BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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	))))	Case No. 12-2637-GA-EXM

MEMORANDUM CONTRA OF THE OHIO GAS MARKETERS GROUP AND THE RETAIL ENERGY SUPPLY ASSOCIATION TO THE APPLICATION FOR REHEARING OF OHIO PARTNERS FOR AFFORDABLE ENERGY

February 19, 2013

TABLE OF CONTENTS

I.	Introduction.....	1
II.	The Commission did not depart from the statutory requirements set forth in Section 4929.08(A), Ohio Revised Code.....	2
III.	The Commission properly found that the administrative rules in effect at the time this proceeding was initiated were satisfied. The joint movants did not fail to file "an application" for modification of Columbia's exemption order.....	4
IV.	The Commission adequately and correctly set forth its findings that certain findings of the previous exemption orders are no longer valid and that the joint movants may be adversely affected if a modification is not made.....	5
V.	The Commission adequately and correctly set forth its findings that the Amended Stipulation is in the public interest.....	7
VI.	The Commission adequately and correctly set forth its findings that the Amended Stipulation meets the Commission's three-part test for evaluating stipulations, is reasonable, and was correctly adopted by the Commission.....	8
VII.	Conclusion.....	11

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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	))))	Case No. 12-2637-GA-EXM

MEMORANDUM CONTRA OF THE OHIO GAS MARKETERS GROUP AND THE RETAIL ENERGY SUPPLY ASSOCIATION TO THE APPLICATION FOR REHEARING OF OHIO PARTNERS FOR AFFORDABLE ENERGY

I. Introduction

On January 9, 2013, the Public Utilities Commission of Ohio ("Commission") granted the amended joint request in this matter to modify the exemption order that had been issued to Columbia Gas of Ohio, Inc., ("Columbia") in 2009.[1] At the same time, the Commission approved the Amended Stipulation presented by Columbia, the Ohio Gas Marketers Group ("OGMG"), the Retail Energy Supply Association ("RESA"), Dominion Retail Inc., Staff, and the Ohio Consumers' Counsel. As a result, aspects of Columbia's current exemption order will be modified starting April 1, 2013, for a five-year period. Columbia will continue its standard choice offer ("SCO") with one-year auctions, but certain provisions will enable Columbia to exit the merchant function, if specific conditions are met. It is, therefore, now possible for an SCO auction to not be held in the five-year period for some customer classes.

Ohio Partners for Affordable Energy ("OPAE") opposed the request to modify and the Amended Stipulation. Following the Commission's decision, OPAE raised five allegations of

[1] *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 (December 2, 2009).

error on rehearing. As further explained below, none of OPAE's arguments have merit and they should be denied.

II. The Commission did not depart from the statutory requirements set forth in Section 4929.08(A), Ohio Revised Code.

In its first allegation of error, OPAE raises the argument that the Commission failed to follow the specific requirements of Section 4929.08(A), Ohio Revised Code, in order to amend an existing Alternative Rate plan. This argument was first raised by OPAE in its initial trial brief. The Commission reviewed the steps required by the statue, summarized the steps it had taken, and on pages 7-11 of the Opinion and Order rejected the claim that the Commission's actions departed from the statutory requirement. A comparison of the first error and the Commission's Opinion and Order reveals that OPAE has not offered any new facts or modified its argument. Thus, Commission should reject the argument on the basis established on Pages 7-11 of the Opinion and Order.

A second ground on which the Commission should dismiss the OPAE argument that the Commission departed from the statutory requirement is the clear language of the statute itself. Section 4929.08(A),Ohio Revised Code, states the following:

> (A) 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;
>
> (2) The abrogation or modification is not made more than eight years after the effective date of the order, unless the affected natural gas company consents.

The record is clear that the components of Section 4929.08(A), Ohio Revised Code, were satisfied, and were not disregarded as OPAE contends. The statute quoted above lists five elements required in order for the Commission to modify an existing Alternative Rate Plan. First, there must be an Alternative Rate Plan to alter. Second, either the Commission on its own or affected parties must petition the Commission to amend the existing alternative rate order. Third, a hearing must be held. Fourth, the Commission must determine that the findings upon which the Alternative Rate Plan was based are no longer valid and that abrogation or modification is in the public interested. Fifth, the request must come within eight years of the Alternative Rate Plan being effective. Below is a list of the record cites, which demonstrate that all of the statutory requirements have been met.

