

**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 OF
COLUMBIA GAS OF OHIO, INC.**

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INTRODUCTION

On December 2, 2009, in Case No. 08-1344-GA-EXM, the Commission issued an Opinion and Order (“First Opinion and Order”) granting Columbia Gas of Ohio, Inc. (“Columbia”) a general exemption of certain natural gas commodity sales services or ancillary services contained in Chapters 4905, 4909, and 4935, Revised Code. In that First Opinion and Order, the Commission adopted a Joint Stipulation and Recommendation (“2009 Stipulation”) that:

- eliminated Columbia’s gas cost recovery mechanism and replaced it with two annual Standard Service Offer (“SSO”) auctions, followed by annual Standard Choice Offer (“SCO”) auctions (*see* First Opinion and Order at 7-8);
- established Columbia’s peak-day demand and peak-day capacity portfolio (*see id.* at 9);
- imposed a non-temperature balancing and peaking service fee (“Balancing Fee”) of \$0.32/Mcf on CHOICE/SSO/SCO suppliers (*see id.*);
- established a mechanism for sharing revenues from Columbia’s off-system sales and capacity release with Columbia’s customers (*see id.* at 10; *see also* 2009 Stipulation at 14); and,
- established a CHOICE/SSO/SCO Reconciliation Rider (“CSRR”) to, among other things, recover Columbia’s incremental SSO/SCO program costs, recover/pass back imbalances between gas costs and recoveries to affected customers; flow-through refunds; and flow-through customers’ shares of off-system sales revenues (*see id.* at 10-11).

After a hearing, the Commission issued a Second Opinion and Order on September 7, 2011, in which it reaffirmed Columbia’s transition to an SCO auction.

Most provisions of the 2009 Stipulation were set to continue after the initial term of the 2009 Stipulation expires on March 31, 2013. (*See* First Opinion and Order at 11; 2009 Stipulation at 8.) Several provisions expire on March 31, 2013, however, including Columbia’s specified levels of peak day demand and peak day capacity portfolio (*see* 2009 Stipulation at 10), some of Columbia’s interstate pipeline contracts, and the current off-system sales/capacity release revenue sharing mechanism (*see id.* at 8, 15). Accordingly, Columbia’s stakeholder group met

for several months in 2012 to discuss these issues. Those discussions resulted in Columbia, Commission Staff, Ohio Gas Marketers Group, Retail Energy Supply Association, and Dominion Retail, Inc. (“the Joint Movants”) filing a Joint Motion to Modify Orders Granting Exemption (“Joint Motion”) in this proceeding on October 4, 2012. The Joint Movants attached a Joint Stipulation and Recommendation (“Joint Stipulation”), which laid out their agreement to continue the 2009 Stipulation, with modifications, for an additional five years.

On November 27, 2012, after several weeks of additional negotiations and discussions with the Office of the Ohio Consumers’ Counsel (“OCC”), the Joint Movants filed an Amended Joint Motion to Modify Orders Granting Exemption (“Amended Joint Motion”) (Jt. Ex. 2). Attached to that Amended Joint Motion was an Amended Stipulation and Recommendation (“Amended Stipulation”) (Jt. Ex. 1), which modified the Joint Stipulation to address several of OCC’s concerns with the original filing.

The Amended Stipulation proposes several modifications to the Commission’s First Opinion and Order and Second Opinion and Order (“the Exemption Orders”) for the period from April 1, 2013, through March 31, 2018, including:

- establishing a new \$0.06/Mcf security deposit for winning SCO suppliers, to cover any expenses incurred by Columbia as the result of a supplier default;
- reducing the Balancing Fee to \$0.27/Mcf and charging it directly to customers, while prohibiting CHOICE suppliers from including the prior \$0.32/Mcf Balancing Fee in their rates after April 1, 2013;
- adjusting Columbia’s firm city gate interstate and intrastate pipeline transportation and storage capacity and terminating certain capacity contracts;
- reducing the amount of revenue from off-system sales and capacity release that Columbia can recover each year from \$20 million to \$14 million and imposing a total recovery limit of \$55 million for the next five-year term;
- authorizing Columbia to exit from the merchant function for CHOICE-eligible non-residential customers if at least 70% of those customers partic-

ipate in Columbia's CHOICE program for at least three consecutive months;

- allowing Columbia to file an application to exit from the merchant function for CHOICE-eligible residential customers, if at least 70% of those customers participate in Columbia's CHOICE program for at least three consecutive months and Columbia has already exited the merchant function for non-residential customers at least twenty-two months earlier;
- establishing a Monthly Variable Rate program to provide commodity service, after an exit from the merchant function, for CHOICE-eligible customers who have not selected a CHOICE supplier and are not served through a government aggregation program; and,
- authorizing Columbia to recover, through the CSRR, IT programming expenses that Columbia will incur to expand its billing options for CHOICE customers.

On October 31, 2012, Columbia filed a Revised Program Outline and Revised Tariffs in the docket for this proceeding. Those filings reflected the changes to the prior SCO Program Outline and to Columbia's tariffs that would be necessary to implement the Joint Stipulation filed on October 4, 2012, if approved by the Commission. Subsequently, on November 28, 2012, Columbia filed a Second Revised Program Outline and Revised Tariffs that reflected the changes to the Program Outline and to Columbia's tariffs that would be necessary to implement the Amended Stipulation.

The Commission held a brief hearing on December 3, 2012, to allow public comment on the Amended Joint Motion and Amended Stipulation. The Commission then held an evidentiary hearing in this proceeding on December 5 and 6, 2012. At that hearing, the parties opposing portions of the Amended Stipulation – Ohio Partners for Affordable Energy (OPAE) and Hess Corporation ("Hess") – presented witness testimony challenging only the exit-the-merchant-function, Monthly Variable Rate, and SCO supplier security provisions of the Amended Stipulation. (*See generally* Harper Testimony (OPAE Exs. 2 and 2A), Magnani Testimony (Hess Ex. 1).)

Columbia now asks the Commission to grant the Amended Joint Motion (Jt. Ex. 2) and adopt the Amended Stipulation (Jt. Ex. 1), along with the Revised

Program Outline (Columbia Ex. 2) and tariffs (Columbia Ex. 3) for the reasons provided below.

ARGUMENT

1. The Commission Has Authority To Modify Its Exemption Orders.

Only one of the intervenors has challenged the Commission's jurisdiction to consider the Amended Joint Motion.¹ OPAE asserted, in its Initial Comments in this proceeding (filed November 5, 2012), that the Joint Motion was unlawful and that the Joint Stipulation violated Columbia's commitments in the 2009 Stipulation. OPAE's arguments are incorrect as a matter of fact and law.

1.1. The 2009 Stipulation, general Commission authority to modify its prior orders, and R.C. 4929.08 all permit the Commission to grant the Joint Motion and approve the Amended Stipulation.

