off-system sales each year equally with its customers. Customers then receive 75% of any additional revenues from off-system sales each year. Additionally, Columbia can receive no more than $42 million in off-system sales revenue for the three years of the prior stipulation (April 2010 through March 2013). (Joint Stipulation at p. 14, Case No. 08-1344-GA-EXM (Oct. 7, 2009).) The Joint Stipulation filed in this case would continue the existing off-system sales revenue sharing mechanism for another five years. Rather than capping Columbia's revenues at an average of $14 million per year, however, the Joint Stipulation caps Columbia's revenues at an average of $12 million per year, or $60 million over five years. (Joint Stipulation at p. 5 .)

OPAE appears to argue that Columbia should not receive *any* of the revenue from off-system sales or capacity release. (OPAE Comments at p. 11.) OPAE suggests that it would be "unjust enrichment" to allow Columbia to recover any revenues from the sale of excess capacity. (*Id.*) These arguments are both factually and legally unsupported. First, Columbia does not have "excess" capacity. Columbia retains only that capacity that is required to manage system operations. Columbia assigns all other capacity to its CHOICE and SCO suppliers. Second, if OPAE wanted to abolish the default off-system sales and capacity release revenue sharing mechanism set forth in the prior joint stipulation, it was obligated to file either a motion or a complaint case to do so. *See supra.* Again, it did not do so. OPAE's efforts to modify the prior joint stipulation without following the proper process for doing so should, again, be denied.

Unlike OPAE, OCC does not argue for an abolition of the off-system sales and capacity release revenue sharing mechanism. Instead, OCC suggests that residential customers should receive a greater share of the off-system sales revenues than they are receiving currently, under the joint stipulation approved in the prior exemption case, because "those revenues are generated by [Columbia] using assets paid for in their entirety by customers." (OCC Comments at p. 11.) The Commission has long rejected similar arguments by OCC.

In 1988, the Commission held that the fact that Columbus Southern Power's electric fuel component (EFC) rate "contained a component for the rental of [certain] equipment * * * based on the depreciation of the equipment" did not mean that the customers who paid that rate were entitled to a reduction in the EFC rate when Columbus Southern Power sold that equipment. Much as it argues here, OCC argued that the customers' payment of the EFC rate gave them an ownership interest in the assets. The Commission rejected that argument. *See In the Matter of the Regulation of the Electric Fuel Component Contained within the Rate Schedules of Columbus Southern Power Company and Related Matters*, Case No. 88-102-EL-EFC, Entry on Rehearing, 1988 Ohio PUC LEXIS 1151, *13 (Dec. 20, 1988). *See also In the Matter of the Fuel Adjustment Clauses for Columbus Southern Power Company and Ohio Power Company*, Case Nos. 09-872-EL-FAC and 09-873-EL-FAC, Entry on Rehearing (Apr. 11, 2012). OCC is still making the same argument, twenty-four years later. The Commission should reject it again.

Moreover, the 80%/20% sharing mechanism that OCC urges the Commission to adopt in this proceeding is significantly more lopsided than the sharing mechanisms this Commission has approved over the last decade. In 2004, for example, the Commission approved a mechanism by which Columbia would share revenues from off-system sales and capacity release for the period from November 1, 2004, to November 1, 2008. Under that approved mechanism, Columbia would retain the first $25 million in such revenues in any calendar year. Any additional revenues would be shared with Columbia's customers. The portion of those additional revenues retained by Columbia would depend on the level of CHOICE participation by Columbia's customers each year. If CHOICE participation were under 60%, Columbia would split the revenues that year equally with customers. If CHOICE participation were between 60% and 70%, Columbia would retain 60% of the revenues that year. If CHOICE participation were between 70% and 80%, Columbia would retain 70% of the revenues that year. And, if CHOICE participation were above 80%, Columbia would retain 80% of the revenues that year. *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Service*, Case No. 94-987-GA-AIR, Entry on Rehearing, at p. 10 (May 5, 2004).

The Commission held that the sharing mechanism adopted for the period from 2004 to 2008 would "not disadvantage choice customers, and [would] provide an incentive to Columbia to appropriately engage in [off system sales and capacity release]." *Id.* at p. 9. Columbia submits that the sharing mechanism it seeks here, which provides significantly greater percentages of off-system sales and capacity release revenues to Columbia's customers than the 2004 to 2008 mechanism, should be approved as reasonable, beneficial to Columbia's customers, and in the public interest.