- **Existence of an Alternative Rate Plan**: The Commission granted Columbia an exemption previously in 2009in *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 (December 2, 2009) (Jt. Ex. 2 at 1).

- **Motion for a modification of the Alternative Rate Plan:** Columbia and other parties jointly filed a motion with the Commission in October 2012 seeking to modify the existing exemption order. (Jt. Ex. 2)

- **Hearing on the Request for Modification:** Notice of the joint request was provided and a hearing was held. (Columbia Ex. 1)

- **Determination that facts have changed since approval of the existing Alternative Rate Plan.** The Commission determined that the findings upon which the prior exemption order was based are no longer valid and the Commission determined that the modification is in the public interest. (Jt. Ex. 2 at 8-10; Columbia Ex. 4; Columbia Ex. 5; OGMG/RESA Ex. 3; OGMG/RESA Ex. 5; OCC Ex.1)

- **Timely modification:** The modification approved by the Commission in January 2013 was not made more than eight years after the effective date of the exemption order in 2009. Moreover, Columbia consented to this modification. (Jt. Ex. 2 at 7-8)

OPAE acknowledges in its application for rehearing that the Commission stated that the findings upon which the prior exemption order was based are no longer valid. OPAE does not believe the Commission decision was sufficient; however, a careful review of the opinion and order reflects that the Commission made the determinations required by Section 4929.08(A), Ohio Revised Code, and there is evidence in the record as to all statutory requirements that the Commission accepted in reaching its conclusion.

OPAE even boldly argues the joint motion did not comply with Section 4929.08(A), Revised Code, because the joint movants "were not requesting a modification of an existing exemption order; they were requesting a new exemption through a new alternative regulation plan." To explain further, OPAE contends that, since the current exemption ends in March 2013 and the joint movants asked that the requested modifications commence in April 2013, they effectively are requesting a new exemption. OPAE is correct that many of the modifications commence in April 2013 per the Amended Stipulations, but Columbia will make changes per the Amended Stipulation before that time too. Columbia will make changes to its billing system for competitive retail natural gas service suppliers per the modified exemption. (Jt. Ex. 2 at 14-15)

In sum, an application for a new exemption was not required and the Commission correctly evaluated the joint motion vis-à-vis the requirements of Section 4929.08(A), Revised Code. OPAE's first allegation of error is meritless.

III. The Commission properly found that the administrative rules in effect at the time this proceeding was initiated were satisfied. The joint movants did not fail to file "an application" for modification of Columbia's exemption order.

OPAE argues next that the joint motion did not comply with Rule 4901:1-19-12, Ohio Administrative Code, and the Commission failed to reach that conclusion. In particular, OPAE states that, per Rule 4901:1-19-12, Ohio Administrative Code, the joint movants were required to

file a complaint and certain designated information regarding a violation in order to propose a modification to an exemption order. Additionally, OPAE asserts that the Commission should have recognized that the joint movants did not comply with the administrative rule.

OPAE's argument, though, ignores the clear statutory language of Section 4929.08(A), Revised Code, which states that a motion is a permissible means of initiating a request to modify an exemption. It is axiomatic that this statutory language is controlling.[2] If an entity felt that there was a violation of an exemption order and wished to complain, then certainly Rule 4901:1-19-12, Ohio Administrative Code, would be triggered. However, the circumstances leading up to the filing in this instance were different. The joint movants (among whom included the natural gas company) initiated this proceeding in accordance with the controlling law. The Commission committed no error in rejecting OPAE's argument on this point.

IV. The Commission adequately and correctly set forth its findings that certain findings of the previous exemption orders are no longer valid and that the joint movants may be adversely affected if a modification is not made.

As OPAE points out, Section 4903.09, Ohio Revised Code, states: "In all contested cases heard by the public utilities commission, a complete record of all the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of the cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based on said findings of fact."

Since the Commission held a hearing, had a complete transcript of that hearing prepared and made publically available on its website including exhibits and testimony, and detailed its reasons for its ruling in its Opinion and Order, OPAE's alleged error must be that the hearing,

---

[2]The Supreme Court of Ohio has stated that "administrative rules, in general, may not add to or subtract from * * * the legislative enactment. *Cent. Ohio Joint Vocational School Dist. Bd. of Edn. v. Admr., Ohio Bur. of Emp. Servs.* (1986), 21 Ohio St.3d 5, 10. Moreover, administrative rules that conflict with statutory authority are invalid. *Hoffman v. Ohio State Med. Bd.* (2007), 113 Ohio St.3d 376.

the transcript or the Opinion and Order is insufficient to be accepted. The Ohio Supreme Court has addressed the standard by which the Commission's compliance should be judged. A Commission decision must provide "in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the [Commission] in reaching its conclusion." *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St.3d 87 at 89, quoting *MCI Telecommunications Corp. v. Pub. Util. Comm.* (1987), 32 Ohio St.3d 306, 312.