OPAE has argued that the only ways for the Joint Movants to extend and modify the terms of the 2009 Stipulation were by filing an entirely new application for exemption under Section 4929.04, Revised Code, or a self-complaint under Section 4929.08, Revised Code. (OPAE Initial Cmts. at 8 (OPAE Ex. 1).) OPAE further argued that the Joint Movants had not met the standards of Section 4929.08, Revised Code, because they had not shown that they were "adversely affected" by the prior Exemption Orders, that "the findings upon which the order[s] [were] based are no longer valid," or that the "modification is in the public interest[.]" Section 4929.08(A)(1), Revised Code.² These arguments misinterpret the scope of Commission authority.

¹ OCC and OPAE originally filed a joint memorandum contra the Joint Motion in which they argued that the Joint Movants had failed to meet the requirements of Section 4929.08, Revised Code. OCC subsequently joined the Joint Movants, however, in signing and supporting the Amended Joint Stipulation (although not the Amended Joint Motion). Accordingly, OCC must now agree the Commission has authority to consider and grant the Amended Joint Stipulation.

² Columbia notes that OPAE has recommended several modifications to the 2009 Stipulation, including abolishing the default off-system sales and capacity release revenue sharing mechanism set forth in the prior joint stipulation. (See OPAE Initial Cmts. at 11 (OPAE Ex. 1).) As OPAE's own arguments indicate, OPAE was obligated to file an application or complaint case to request such modifications. It did not do so. Accordingly, OPAE's efforts to modify the prior joint stipulation without following the proper process for doing so should be denied.

As a general matter, “the Commission retains the authority to modify a prior order adopting a stipulation,” if there are “sufficient grounds” to do so. *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 42 (July 18, 2012). Cf. *In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Entry on Rehearing, ¶39 (Oct. 17, 2012) (reaffirming the Commission’s authority to modify a mechanism established in a prior Commission order). Moreover, the 2009 Stipulation, which the Commission’s First Opinion and Order approved in its entirety, specifically allowed its signatories to seek, and the Commission to grant, modifications to the exemption’s terms for the period after the 2009 Stipulation’s initial term. In the 2009 Stipulation, the signatory parties “reserve[d] the right to propose changes to the Agreement to become effective after the end of the initial term.” (2009 Stipulation at 8.) On the same page, the parties agreed that the provisions of the 2009 Stipulation would “continue [after the expiration of the initial term] until modified by the Commission.” (*Id.*) Thus, both the Commission’s general powers and the Commission-approved 2009 Stipulation give the Commission the authority to modify the 2009 Stipulation.

The Joint Motion also meets the requirements of Section 4929.08(A), Revised Code. See generally *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) (granting motions to modify previous Commission orders granting exemptions). R.C. 4929.08(A) provides, in relevant part:

The public utilities commission has jurisdiction over every natural gas company that has been granted an exemption or alternative rate regulation under section 4929.04 or 4929.05 of the Revised Code. As to any such company, the commission, upon its own motion or upon the motion of any person adversely affected by such exemption or alternative rate regulation authority, and after notice and hearing and subject to this division, may abrogate or modify any order granting such an exemption or authority only under both of the following conditions:

(1) The commission determines that the findings upon which the order was based are no longer valid and that the abrogation or modification is in the public interest * * *.

As discussed below, certain findings upon which the Exemption Orders were based are no longer valid. As a result, Columbia is adversely affected by the exemption as it currently stands, and modification of the Exemption Orders is in the public interest. Therefore, under both the Commission's First Opinion and Order and statute, the Commission has the authority to modify the Exemption Orders granting Columbia's exemption.

1.2. The 2009 Stipulation did not prohibit the filing of the Amended Stipulation.

As a secondary argument, OPAE asserts that Columbia committed in the 2009 Stipulation "not to modify the [SCO] program substantively and not to propose to exit the merchant function * * *." (OPAE Initial Cmts. at 7 (OPAE Ex. 1).) This argument is, at best, frivolous. The parties to the 2009 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[.]" (2009 Stipulation at 8.) Columbia is, in this proceeding, seeking approval for the substantive amendments to its Program Outline submitted on October 31 and November 28, 2012. Columbia also did not commit, in the 2009 Stipulation, 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 9.) Columbia's intent and request to exit the merchant function arose after the submission of the 2009 Stipulation, during the negotiation of the Joint Stipulation in this proceeding. Thus, there was nothing in the 2009 stipulation that prohibited the filing of a motion like the Amended Joint Motion or the Amended Stipulation.

OPAE also notes that the Commission, in its Second Opinion and Order, 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. (OPAE Initial Cmts. at 8-9 (OPAE Ex. 1), *quoting* Second Opinion and Order at 13.) This does not, however, and should not be interpreted to, prevent the approval of the Amended Stipulation. Under the Amended Stipulation, the earliest that Columbia could exit the merchant function for CHOICE-eligible

non-residential customers is April 1, 2014 – well after Commission Staff will produce its study of the SCO. (*See* Am. Stip. at 9, §28 (Jt. Ex. 1).) Additionally, Columbia cannot exit the merchant function for its residential customers until at least twenty-two months after Columbia exits the merchant function for its non-residential customers – or, in other words, until February 1, 2016, at the very earliest. (*Id.* at 10, §31.) The Commission thus will have the benefit of its SCO study for at least two and a half years before it would ever see an application to exit the merchant function for residential customers. 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 Amended Joint Motion and Amended Stipulation.

2. The Commission Should Modify The Exemption Orders.

2.1. Certain findings upon which the Exemption Orders were based are no longer valid, adversely affecting Columbia.

The exemption from regulation granted Columbia in Case No. 08-1344-GA-EXM was the first such exemption for Columbia. In abandoning the GCR and implementing gas supply auctions, Columbia was initiating a new method of supplying gas to customers. (Brown Testimony at 18 (Columbia Ex. 6).) The auction process is now no longer new or novel, and there is no longer uncertainty about the auction process. Columbia has held three auctions, and the parties agree that the auctions have provided customer benefits. (*Id.*)

While there is now less uncertainty about the auction process, since the 2009 Stipulation was approved in December 2009, the introduction of shale gas into the marketplace has created greater uncertainty about Columbia's best use of interstate pipeline capacity. The introduction of Marcellus shale gas, and subsequently Utica shale gas, has created the potential for new gas supply opportunities in Ohio. How these opportunities will develop is unknown, but the opportunities could potentially impact Ohio utilities' use of interstate pipeline capacity. (*Id.*) It will likely take several years to fully assess the full impacts of shale gas on Ohio markets, and until all market participants can assess these impacts it makes sense not to make long-term interstate pipeline capacity contract decisions that could adversely impact Columbia's ability to make the best use of all pipeline capacity available to it.³ Consequently, the factual assumptions underlying Colum-

³ New interstate pipeline capacity contracts that could possibly facilitate direct access to Marcellus or Utica Shale gas supplies require minimum contract terms of 10-20 years, generally at higher rates, while simultaneously providing limited access to existing supply resources. (*See* Ander-

bia's capacity contracts have changed since the Commission issued the Exemption Orders. Yet, the 2009 Stipulation approved by the Exemption Orders provides for a peak day capacity portfolio that is not geared to meet Columbia's needs during the period after the 2009 Stipulation's initial term. (*Id.* at 18-19.)