5.4. The Expenses To Be Recovered Through The CHOICE/SCO Reconciliation Rider Will Benefit Ratepayers And The Public Interest

Lastly, OPAE objects to the extension of the CHOICE/SCO Reconciliation Rider ("CSRR") for an additional five year term. (*See* OPAE Comments at p. 15.)

The CSRR allows for "the recovery from or pass back to all affected customers of any imbalances between gas costs and recoveries; the flow-through of refunds; and the flow-through of [customers' share of revenues from] the Off-System Sales and Capacity Release * * * Incentive Sharing Mechanism." (Opinion and Order, Case No. 08-1344-GA-EXM, at 10 (Dec. 2, 2009).) The CSRR also allows Columbia to recover incremental SCO program costs, such as "educational expenses, information technology, and other [SCO] implementation costs." (*Id.* at pp. 10-11.) In the last exemption case, the Commission found that the proposed CSRR was permissible under Sections 4929.11 and 4905.13, Revised Code, and approved the establishment of that rider. (*Id*. at p. 14.)

The Joint Stipulation filed in this proceeding would continue the CSRR, but modify it to include incremental program costs related to any exit from the merchant function that occurs during the term of the stipulation, such as educational programs and information technology expenses. (*See* Joint Stipulation at p. 12.) The CSRR also would flow through any funds remaining at the end of each program year from the new, ten-cent SCO Supplier security requirement. (*Id*. at p. 3.) And, the Joint Stipulation also specifies certain proposed billing system enhancements for CHOICE suppliers and customers, the costs of which also would be recovered through the CSRR. (*Id*. at pp. 10-12.)

OPAE argues that the CSRR "violates the principle of cost causation," suggesting that the costs currently recovered through the CSRR, and those proposed to be recovered through the CSRR, should not be charged to customers because customers receive no benefits from those costs. (OPAE Comments at p.

15.) As explained twice before in these Comments, OPAE's proposal to abolish the CSRR is not properly raised here. If OPAE sought to abolish the CSRR, again, the proper mechanism to accomplish that would have been a motion or a complaint case under Section 4929.08(A), Revised Code, and Rule 4901:1-19-12, Ohio Admin. Code. Regardless, the argument that customers do not benefit from being educated about Columbia's CHOICE program, would not benefit from being educated about a planned exit from the merchant function, and would not benefit from changes to Columbia's billing system to allow, *e.g.*, new billing options and contract portability, is transparently and obviously flawed. OPAE also overlooks other components of the CSRR that even more clearly benefit customers, such as the flow-through of refunds and of the customers' share of revenues from off-system sales and capacity release.

6. The Joint Motion Furthers State Policy, As Expressed By The Ohio Legislature, To Promote Customer Choice

Lastly, OPAE and OCC argue that the modifications set forth in the Joint Stipulation violate important regulatory principles or practices.

OPAE's primary argument against the Joint Motion is that exiting the merchant function will raise prices for consumers. OPAE argues that it is "a fundamental public policy to ensure customers the lowest possible price." (OPAE Comments at p. 4.) OPAE then notes that "Columbia's shadow billing data" – a comparison of CHOICE customers' savings as compared to the Gas Cost Recovery (GCR), Standard Service Offer (SSO), and Standard Choice Offer (SCO) programs – shows that CHOICE customers "have paid $884,587,332 more for natural gas[.]" (OPAE Comments at p. 6; *see also* OCC Comments at pp. 7-8.) These arguments are founded on the implicit, but unsupported, assumption that commodity prices will be higher under the Joint Movants' proposed MVR Program than they would be under the SCO. These arguments are also founded on a mistaken proposition of law. It is not state policy to ensure customers the lowest possible price. Instead, it is state policy to "[p]romote the availability to consumers of adequate, reliable, and *reasonably* priced natural gas services and goods[.]" Section 4929.02(A)(1), Revised Code (emphasis added).

OCC and OPAE have not argued that prices set by bilateral contracts between Columbia's customers and CHOICE suppliers are not "reasonabl[e]." Indeed, any such argument would necessarily fail, as the Ohio legislature has supported customer choice since 2001, when it passed Sub. H.B. 9. OCC and OPAE's cost-based arguments boil down to a contention that CHOICE contracts are themselves contrary to state policy, which is clearly unsupportable.

Moreover, the nearly $885 million shadow billing figure that OCC and OPAE tout is both misleading and largely irrelevant to the issues before the Commission in this proceeding. That figure represents the total, combined amount that hundreds of thousands of Columbia CHOICE customers might have saved over 15 ½ years by participating in GCR, SSO, or SCO. This tells the Commission nothing useful about the average difference in cost for an average customer in an average month. The $885 million figure includes residential customers, who are in no danger of losing their SCO in this proceeding (because Columbia could not exit the merchant function without a significant increase in residential customer participation in Columbia's CHOICE program and a separate application to exit the merchant function for those customers). Most of the $885 million figure represents theoretical savings under the GCR or SSO, which tells the Commission nothing useful about the relative costs of CHOICE and SCO service. Columbia has offered the SCO only since April 2012. Indeed, the shadow billing data is of no use in forecasting costs under a future MVR Program. Finally, the shadow billing data offers, at best, an apples-and-oranges comparison of the relative costs for SCO and CHOICE customers. The data compares costs under different kinds of contracts (e.g., long-term, fixed-rate contracts under CHOICE, versus short-term, variable rates under SCO), with different tax treatments for each (*see* Second Opinion and Order at p. 6, Case No. 08-1344-GA-EXM (Sept. 7, 2011)). In short, Columbia's "shadow billing" figures may be sensational, but they are not particularly pertinent.

Next, OPAE derides the "non-price benefits * * * that come with bilateral contracts" with CHOICE suppliers (including fixed rates) as simply "bangles and baubles[.]" (OPAE comments at p. 15.) Yet, it is precisely such "non-price benefits" that the Ohio Legislature has sought to promote. The Legislature has declared it state policy to "[p]romote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs[.]" Section 4929.02(A)(2). Other relevant state policies include "[p]romot[ing] diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers;" and "[p]romot[ing] an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods[.]" Sections 4929.02(A)(3), and (7), Revised Code. These have been state policy for over four years, since Governor Strickland signed S.B. 221 into law in May 2008. And, the Joint Motion filed in this proceeding furthers all of these interests.

The enhanced billing options for competitive retail natural gas suppliers (see Joint Motion at 10-11) further the state policy of providing consumers with "the price, terms, conditions, and quality options they elect" (Section 4929.02(A)(2), Revised Code) by enabling customers to enter into new kinds of contracts with CHOICE suppliers, including flat fee contracts and contracts in which the supplier charges the monthly NYMEX (New York Mercantile Exchange) rate, plus or minus a set value. Customers will also be able to transfer their CHOICE contracts to new addresses within Columbia's service area and prepay the commodity portions of their bills.

And, if 70% of Columbia's CHOICE-eligible non-residential customers migrate to CHOICE, Columbia will exit the merchant function, thereby effecting "an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers [without] the need for regulation of natural gas [commodity] services and goods[.]" Section 4929.02(A)(7), Revised Code.

Allowing Columbia to exit the merchant function for non-residential customers or residential customers would not be "[e]liminating a competitive option that customers obviously prefer," as OPAE argues. (OPAE Comments at p. 9.) It could only take place after the vast majority of non-residential or residential customers had moved to CHOICE. And, it would not be an unwarranted "governmental intervention in the marketplace," as OPAE argues. (*Id*. at p. 10.) Instead, it would be the fulfillment of a legislative policy announced more than four years ago, and set in motion more than a decade ago, by the Ohio Legislature. Indeed, the Commission already is in the process of applying this state policy through rulemaking. The Commission held last year that it is "open to considering applications to exit-the-merchant-function and will seriously consider such applications that are just and reasonable." *In the Matter of the Commission's Review of the Alternative Rate Plan and Exemption Rules Contained in Chapter 4901:1-19 of the Ohio Administrative Code*, Case No. 11-5590-GA-ORD, Entry, at p. 2 (Nov. 22, 2011).

Thus, the non-residential exit and billing improvements that OPAE so vociferously opposes in this proceeding would not violate any important regulatory principle or practice. To the contrary, OPAE's blanket opposition to these modifications is, itself, entirely inconsistent with public policy, as declared by the Ohio Legislature and this Commission.

7. Conclusion

For all of the reasons expressed above, Columbia Gas of Ohio, Inc. respectfully requests that the Commission approve the Joint Stipulation and modify the Commission's prior exemption orders in the manner described in the Joint Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Reply Comments of Columbia Gas of Ohio, Inc. in Response to the Initial Comments of Ohio Partners for Affordable Energy and Comments by the Office of the Ohio Consumers' Counsel was served by electronic mail upon the following parties this 12th day of November, 2012:

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