If the Commission had held no hearing, or received no evidence or relied on findings that are outside the record, it would have committed error. *See*, *Tongren*, *supra*; *Ideal Transp. Co. v. Pub. Util. Comm.* (1975), 42 Ohio St.2d 195; *Ohio Bell Tel. Co. v. Pub. Util. Comm. of Ohio* (1937), 301 U.S. 292. In this instant proceeding, however, the Commission held a hearing, received evidence, and relied on findings from the record to make its decision. The Commission directly stated that it had analyzed the record and the arguments of the parties. Moreover, the decision sets forth the evidence and arguments upon which the Commission based its decisions that: (a) certain findings in the previous exemption orders are no longer valid and (b) the joint movants may be adversely affected if a modification is not made. For instance, on page 10 of the Opinion and Order, the Commission referenced the evidence from the joint movants regarding:

- The advent of shale gas production in Ohio
- The factual assumptions underlying Columbia's capacity contracts
- Columbia's consideration of exiting the merchant function
- Adherence to the policies in Section 4929.02, Revised Code.

Those factors were cited by the joint movants in the evidence as the bases for fulfilling the requirements of Section 4929.08(A), Revised Code. (*See*, Jt. Ex. 2 at 8-9) Then, the Commission stated on pages 10 and 11 that the joint movants had provided record support and "had shown" that certain findings of the previous exemption orders are no longer valid and that the joint movants may be adversely affected if a modification is not made. Thus, the Commission accepted the

evidence presented by the joint movants on this issue, which evidence was contained in the testimony of multiple witnesses and exhibits.

Additionally it is noted that, in cases with contested stipulations -- like the instant case, the Commission is entitled to "place substantial weight on the terms of the stipulation." *In re Application of Columbus S. Power Co.* (2011), 129 Ohio St.3d 46, citing *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126. The Commission must still determine, from the evidence, what is just and reasonable. In this case, the Commission did determine from the evidence that the requirements of Section 4929.08(A), Ohio Revised Code, were satisfied. Moreover, the Commission explained its reasoning sufficiently in its January 9, 2013 decision. This allegation of error must be rejected.

V. The Commission adequately and correctly set forth its findings that the Amended Stipulation is in the public interest.

Like the allegation above, OPAE next argues that the Commission improperly concluded that the Amended Stipulation is in the public interest and corroborated the public interest objective in the State policy (Section 4929.02, Revised Code). OPAE brashly contends that the Commission ignored evidence and the language of the State policy.

OPAE alleges that the Commission should have agreed with its concerns that SCO service will be eliminated in Columbia's territory. OPAE also stated that, on page 11 of the decision, the Commission "found that elimination of the SCO corroborated the public policy objectives of R.C. Section 4929.02...." OPAE is incorrect -- the Commission made no such finding. Moreover, the Amended Stipulation continues SCO service, unless otherwise modified by the Commission.

(Jt. Ex. 1 at 3) The Amended Stipulation does provide that Columbia can exit the merchant function, but certain thresholds and conditions must be met first.[3] (Jt. Ex. 1 at 6-7, 9)

Regardless, the record contains evidence presented by the signatory parties to the Amended Stipulation (including the joint movants) that supports the Commission's determination that the Amended Stipulation is in the public interest and in accordance with the State policy (Section 4929.02, Revised Code). *See, e.g.*, Columbia Exs. 5-7; OGMG/RESA Exs. 3-5; OCC Ex. 1. OPAE's discontent with the weighing of that evidence does not mean that any error occurred. To the contrary, the Commission adequately set forth its findings and properly weighed and concluded that the Amended Stipulation is in the public interest.

VI. The Commission adequately and correctly set forth its findings that the Amended Stipulation meets the Commission's three-part test for evaluating stipulations, is reasonable, and was correctly adopted by the Commission.