Columbia has also begun to plan for a possible exiting of the merchant function. When the 2009 Stipulation was approved, Columbia had not expressed an intent to, and did not contemplate seeking to, exit the merchant function. Since then, some stakeholders believe an exit may be warranted, if participation in Columbia's CHOICE program meets sufficient levels. (*Id.* at 19.) The Exemption Orders do not, however, authorize an exit from the merchant function.

For these reasons, the Exemption Orders are adversely affecting Columbia, the findings underlying the Commission's Exemption Orders are no longer valid, and modifications to those Orders should be granted.

2.2. Modifying the Exemption Orders is in the public interest.

The Amended Stipulation would modify the details of Columbia's exemption for a term that will commence on April 1, 2013, and continue until March 31, 2018. There are benefits to be derived from continuing the current exemption agreement, with modifications.

2.2.1. Modifying Columbia's capacity portfolio would permit Columbia to retain flexibility in a rapidly evolving marketplace.

Currently, a majority of the gas that is consumed by Columbia's customers originates in the Gulf Coast region and is transported by Columbia Gulf to Columbia Gas Transmission, LLC ("TCO") and on TCO into Ohio. (Anderson Testimony at 8 (Columbia Ex. 4).) Maintaining the Columbia Gulf capacity gives Columbia flexibility, because there are multiple sources of supply and/or supply basis available to the Columbia Gulf system. (*Id.* at 25.) Appalachian Basin shale gas cannot yet take the place of Columbia Gulf-delivered supplies, because, with limited exceptions, shale gas supplies do not physically flow on TCO's system to a point where they can be delivered into the majority of Columbia's markets, including injection into storage. (*Id.* at 8.) At present, Columbia is aware of at least four pipeline projects that would move gas west from the Marcellus/Utica region,

son Testimony at 21-25 (Columbia Ex. 4).)

but none of them is considered a viable replacement to Columbia Gulf at this time. Two of the projects would have very limited city gate access to Columbia's markets and be more expensive than present alternatives. (*See id.* at 22.) The third project has been unable to obtain sufficient firm support to move forward, but would require additional downstream capacity to replace Columbia Gulf and has higher expected costs. (*See id.* at 22-23.) The fourth project is very early in the routing stages, but it is limited to northern Ohio and has projected rates that are significantly higher than Columbia Gulf. (*See id.* at 23.)⁴

Consequently, consistent with the Amended Stipulation, Columbia provided Columbia Gulf with a contractually obligated notice of intent to renew its capacity contract with Columbia Gulf on or around September 30, 2012. Nonetheless, Columbia will reduce its Columbia Gulf contract capacity by 25% in April, 2016, as a means to test whether Appalachian Basin shale gas supplies can be relied upon to meet the physical needs of Columbia's customers. (*Id.* at 10.) It is in the public interest for the Commission to permit Columbia and its stakeholders to maintain flexibility, particularly with regard to interstate pipeline capacity, thus enabling Columbia to assess whether the ability to physically transport shale gas to its markets has developed. (*Id.* at 19.)

2.2.2. Modifying the Balancing Fee would improve rate transparency.

Modifying the Balancing Fee, which is currently charged to Suppliers (and potentially factored into Suppliers' charged rates), to instead charge it directly to customers would make clearer suppliers' actual costs for providing gas commodity service to customers. (*Id.* at 17.) The Amended Stipulation's prohibition against CHOICE suppliers charging rates that include the prior Balancing Fee, moreover, would ensure that this change will not result in any customer paying the Balancing Fee twice. (*See* Supp. Brown Testimony at 10 (Columbia Ex. 7).) CHOICE Suppliers who have the current Balancing Fee built into their rates would need to modify their contracts to avoid "double-billing" their customers for the Balancing Fee. (Vol. II, p. 46.)

⁴ Although shale gas is not currently a viable supply option for Columbia, shale gas supplies have had a beneficial impact on the prices of commodity gas available to Columbia customers. The increase in natural gas production on both regional and national levels since January 2006 has driven down commodity prices for Columbia's customers. (*See* Anderson Testimony at 23-24 (Columbia Ex. 4).)

Some intervenors have questioned how the prohibition on “double-billing” the Balancing Fee will be enforced. The details for such enforcement must still be worked out. (Vol. II, pp. 47, 61-62.) As a practical matter, however, the SCO price will help ensure that the CHOICE Suppliers comply with their obligations. Because the Balancing Fee will no longer be charged to SCO suppliers as of April 1, 2013, the Retail Price Adjustment component of the SCO price will likely decrease. (See Anderson Testimony at 18 (Columbia Ex. 4).) This will provide a strong signal to CHOICE and Governmental Aggregation suppliers to reduce their prices to compete with the SCO auction or risk losing their customers. (*Id.*)

3. The Commission Should Approve The Amended Stipulation.

3.1. The Amended Stipulation is the result of serious bargaining among capable, knowledgeable parties.

The Stipulation is the product of an open process in which all parties were represented by able counsel and technical experts. Beginning in March, 2012, Columbia conducted a series of open meetings with its stakeholder group to discuss the status of its marketplace and the need for modification of the Exemption Orders. (Brown Testimony at 22 (Columbia Ex. 6).) Columbia’s Stakeholder Group is comprised of a large and diverse group of suppliers servicing Columbia’s Transportation Service customers, Competitive Retail Natural Gas Suppliers servicing Columbia’s CHOICE customers, SSO/SCO Suppliers, numerous municipalities, industrial and commercial customer groups, representatives of residential customers and the Staff of the Public Utilities Commission of Ohio. (*Id.*) Even though not all stakeholders agreed to the Stipulation, all those parties had ample opportunity to participate in the stakeholder meetings and negotiations that eventually resulted in the Amended Stipulation. (*Id.* at 22-23.)

During the course of the spring and summer there were extensive discussions and negotiations. (*Id.* at 22.) After the filing of the original Joint Motion in this proceeding on October 4, the Joint Movants continued to meet with representatives of the OCC to discuss the issues raised in that Motion. (Brown Supp. Testimony at 4 (Columbia Ex. 7).) After approximately seven weeks of additional negotiations, the Joint Movants and OCC were able to reach agreement on revisions to the Joint Stipulation that addressed many of OCC’s concerns. (*Id.*) Accordingly, OCC joined and signed the Amended Stipulation filed on November 27, 2012.

For example, the proposed change in the manner in which Columbia charges its Balancing Fee (directly to customers, rather than to suppliers) came about through discussions with Commission Staff and OCC regarding the difference between the latest Retail Price Adjustment levels of Dominion East Ohio and Columbia. One of the two major factors that influenced the different Retail Price Adjustment levels was that Dominion East Ohio charged its balancing fee to customers. Consequently, Columbia proposed the change to bring its practice into line with the method used by Dominion East Ohio Gas as part of its auction process. (Anderson at 17-18 (Columbia Ex. 4).) As another example, the “trigger” for Columbia to exit the merchant function (participation by at least 70% of CHOICE-eligible non-residential customers for at least three consecutive months) was a compromise benchmark reached by the negotiating parties. (Vol. II, pp. 54-55.)

Each party to the Amended Stipulation regularly participates in rate proceedings and other regulatory matters before the Commission, and each party was represented by similarly experienced and competent counsel. (Brown Testimony at 23 (Columbia Ex. 6).) The signatory parties have adopted it as a reasonable resolution of all of the issues. The Stipulation recommended by the Parties for adoption and approval by the Commission is a fair, balanced and reasonable resolution of this proceeding.

3.2. The Amended Stipulation benefits ratepayers and the public interest.

3.2.1. Supplier Security Agreements

Under the Amended Stipulation, SCO Suppliers will be required to provide Columbia with a cash deposit in the amount of \$0.06 per Mcf multiplied by the initial estimated annual delivery requirements for the SCO Program Year of the tranches won by that SCO Supplier. (Am. Stip. at 4, §9 (Jt. Ex. 1).) The purpose of the security is to provide Columbia with a liquid account to meet any supply default expenses it incurs other than compensation to the non-defaulting SCO Suppliers. (*Id.*)

OPAEC has suggested that Columbia could instead collect its costs associated with an SCO supplier default through the CSRR, if the CSRR mechanism were modified. (Vol. II, p. 49; Harper Testimony at 30 (OPAEC Ex. 2).) Under that alternative, Columbia’s customers would pay those costs. Under the Amended Stipulation, however, each SCO supplier would pay a deposit to defray any such

costs. And, any unused portion of that liquid deposit account would be credited to the CSRR at the end of each Program Year (Brown Testimony at 8 (Columbia Ex. 6)), where it would offset the costs of implementing the CHOICE education program, the pre-exit-the-merchant-function education programs, and the billing enhancements described in the Amended Stipulation. (*See* Am. Stip. at 16, §47 (Jt. Ex. 1).) Consequently, the security requirement proposed in the Amended Stipulation would provide greater benefits to ratepayers and the public than the alternative suggested by OP&A.

3.2.2. Capacity Contracts

Under the Amended Stipulation, Columbia will retain a combination of firm interstate and intrastate pipeline transportation and storage capacity and local gas supplies that in aggregate will provide firm city gate deliverability of 1,963,178 Dth as of April 1, 2013, reduced to 1,940,214 Dth effective November 1, 2013. (Am. Rev. Program Outline at 24, §18.A.1 (Columbia Ex. 2); *see also* Am. Stip. at 5, §11 (Jt. Ex. 1).)

Columbia has two categories of upstream interstate pipeline contracts. (Anderson Testimony at 24 (Columbia Ex. 4).) In the first category are the pipelines that deliver gas directly to Columbia's city gates. (*Id.*) These include North Coast Gas Transmission, LLC (which serves the Parma, Findlay, Fostoria, Oberlin, and Norwalk markets), Panhandle Eastern Pipe Line Company (which serves the Maumee market), and TCO. (*Id.* at 4, 24.) Columbia's distribution network consists of several hundred, often isolated, distribution systems spread out over sixty counties throughout the State of Ohio. (*Id.* at 2.) Columbia's distribution systems are served by over 840 separate points of delivery from upstream interstate pipeline companies. (*Id.*) Columbia receives service through twelve Pipeline Scheduling Points. (*Id.*)

Under the Amended Stipulation, Columbia will renew its Panhandle and TCO capacity contracts through March 31, 2018. (*See* Am. Stip. at 5, §14 (Jt. Ex. 1); Vol. II, p. 29.) A major influence for renewing the TCO contract was the desire for consistency, i.e., the suppliers' desire to know what they were going to be receiving for the next five years. (Vol. II, p. 30.) Additionally, Columbia's distribution network is integrated with TCO's pipeline. The vast majority of Columbia's distribution systems are connected to TCO, and the vast majority of those distribution systems have no alternative pipeline options. (Anderson Testimony at 3 (Columbia Ex. 4).) Given the large number of points of delivery, the diverse service territory, and the temperature-sensitive demand of the vast majority of customers

that Columbia contracts for capacity to serve, TCO provides the most efficient, cost-effective capacity. (*Id.* at 5.) Columbia is terminating, however, 22,964 Dth/day of North Coast transportation capacity and 23,255 Dth/day of associated transportation capacity from the Crossroads Pipeline Company when those respective contracts expire October 31, 2013. (Am. Stip. at 5, ¶14 (Jt. Ex. 1); Anderson Testimony at 10 (Columbia Ex. 4).) Columbia is terminating or reducing these capacity volumes primarily to bring Columbia's city gate capacity portfolio in line with its design peak day forecast and because other capacity exists in the same markets that costs less. (Anderson Testimony at 10 (Columbia Ex. 4).)

In the second category of upstream interstate pipeline contracts are the pipelines that deliver gas to the pipelines in the first category. These pipelines providing "capacity upstream of city gate" are Columbia Gulf, Tennessee Gas Pipeline Company, Crossroads Pipeline Company and Trunkline. (*Id.*) Columbia will renew the Tennessee Gas Pipeline and Trunkline contracts through March 31, 2018. (Am. Rev. Program Outline at 25, §18.B (Columbia Ex. 2).) And, as discussed above, Columbia provided Columbia Gulf with a contractually-obligated notice of intent to renew its existing Columbia Gulf Firm Transportation Service contracts through March 31, 2018, reducing its contracted capacity level by 25% for the last two years (Am. Stip. at 5, ¶14 (Jt. Ex. 1)), to give Columbia the flexibility to see whether Appalachian Basin shale gas supplies can be relied upon to meet the physical needs of Columbia's customers. (Anderson Testimony at 10 (Columbia Ex. 4).) The gas supplies delivered by Columbia Gulf and Tennessee Gas Pipeline are critical to Columbia's ability to provide reliable service to its firm customers (*Id.* at 24-25), i.e., residential customers and those small commercial and industrial customers who do not qualify for, or chose not to take service under, Columbia's Transportation Service program (*id.* at 11-12).

