

**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	:	Case No. 12-2637-GA-EXM
Second Opinion and Order in Case No.	:	
08-1344-GA-EXM.	:	

**POST-HEARING BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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December 11, 2012

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INTRODUCTION

This case presents a simple question with a clear answer on a review of the record. The principal, and dispositive, issue is whether the Amended Stipulation satisfies the Public Utilities Commission of Ohio's (Commission's) three-pronged tests for approving and adopting stipulations. It does and its Staff recommends the Commission adopt and approve it.

STATEMENT OF THE FACTS AND CASE

Promoting competition in natural gas sales is the policy of the state of Ohio.¹ Following that policy, the Commission has issued orders providing for gradually increasing the competitive environment in natural gas sales in Columbia Gas of Ohio's (Columbia's) service territory. In 2009, the Commission approved and adopted a stipulation directing Columbia to hold an auction to secure natural gas through a standard service offer (SSO) structure initially, and, subsequently, through a standard choice offer (SCO) structure. The Commission also approved a Program Outline implementing the SSO structure.² In 2011, the Commission approved and adopted a stipulation revising that Program Outline to implement the initial SCO auction, occurring in 2012.³

In the present case, Joint Movants⁴ seek to continue that progression of gradually improving the competitive environment for natural gas sales.⁵ The Joint Movants ask the Commission to modify its previous orders identified above together with approving and

¹ R.C. 4929.02.

² *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a General Exemption of Certain Natural Gas Commodity Sales and Service or Ancillary Services*, Case No. 08-1344-GA-EXM (hereinafter *In re Columbia Gas*)(Opinion and Order at 16) (December 2, 2009).

³ *In re Columbia Gas* (Second Opinion and Order at 18, 20) (September 7, 2011).

⁴ Joint Movants are, collectively, Columbia, Staff, Ohio Gas Marketers Group, Retail Energy Supply Association, and Dominion Retail, Inc.

⁵ *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 (Amended Joint Motion to Modify Orders Granting Exemption and Motion for Bifurcation of the Capacity and Balancing Issues on An Expedited Basis) (October 4, 2012).

adopting an Amended Stipulation and Recommendation to improve the competitive environment in natural gas sales in a controlled fashion.⁶ The Commission conducted a hearing on the motion and Amended Stipulation and Recommendation and it has provided this opportunity for the parties to brief the issues.

DISCUSSION

I. The Amended Stipulation and Recommendation satisfies the Commission's three-pronged test for evaluating stipulations and Staff recommends the Commission approve and adopt it.

The principal issue in this case is whether the Commission should approve the Amended Stipulation and Recommendation. Many parties, including Staff, have recommended the Commission do so in an effort to further Ohio's policy of promoting competition in natural gas sales. The parties ask the Commission to revise prior orders and adopt a process leading to Columbia's possible exit from the merchant function.⁷ Staff endorses that process and recommends the Commission approve and adopt the Amended Stipulation and Recommendation because of its demonstrated satisfaction of the Commission's three-part test for analyzing stipulations.

⁶ *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 (Amended Joint Motion to Modify Orders Granting Exemption and Motion for Bifurcation of the Capacity and Balancing Issues on An Expedited Basis) (October 4, 2012).*

⁷ *Id.*

As the Commission is aware, it has long applied a three-part test for analyzing whether to approve a stipulation. The Commission approves and adopts stipulations, such as the present one, if the stipulation:

- 1) is the result of serious bargaining between capable and knowledgeable parties;
- 2) as a package, benefits customers and the public interest;
- 3) does not violate any important regulatory principle or practice.

Staff believes the Amended Stipulation and Recommendation, Jt. Ex. 2, meets these criteria as many other parties also believe.⁸

The Amended Stipulation and Recommendation results from serious bargaining between capable and knowledgeable parties.⁹ A mere perusal of the signatories to the Amended Stipulation and Recommendation establishes the bargaining was among capable and knowledgeable parties. Those parties and/or their counsel are well known to the Commission through many years of case participation, including cases involving Columbia. Many are actively involved in Columbia's stakeholder group, which regularly meets to discuss issues involving Columbia's natural gas service. There cannot be any question that the signatories are capable and knowledgeable.

⁸ See e.g., Columbia Ex. 7 at 8 (Brown Supp. Dir. Test.); OGMG/RESA Ex. 5 at 4-6 (Rigenbach Dir. Test.); OGMG/RESA Ex. 4 at 4 (Parisi Supp. Test.); OCC Ex. 1 at 4 (Hayes Dir. Test.).