OPAE states that the Amended Stipulation was not the product of serious bargaining although OPAE was invited and attended certain meetings. OPAE asserts that "real" negotiations did not occur and thus OPAE was excluded, but OPAE cites to no evidence in the record to support these allegations. Moreover, this is directly contrary to the *evidence* admitted in the record. In fact, witnesses stated that open meetings were held with Columbia's stakeholder group (which includes a cross-section of interested parties, including OPAE), and extensive discussions and negotiations took place openly. (Columbia Ex. 6 at 22-23; OGMG/RESA Ex. 5

[3]OPAE may be confusing the SCO terms of the Columbia Amended Stipulation and the Commission's findings with those in the proceeding involving modifications to Dominion East Ohio's exemption order. *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. 12-1842-GA-EXM. In that case, Dominion East Ohio and others jointly proposed to discontinue the SCO service for choice-eligible, non-residential customers and the Commission accepted that proposal. OPAE raised the argument in its application for rehearing in that proceeding, that the Commission improperly found that elimination of the SCO corroborated the public policy objectives of Section 4929.02, Revised Code. In this matter, the Amended Stipulation does not propose discontinuation of the SCO service. It continues the SCO, but does provide that Columbia may exit the merchant function if thresholds and conditions are met.

at 4) OPAE's unsubstantiated assertions on rehearing do not warrant reversal of the Commission's finding on this point.

Next, OPAE argues that ratepayers and the public interest will not benefit from the Amended Stipulation. OPAE states several grounds, which are not meritorious:

(a) OPAE argues that competition will be reduced and competitive options will be eliminated with the Amended Stipulation because Columbia may exit the merchant function and the SCO will be eliminated for non-residential customers. OPAE even stated that the point of the amended joint motion and Amended Stipulation is to "squelch competition and harm commercial consumers." The Commission should not be swayed by such rhetoric.

(b) OPAE is offended that the Commission elected to study the impact of any exit by Columbia from the merchant function, arguing that a study has no value after the non-residential customers have been harmed. It was not error for the Commission to make this election. OPAE may not appreciate the value, but rehearing is not warranted because of this alleged shortcoming.

(c) OPAE takes issue with the SCO deposit of $0.06/Mcf to be charged to SCO suppliers in order to create a liquid pool of funds in the event an SCO supplier defaults during a program year. If there are funds remaining at the end of the program year, the funds are flowed through to customers via the Choice/SCO Reconciliation Rider ("CSRR"). OPAE discounts much of the evidence in the record, which establishes that this deposit is for the SCO expenses incurred by Columbia because, upon the default of the SCO

supplier, Columbia will immediately supply the natural gas to customers so that they enjoy continuous service. It is reasonable to mitigate that risk to Columbia via this SCO deposit. Furthermore, testimony demonstrated that additional SCO expenses will emerge. OPAE also discredits the evidence regarding the subsidization of SCO expenses by non-SCO customers. However, the evidence in the record explains the multi-party support for the amount and flow-through of the remaining funds via the CSRR.[4] As noted earlier, the Commission was permitted to place substantial weight on the Amended Stipulation. The Commission evaluated the SCO deposit provision vis-à-vis the other evidence and arguments presented by the parties. After giving the evidence and the arguments their due consideration and appropriate weight, the Commission ultimately accepted the OGMG/RESA position. There was nothing improper in the Commission's analysis.

Finally, OPAE states that the Amended Stipulations violates multiple statutes and rules, for many of the same reasons as addressed earlier in this pleading. OPAE adds that the Amended Stipulation violates the State of Ohio policy as set forth in Section 4929.02(A), Ohio Revised Code. However, a review of that statute will explain why the Amended Stipulation is not contrary to, but consistent with, Ohio's natural gas policies. More importantly, evidence in the record

---

[4]OPAE further stated that the SCO deposit is discriminatory because SCO suppliers will provide the $0.06/Mcf deposit, and Choice suppliers will not. However, the fact that the SCO deposit only applies to SCO suppliers does not make the deposit improper. Absolute uniformity among rates and charges is not required; utilities are permitted to charge different and unequal rates so long as there is some actual and measurable difference in furnishing of services. *Mahoning Cty. Twps. v. Pub. Util. Comm.* (1979), 58 Ohio St.2d 40, 43-44. *See, also, Weiss v. Pub. Util. Comm.* (2000), 90 Ohio St.3d 15, and *AK Steel Corp. v. Pub. Util. Comm.* (2002), 95 Ohio St. 3d 81, 86-87. The SCO deposit will be part of doing business as an SCO supplier. However, a SCO supplier and a Choice supplier are not the same and they will not have the same risks and expenses. Further, as the Commission noted in the Opinion and Order, no supplier is required to be a bidder in the SCO auctions. If OPAE's position were accepted, then Choice suppliers equally would be able to allege undue discrimination because SCO suppliers have continued access to significant customer loads without the risks and expenses associated with engaging in the retail market or complying with administrative rules. This contention of improper discrimination does not hold water.

establishes that the Amended Stipulation conforms with Ohio's natural gas policies. The Amended Stipulation will not run contrary to promoting reasonably priced natural gas services (Section 4929.02[A][1]), the availability of natural gas services (Section 4929.02[A][2]), the diversity of supplies or suppliers (Section 4929.02[A][3]), or effective competition (Section 4929.02[A][8]). Moreover, the Amended Stipulation will specifically promote an expeditious transition to achieve effective competition and transactions and to reduce or eliminate the need for regulation (Section 4929.02[A][7]).

The Commission disagreed with OPAE's position when it considered the evidence and arguments of the parties. Nothing new is presented on rehearing, and there was no improper analysis by the Commission. This allegation of error should be rejected.

VII. Conclusion

For the foregoing reasons, OPAE has not demonstrated error in the Commission's January 9, 2013 decision. OPAE's arguments should be rejected, and the application for rehearing should be denied.

Respectfully submitted,

M. Howard Petricoff (0008287), Counsel of Record
Stephen M. Howard (0022421)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
P.O. Box 1008
Columbus, Ohio 43216-1008
614-464-5414
614-719-4904 (fax)
mhpetricoff@vorys.com
smhoward@vorys.com

Attorneys for the Ohio Gas Marketers Group and the Retail Energy Supply Association

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served this 19th day of February 2013, via email on the parties listed below.

Stephen B. Seiple
Brooke Leslie
Columbia Gas of Ohio, Inc.
200 Civic Center Drive
P.O. Box 117
Columbus, Ohio 43216-0117
sseiple@nisource.com
bleslie@nisource.com

Daniel R. Conway
Eric B. Gallon
Porter Wright Morris & Arthur LLP
Huntington Center
41 South High Street
Columbus, Ohio 43215
dconway@porterwright.com
egallon@porterwright.com

Larry S. Sauer
Joseph P. Serio
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
sauer@occ.state.oh.us
serio@occ.state.oh.us

Stephen Reilly
Attorney General's Office
Public Utilities Commission Section
180 E. Broad Street, 9th Floor
Columbus, Ohio 43215-3793
stephen.reilly@puc.state.oh.us

Barth E. Royer
Bell & Royer Co. LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
barthroyer@aol.com

Dane Stinson
Bailey Cavalieri
10 West Broad Street
Columbus, Ohio 43215
Dane.Stinson@BaileyCavalieri.com

Matthew White
Interstate Gas Supply
6100 Emerald Parkway
Dublin, Ohio 43016
mswhite@igsenergy.com

Joseph Clark
Direct Energy
21 East State Street, 19th Floor
Columbus, Ohio 43215
joseph.clark@directenergy.com

John L. Einstein
Volunteer Energy Services
7900 Windmiller Drive
Pickerington, Ohio 43147
jeinstein@volunteerenergy.com

A. Brian McIntosh
McIntosh & McIntosh
1136 Saint Gregory Street
Cincinnati, Ohio 45202
brian@mcintoshlaw.com

M. Anthony Long
Honda of America Mfg.
24000 Honda Parkway
Marysville, Ohio 43040
Tony.long@homda.com

Glenn Krassen
Bricker & Eckler
1001 Lakeside Avenue East
Cleveland, Ohio 44114
gkrassen@bricker.com

David C. Rinebolt
Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, OH 45840
drinebolt@ohiopartners.org
cmooney@ohiopartners.org

Matt Warnock
J. Thomas Siwo
Bricker & Eckler
100 South Third Street
Columbus, Ohio 43215
mwarnock@bricker.com
tsiwo@bricker.com

M. Howard Petricoff

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/19/2013 4:34:11 PM

in

Case No(s). 12-2637-GA-EXM

Summary: Memorandum Memorandum Contra of the Ohio Gas Marketers Group and the Retail Energy Supply Association to the Application for Rehearing of Ohio Partners for Affordable Energy electronically filed by M HOWARD PETRICOFF on behalf of Ohio Gas Marketers Group and Retail Energy Supply Association