Columbia also has a separate category of non-pipeline capacity resources. (Anderson Testimony at 4 (Columbia Ex. 4).) Columbia has a peaking contract provided by J. P. Morgan Ventures Energy Corporation, which provides service to Columbia's Parma market; a full requirements contract with Gatherco, Inc., which serves numerous Columbia markets; local gas supply contracts with Producer's Gas Sales, Inc., which serve portions of Columbia's markets in Coshoc-ton, Zanesville and Newark; and numerous local gas contracts with small gas producers. (*Id.*) Columbia is not renewing the peaking contract. (Am. Stip. at 5, §14 (Jt. Ex. 1); Anderson Testimony at 10 (Columbia Ex. 4).) Again, Columbia is doing this to bring Columbia's city gate capacity portfolio in line with its design peak day forecast and because other capacity exists in these same markets that costs less. (Anderson Testimony at 10 (Columbia Ex. 4).)

OPAE complained, in its Initial Comments, that Columbia is executing “long-term contracts with its own affiliates for capacity that may well be unnecessary if local shale gas production matches expectations.” (OPAE Initial Cmts. at 16 (OPAE Ex. 1).) Columbia disagrees that a five-year period is considered “long-term” for interstate pipeline capacity contracts. (Anderson Testimony at 25 (Columbia Ex. 4).) Regardless, as discussed above, local shale gas production is not yet in a position to meet Columbia’s needs. OPAE has not specified the amount of pipeline capacity purchased from a Columbia affiliate that it believes “may *** be unnecessary.” Indeed, OPAE offered no witness testimony to support its criticisms at all.

Similarly, OPAE complained that Columbia’s renewal of its capacity contracts would “choke off the use of shale gas at a time when state policy is to promote markets for that commodity.” (OPAE Initial Cmts. at 11 (OPAE Ex. 1).) But, again, OPAE offered no testimony or other evidence to support that assertion. Columbia’s witness, Michael Anderson, testified that Columbia’s renewal of its interstate pipeline contracts would have no perceptible impact on the development of shale resources in Ohio. (Anderson Testimony at 26 (Columbia Ex. 4).)

In short, Columbia’s capacity portfolio is designed to meet its customers’ needs in the most efficient, cost-effective manner possible, while providing Columbia with the flexibility to respond to developments of new pipeline capacity in the Appalachian Basin as they arise. Columbia’s modifications to its city gate capacity portfolio for the next five years are designed to bring that portfolio in line with its design peak day forecast and because Columbia has other, cheaper capacity options in the relevant markets. Columbia’s capacity contracts therefore benefit ratepayers and the public.

3.2.3. Capacity Allocation

After Columbia retains enough storage to provide system balancing services for the CHOICE and SCO suppliers, Columbia’s assigns a “slice of the pie” to all CHOICE and SCO suppliers on a “level playing field” basis. (Anderson Testimony at 13 (Columbia Ex. 4).) In other words, Columbia assigns Firm Transportation Service and storage capacity on an equal percent of design peak day demand basis across Columbia’s twelve Pipeline Scheduling Points. (*Id.*) Additionally, Columbia assigns a “slice of the pie” within each Pipeline Scheduling Point. (*Id.* at 13-14.) For example, suppliers in the Toledo Pipeline Scheduling Point are assigned a percentage of storage and Firm Transportation Service identical to that assigned to suppliers in the Columbus Pipeline Scheduling Point (al-

though suppliers at different Pipeline Scheduling Points receive capacity from different pipeline companies). (*Id.* at 14.) This process is designed to maximize assignment to CHOICE and SCO suppliers. (*Id.*)

There is some capacity Columbia is not able to assign to suppliers as part of this process. (*See id.* at 14, 15.) Columbia incorporates that capacity into the peaking service Columbia provides to CHOICE and SCO suppliers. (*Id.* at 14.) Columbia also uses it to supplement supplier-provided supplies as needed to maintain system reliability. (*Id.*) For example, if the supply requirement to meet the firm delivery obligations in an area of Columbia's service territory exceeded the aggregate minimum delivery requirements for CHOICE and SCO suppliers in that area, Columbia would provide additional supplies via the retained capacity in order to assure system reliability in that area. (*See id.* at 14-15.)

OPAE has argued that the "level playing field" approach to capacity allocation is anti-competitive because it prevents marketers from competing on balancing costs and transportation pricing. OPAE asserts: "The price customers pay for competitive natural gas service is based on the price of the commodity and transportation (and balancing fees). Eliminating competition for pipeline fees limits competition." (OPAE Initial Cmts. at 12 (OPAE Ex. 1).) This is incorrect for multiple reasons: it fails to recognize the complexity of Columbia's markets; it fails to recognize the need to assure reliable service; it reflects the mistaken belief that shale supplies can replace firm capacity rights; and, it reflects the misconception that alternative balancing services exist. Suppliers are free to use the capacity Columbia assigns to them however they see fit. They could use an alternative to the capacity they purchase from Columbia to deliver gas to Ohio end-use customers. (Vol. II, pp. 26-27.)

Regardless, Columbia's assignment mechanism provides numerous benefits that outweigh any theoretical anti-competitive effects. It maintains service reliability for Columbia's customers. (Anderson Testimony at 15 (Columbia Ex. 4).) It provides a consistent and level playing field between CHOICE and SCO suppliers. (*Id.*) It minimizes operational complexities and creates stability and certainty for all market participants. (*Id.*) Because Columbia assigns suppliers capacity that matches the suppliers' customer groups' needs, those suppliers (particularly SCO suppliers, who do not know how many customers they will have month to month) do not have to go out and acquire capacity they may not ultimately need. Having Columbia assign capacity largely eliminates this uncertainty and thereby minimizes costs to customers, particularly SCO customers. (*Id.* at 30.) And, by assigning capacity to suppliers, Columbia lowers barriers to entry

for potential new suppliers. (*Id.* at 15.) Columbia's capacity allocation methodology therefore provides a variety of benefits to ratepayers and the public.

3.2.4. Off-System Sales and Capacity Release

Once Columbia has assured service reliability to its firm customers, Columbia's traders identify opportunities for off-system sales using the available capacity and gas supply resources and make contacts with Columbia's industry trading partners to determine if interest exists to execute a transaction. (Anderson Testimony at 27 (Columbia Ex. 4).) Similarly, each month Columbia analyzes what transportation capacity may be needed to assure service reliability to its firm customers. (*Id.*) Once that level of capacity has been determined, Columbia solicits bids with potential buyers of capacity available for temporary release. (*Id.*) If acceptable bids are forwarded, Columbia releases the capacity through the capacity release process approved by FERC for each interstate pipeline. (*Id.*) And, through the off-system sales and capacity release revenue sharing mechanism provisions of the Amended Stipulations, Columbia will continue to share the revenues from these off-system sales and releases of capacity.

Under the revenue sharing mechanism that is currently in place, Columbia retains 100% of the revenue from the first \$2 million of off-system sales each year, 50% of the revenue from the next \$18 million of off-system sales each year, and 25% of the revenue from off-system sales over \$20 million each year. The remaining revenue is shared with Columbia's customers, as a credit to Columbia's CSRR. The 2009 Stipulation also imposes a \$20 million annual cap and a \$42 million cumulative cap (which works out to an average of \$14 million per year for the three-year term of the 2009 Stipulation) on Columbia's share of the revenues. Again, any revenues over the caps is shared with customers through the CSRR. (*See* 2009 Stipulation at 14.)

Under the revised off-system sales and capacity release revenue sharing mechanism in the Amended Stipulation, however, Columbia would retain only 50% of the revenue from the first \$1 million of off-system sales each year, 100% of the revenue from the next \$1 million of off-system sales each year, and 50% of the revenue from the next \$25 million of off-system sales each year. The remaining revenue would be shared with Columbia's customers, as a credit to Columbia's CSRR. Thus, under the Amended Stipulation, customers would see an immediate credit to the CSRR with Columbia's first off-system sale. The Amended Stipulation would also impose a much lower, \$14 million annual cap (\$6 million less than the current mechanism) and a \$55 million cumulative cap (which works

out to an average of only \$11 million per year, \$3 million per year less than the current sharing mechanism, for the five-year term of the Amended Stipulation) on Columbia's share of the revenue. And, again, any revenues over the caps would be shared with customers through the CSRR. (Am. Stip. at 6, ¶18 (Jt. Ex. 1.) Thus, the changes to the off-system sales and capacity release revenue mechanism should provide benefits to ratepayers.

OPAE has suggested that Columbia should not receive any of the revenues from off-system sales or capacity release, describing the sharing mechanism as "unjust enrichment" derived from selling "excess capacity" "paid for by customers." (OPAE Initial Cmts. at 11 (OPAE Ex. 1).) These criticisms are off-base for several reasons.

First, the capacity that Columbia sells off-system is not "excess capacity." (Anderson Testimony at 29 (Columbia Ex. 4).) Columbia does not have excess capacity. All the capacity in Columbia's capacity portfolio is needed to meet projected demands. (*Id.* at 12.) Indeed, Columbia's latest Peak Day Forecast shows firm demand that slightly exceeds its available firm capacity entitlements by 20,186 Dth or 1.05%. (*Id.*)

Second, the Commission has long rejected arguments that ratepayers are entitled to the revenues generated by a utility using assets paid for by customers. 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 OPAE 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 ("In re CSP EFC")*, 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) (citing *In re CSP EFC*).

Third, abolishing the revenue sharing mechanism entirely would be inconsistent with Commission precedent. 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 No-

vember 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 – the higher the CHOICE participation, the greater Columbia's share of the revenues. *See 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. It follows that the revenue sharing mechanism Columbia 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.

3.2.5. Exit from the Merchant Function

Columbia has over 877,500 customers served by SCO/Default Sales Service suppliers. (Brown Testimony at 15 (Columbia Ex. 6).) Columbia's SCO program provides the largest pool of demand of any such program in the nation by a significant margin. (*Id.*) The SCO program provides strong and stable competition to CHOICE and the Joint Stipulation does not change that in the near-term. (*Id.*)

However, Columbia will begin evaluating non-residential customer participation in Columbia's CHOICE program in April 2013. On August 1 of each year, Columbia will calculate whether the percentage of CHOICE-eligible non-residential customers participating in the CHOICE program has reached 70% or more for at least three consecutive months. If it has, then Columbia will exit the merchant function with regard to its non-residential customers as of the next April 1. (Am. Stip. at 9, §28 (Jt. Ex. 1).) OCC has not joined the provisions of the Amended Stipulation that relate to the non-residential exit from the merchant function. (*Id.* at 1 n.1.) Hess Corporation, which did not sign the Amended Stipulation, has nonetheless urged the Commission to approve the non-residential exit framework. (Magnani Testimony at 5 (Hess Ex. 1).)

If at least 70% of Columbia's CHOICE-eligible residential customers have participated in Columbia's CHOICE program for at least three consecutive months, and at least 22 months (and two winter heating seasons) have passed

since Columbia exited the merchant function for its CHOICE-eligible non-residential customers, Columbia may file an application to exit the merchant function for its CHOICE-eligible residential customers. (Am. Stip. at 10, §31 (Jt. Ex. 1).) This would take the form of a *de novo* application to exit the merchant function, in compliance with whatever Commission rules are in place at the time that relate to an application to exit the merchant function. (Vol. II, p. 56.)

Hess Corporation is not supporting the residential exit from the merchant function. However, Hess is not currently in the residential market (Vol. III, p. 155) and is not sure that it would accept residential customers under the MVR program if Columbia exited the merchant function for residential customers (*id.* at pp. 155-156). Consequently, Hess has no standing to challenge the residential exit. *See*. Entry at ¶6 (Nov. 21, 2012) (limiting Stand Energy's intervention in this matter to issues on which "Stand is representing its own interests").

Columbia views the exit for residential customers to be an option for the Commission to consider as it looks at how the evolution in commodity sales service within the State of Ohio is progressing and whether an exit is an appropriate path to follow and consistent with state policy and goals. The 70% level provides a good benchmark at which time Commission review would be appropriate. (Brown Testimony at 14 (Columbia Ex. 6).) Additionally, in order for Columbia to file such an application, participation rates in Columbia's CHOICE program must approximately double from present levels – levels achieved after approximately fifteen years of statewide CHOICE availability. (*Id.*) Should customers actively choose a CHOICE supplier at double the present rate, they would be sending a strong message that would justify review by the Commission. (*Id.*)

3.2.6. Monthly Variable Rate ("MVR") Program

Under the Amended Stipulation, if Columbia exits from the merchant function for any customer class, those CHOICE-eligible customers in the customer class that do not enroll with a CHOICE Supplier and are not served through a government aggregation program will be assigned to an MVR Supplier. (Am. Stip. at 12, §37 (Jt. Ex. 1).) MVR Suppliers will be CHOICE Suppliers who choose to participate in the MVR program. (*Id.* at 13, §38.) The pricing for customers in the MVR program will be based on the closing New York Mercantile Exchange ("NYMEX") price plus basis (the monthly variable rate or "MVR" price). (*Id.* at 7, §20.) MVR Suppliers will provide their MVR prices to Columbia and the OCC each month and have those prices posted on the Commission's Apples to Apples Chart. (*Id.* at 13, §40.)

No customer will be forced to accept commodity service through the MVR. Customers would be able to leave the MVR program by enrolling with a CHOICE supplier or participating in a governmental aggregation program. (*Id.* at 14, §41; *see also* Vol. II, p. 73.) Moreover, MVR Suppliers would be prohibited from charging termination or cancellation fees to customers who are assigned to MVR Suppliers but then choose to enroll with CHOICE suppliers. (*Id.*; *see also id.* at 12, §35.)

The Amended Stipulation does not specify a methodology for assigning customers to MVR Suppliers. (*See id.* at 13, §39.) Columbia supports the initial allocation of customers to MVR Suppliers on a proportional basis, as compared to the MVR Supplier's CHOICE enrollment at the time of allocation. Each MVR supplier would receive a percentage of MVR customers equal to the percentage of Columbia CHOICE customers served by that MVR Supplier at the time of the exit. For example, if 20% of Columbia's CHOICE customers in a particular customer class (e.g., non-residential) were enrolled with CHOICE Supplier "X" when Columbia exited the merchant function for that class, and CHOICE Supplier "X" chose to participate in the MVR program, "X" would receive an initial allocation of 20% of the MVR customers in that class. A minimum of 1% would be assigned to an MVR Supplier with equal to, or less than 1% CHOICE enrollment. This initial allocation would preserve the relative market shares of the CHOICE suppliers at the time of the exit. On-going customer allocations would be done on a random, rotating basis based upon the list of participating MVR Suppliers. (Brown Testimony at 16 (Columbia Ex. 6).)

Columbia does not support Hess's recommendation to include "each supplier's * * * average historical SSO and SCO tranche ownership" in determining each supplier's "proportional market share at the time of exit." (Magnani Testimony at 7 (Hess Ex. 1).) As Hess's witness acknowledged at hearing, such an allocation methodology could result in companies that are no longer CHOICE suppliers receiving allocations of MVR customers. (*See* Vol. III, pp. 152-153.) It could also result in SCO suppliers receiving allocations of MVR customers that they do not want; some SCO suppliers, such as Hess, are not in the residential market and might not accept residential MVR customers. (*See id.*, pp. 155-156.) In such cases, the MVR customers allocated to the companies that are no longer CHOICE suppliers or that do not wish to accept MVR customers would have to be reallocated. (*See id.*, pp. 156-157.) Hess's suggested MVR allocation methodology is unnecessarily complicated and should be rejected.

OPAE has argued that moving from the SCO to a Monthly Variable Rate program would increase customer costs, noting that, according to Columbia's "shadow billing" data, CHOICE customers have paid \$884,587,332 more than GCR, SSO, or SCO customers since 1997. However, this is not a relevant figure, for several reasons.

First, discussion of the figure implies that the CHOICE program was designed to generate guaranteed savings. That is simply not the case. The intent of the CHOICE program has always been to provide customers with competitive alternatives for the purchase of their gas supply. (Brown Testimony at 20 (Columbia Ex. 6).) Similarly, 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). OPAE has not, and cannot, argue that prices set by bilateral contracts between Columbia's customers and CHOICE suppliers are not "reasonable." Indeed, any such argument would necessarily fail, as the Ohio legislature has supported customer choice since 2001, when it passed Sub. H.B. 9. OPAE's cost-based arguments boil down to a contention that CHOICE contracts are themselves contrary to state policy, which is clearly unsupportable.

Second, the shadow-billing figure that OPAE cites is a combined, cumulative total for all Columbia CHOICE customers over the past fifteen-and-a-half years. It tells the Commission nothing about the cost difference for an average customer in any particular month. (Brown Testimony at 20 (Columbia Ex. 6).) Third, that figure includes calculated cost differences for commercial, industrial, and residential customers. (*Id.*) If the Commission grants the Joint Motion, it would be approving an exit from the merchant function for only commercial and industrial customers. The cost differences for residential customers are irrelevant to weighing the merits of a non-residential exit. Fourth, most of that figure represents the theoretical cost savings for customers under the GCR or SSO programs. (*Id.*) The SCO is the program OPAE wants to keep, and Columbia has offered that program only since April 2012. (*Id.*)

Fifth, Columbia's "shadow billing" data is, at best, a crude measure of the cost differences between GCR, SSO, or SCO rates and CHOICE rates. The programs offer different kinds of rates – for example, many CHOICE contracts offer long-term, fixed rates, whereas the SCO rates are short-term, variable rates – with different tax treatments. It is not an apples-to-apples comparison. (*Id.*)

Finally, the “shadow billing” data is irrelevant because it says nothing about future costs. If Columbia exits the merchant function for non-residential customers, it will replace the SCO for those customers with the MVR program. Stating that SSO and SCO customers have sometimes paid more than CHOICE customers in the past tells the Commission nothing about the likely relative costs of the CHOICE and MVR programs in the future. And, OP&A’s testimony in this proceeding never established that the current state of successful competition would suffer or that prices would rise from discontinuance of the SCO. The Commission struck OP&A’s only purported evidence on this point (regarding the purported effects from Atlanta Gas and Light shifting customers to bilateral contracts in 1999 (*see* Harper Testimony at 25-26 (OP&A Exs. 2 and 2A))) because of its lack of basis.⁵ Thus, OP&A’s “shadow billing” arguments provide no basis for avoiding a move to a pure, market-based, MVR program following Columbia’s exit from the merchant function for any customer class.

3.2.7. Billing Enhancements

Lastly, Columbia has agreed to implement numerous enhancements to its current billing system to provide Suppliers with greater flexibility for enrolling customers. These enhancements will benefit current CHOICE Customers and any other customer who wants to keep open the option of choosing a CHOICE supplier. (Vol. II, pp. 36, 37.) Columbia has agreed to use its best effort to implement as many of those changes as reasonably possible by April 1, 2013. (*See* Am. Stip. at 14-16, ¶¶43-44 (Jt. Ex. 1).)

As a result of these enhancements, customers will be able to choose among a number of new products and billing options, including flat fee contracts; contracts with rates based upon monthly NYMEX prices, plus or minus a value; and prepaid contracts. (*See id.*) Columbia will increase its rate ready billing codes to 100 per Supplier (*id.* at 14, ¶43), which means Suppliers will be able to

⁵ OP&A’s testifying witness also advanced a hodge-podge of irrelevant and inconsistent general economic theories having no bearing on the state policy and goals at issue in this proceeding. For example, Ms. Harper cited the theoretical benchmark of “perfect competition” but conceded that no economist, to her knowledge, has ever used it to define “effective competition” as the term is used in Section 4929.02(A)(7). (Vol. III, pp. 286, 288.) Without any foundation in logic or economics, she also invented “passive choice” as adequate for defining the term “willing buyer” in Section 4929.02(A)(7). (Vol. III, p. 294.) Further, after expressing concerns about market power based on the current level of market concentration in the CHOICE program, Ms. Harper admitted she is no expert on market power in Columbia’s service territory. (*Id.*, pp. 312-313.)

offer an expanded number of pricing offers to customers. (Caddell Testimony at 5 (Columbia Ex. 5).)

Customers will be able to enroll in the CHOICE program when they first request service with Columbia and transfer their existing CHOICE contracts to new service addresses if they move within Columbia's service territory. (*Id.*) This will improve the customer experience, because customers will not have to contact their CHOICE Suppliers to re-enroll at their new addresses. (*Id.*) Columbia will also be able to permit rolling rate change submission. Suppliers will be able to submit rate change transactions for existing CHOICE customers each processing day, with those changes made effective as of the next billing cycle. (*See* Am. Stip. at 15, ¶43 (Jt. Ex. 1).) This will enhance the customers' experience, and reduce the number of customer inquiries related to the amount of time it takes for a Supplier's rate change to appear on the customer bill. (Caddell Testimony at 5 (Columbia Ex. 5).)

Additionally, for a competitively neutral fee, Suppliers can opt to have their logo enlarged and placed in the top margin of the front page of the bill for consolidated bills for CHOICE Customers. (Am. Stip. at 14-16, ¶¶43-44 (Jt. Ex. 1).) The net revenues for this service will be credited to the CSRR (*id.*), which will save customers money, and the enlarged logo will improve customer awareness. (Caddell Testimony at 5 (Columbia Ex. 5).)

Finally, the costs for these billing enhancements (as well as the costs for implementing programs to educate customers about the CHOICE program and, if Columbia meets the necessary CHOICE participation thresholds, programs to educate non-residential customers about Columbia's exit from the merchant function) would be subject to review during the Commission's annual audit of the CSRR. (Am. Stip. at 16, §47 (Jt. Ex. 1).) The Amended Stipulation specifically preserves OCC's rights in CSRR proceedings to challenge the reasonableness of Columbia's costs for the billing system enhancements outlined above. (*Id.*) Thus, the Commission's audit of the CSRR and OCC's independent review of Columbia's expenditures to enhance its billing system will ensure that those enhancements benefit ratepayers and the public.

3.3. The Amended Stipulation does not violate any important regulatory principle or practice.

The Amended Stipulation does not violate any important regulatory principle or practice. OPAE has argued that the new \$0.06/Mcf security deposit re-

quired of SCO suppliers is discriminatory, because it is not charged to CHOICE suppliers. This criticism is misguided, because SCO supplier defaults are not comparable to CHOICE supplier defaults. The risk, and potential costs, to Columbia of a default by an SCO supplier are significantly greater than the risks to Columbia of a default by a CHOICE supplier. (Brown Testimony at 8-9 (Columbia Ex. 6).) Moreover, a default by an SCO Supplier is more likely to cause a direct and immediate impact on Columbia. A CHOICE Supplier default would be absorbed in the first instance by the SCO suppliers. (*Id.* at 9.) An SCO Supplier default would be absorbed in the first instance by the remaining SCO suppliers, up to an amount not to exceed 150% of each SCO Supplier's initial annual delivery requirement. (Amd. Rev. Program Outline § 16.5.i. (Columbia Ex. 2).) If, due to the 150% limit, the allocation described above did not result in all of the unassigned demand being assigned to nondefaulting SCO Suppliers, then Columbia would supply the remaining demand. (*Id.* § 16.5.ii.) In short, an SCO Supplier default would leave fewer other suppliers to absorb that Supplier's demand than a default by a CHOICE supplier. The \$0.06/Mcf deposit gives Columbia additional security against such costs. (Brown Testimony at 8 (Columbia Ex. 6).)

Contrary to some intervenors' arguments, the Amended Stipulation furthers the State's policies with regard to competitive retail natural gas service, as expressed in the Ohio Revised Code. For example, changing the Balancing Fee, so that it is charged directly to customers rather than indirectly to (potentially) some customers through their CHOICE or SCO Suppliers, will increase price transparency. This furthers the state policy to "[e]ncourage cost-effective and efficient access to information regarding the operation of the distribution systems of natural gas companies in order to promote effective customer choice of natural gas services and goods[.]" Section 4929.02(A)(5), Revised Code.

The SCO program is the product of regulation by the Commission. (Vol. III, p. 291.) The SCO auction is an artificial market, in which suppliers bid for the right to obtain large groups of customers without "the cost of customer acquisition [that] is [usually] part and parcel of a competitive model[.]" (*Id.*, p. 290.) Hence, exiting the merchant function, if 70% of Columbia's CHOICE-eligible non-residential customers migrate to CHOICE, would "[r]ecognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment[.]" and effect "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 will-

ing sellers." Section 4929.02(A)(6) and (7), Revised Code.⁶ OPAE's testifying witness, Stacia Harper, asserted in her testimony that a customer receiving service through the MVR program after an exit from the merchant function would not be a "willing buyer[]" (Section 4929.02(A)(7), Revised Code) "because the customer is assigned to the supplier without the customer's consent" and without any negotiation of price. (Harper Testimony at 15 (OPAE Ex. 2).) This ignores, however, that no customer is required to remain in the MVR program. Any customer may migrate from the MVR program, without incurring any cancellation fee, by enrolling with a CHOICE supplier. (Am. Stip. at 14, §41 (Jt. Ex. 1).) Ms. Harper's complaint is also inconsistent with her position regarding the SCO. At hearing, Ms. Harper testified that a customer who decides not to participate in the CHOICE program and instead receives service through the SCO program, at whatever price the SCO auction established, has made a "conscious decision," asserting, "I'm a firm believer in passive choice." (Vol. III, pp. 293-294.) If the "passive choice" to receive service through the SCO program satisfies the state policy expressed in Section 4929.02(A)(7), Revised Code, then the "passive choice" to receive service through the MVR (by not selecting a CHOICE supplier and then remaining with the MVR supplier once the customer is assigned) must similarly satisfy state policy.

Finally, the enhanced billing options for competitive retail natural gas suppliers further the state policy of providing consumers with "the price, terms, conditions, and quality options they elect" and "encourage innovation and market access for cost-effective supply- * * * side natural gas services and goods" (R.C. § 4929.02(A)(2) and (4)) 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.

Thus, the modifications to the Exemption Orders proposed in the Amended Stipulation would further the state's policies, as outlined in R.C. 4929.02, to "[e]ncourage innovation and market access for cost-effective supply- * * * side natural gas services and goods[.]" "[r]ecognize the continuing emergence of competitive natural gas markets through the development and implementa-

⁶ Columbia acknowledges that the SCO also meets the state policy in Section 4929.02(A)(7), Revised Code, to "reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. of the Revised Code[.]" in that Columbia offers the SCO as a result of its exemption from Chapters 4905 and 4909 of the Revised Code.

tion of flexible regulatory treatment[.]” and “[p]romote 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 under Chapters 4905. and 4909. of the Revised Code[.]” R.C. 4929.02(5), (6), and (7).

CONCLUSION

For all of the reasons expressed above, Columbia Gas of Ohio, Inc. respectfully requests that the Commission approve the Joint Stipulation (along with the Revised Program Outline and tariffs) and modify the Commission’s prior exemption orders in the manner described in the Joint Motion.

Respectfully submitted,

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I hereby certify that a true and accurate copy of the foregoing Post-Hearing Brief of Columbia Gas of Ohio, Inc. was served by electronic mail upon the following parties this 11th day of December, 2012:

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