⁹ Columbia Ex. 7 at 9 (Brown Supp. Dir. Test.); OGMG/RESA Ex. 5 at 4 (Rigenbach Dir. Test.); OGMG/RESA Ex. 4 at 4 (Parisi Supp. Test.); OCC Ex. 1 at 4 (Hayes Dir. Test.).

There also cannot be any question that the Amended Stipulation and Recommendation resulted from serious bargaining among those parties. The signatories represent diverse and competing interests. They include: the regulated utility (Columbia), the regulator (Staff), gas marketers (OGMG & RESA), and consumers (OCC). They did not agree quickly. The Amended Stipulation and Recommendation evolved from a never-say-die process of negotiation and re-negotiation that sought an as-broad-as-possible signatory base. The Amended Stipulation and Recommendation represents changes from an earlier stipulation filed in this case that continued, serious bargaining produced.

The Amended Stipulation and Recommendation, as a package, benefits consumers and the public interest.¹⁰ The Amended Stipulation and Recommendation provides many benefits that include, but are not limited to:

- 1) advancing Ohio's energy policy;
- 2) providing for the extension of the SCO program, while also providing a structure for Columbia to make a controlled and supervised possible two-phase exit from the commodity merchant function.
- 3) as part of a possible two-phase exit, requiring specified criteria to be met prior to Columbia's exit for non-residential customers. In addition to meeting specified criteria prior to any possible exit for residential customers, the Amended Stipulation and Recommendation also includes additional due process requirements comprising, among other things, Columbia's filing an application and including a request to the Commission to hold an evidentiary hearing.

¹⁰ Columbia Ex. 7 at 10 (Brown Supp. Dir. Test.); OGMG/RESA Ex. 5 at 4 (Rigenbach Dir. Test.); OGMG/RESA Ex. 4 at 4 (Parisi Supp. Test.); OCC Ex. 1 at 10-15 (Hayes Dir. Test.).

- 4) Ensuring Columbia customers will not be double-billed for Columbia's balancing fee;
- 5) providing for lowering the Choice\SCO Reconciliation Rider (CSRR), which benefits Columbia's ratepayers financially;
- 6) providing the public additional opportunities to participate in Commission proceedings, including at least six local public hearings.¹¹

Because of these benefits, if no others, the Amended Stipulation and Recommendation benefits consumers and the public interest and it satisfies the second prong of the Commission's three-pronged test.

Finally, the Amended Stipulation and Recommendation does not violate any important regulatory principle or practice. Staff agrees with many others that it does not.¹²

The Amended Stipulation and Recommendation satisfies the Commission's three-pronged test and Staff recommends the Commission approve it.

II. Staff supports bifurcation of these proceedings, if the Commission decides to do so.

During these proceedings some parties moved for bifurcation of the Commission's consideration of certain issues because of time constraints associated with the SCO auc-

¹¹ Jt. Ex. 2; Columbia Ex. 7 at 7, 10 (Brown Supp. Dir. Test.); OGMG/RESA Ex. 5 at 4 (Rigenbach Dir. Test.); OGMG/RESA Ex. 4 at 4 (Parisi Supp. Test.); OCC Ex. 1 at 6, 10-16 (Hayes Dir. Test.).

¹² See e.g., Columbia Ex. 7 at 10 (Brown Supp. Dir. Test.); OGMG/RESA Ex. 5 at 4 (Rigenbach Dir. Test.); OGMG/RESA Ex. 4 at 4 (Parisi Supp. Test.); OCC Ex. 1 at 10-15 (Hayes Dir. Test.).

tion's process. That motion was denied.¹³ In denying the motion, the Attorney Examiner noted the Commission might consider the bifurcating the issues subsequent to the hearing.¹⁴ Staff supports bifurcation if the Commission decides to do so.

CONCLUSION

In sum, Staff recommends the Commission approve and adopt the Amended Stipulation and Recommendation.

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**On behalf of the Staff of
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¹³ *In the Matter of the Application to Modify, in Accordance with Section 4929.08, Revised Code, the Exemption Granted Columbia Gas of Ohio, Inc., in Case No. 08-1344-GA-EXM*, (Entry at 2-4, 6) (October 18, 2012).

¹⁴ *Id.* at 4.

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following Parties of Record, this 11th day of December, 2012.

/s/ Stephen A. Reilly

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Summary: Brief Post-Hearing Brief submitted by Assistant Attorney General Stephen Reilly on behalf of the Staff of the Public Utilities Commission of Ohio. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio