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BEFORE
THE PUBLIC UTILITIES COMMMISSION OF OHIO

In the Matter of the Commission's Investigation And Further Consideration of the Language Set Forth in the Tariffs of Columbia Gas of Ohio, Inc., The East Ohio Gas Company, and The Cincinnati Gas & Electric Company Regarding The Enforcement of the Customer Codes of Conduct for the Customer Choice[SM] Programs.	))))))))	**Case No. 99-661-GA-COI**

COMMENTS OF COLUMBIA GAS OF OHIO, INC.

INTRODUCTION

On June 2, 1999, the Public Utilities Commission of Ohio ("Commission") issued an Entry in this proceeding, stating that with regard to the LDC Customer Choice[SM] programs, "the process for suspending or terminating marketers for violation of the Codes of Conduct requires further investigation and review." The Entry included a Staff proposal for a process recommended for inclusion in LDC tariffs. The Entry further provided interested parties with an opportunity to comment on the Staff proposal, with comments due by June 25, 1999. Reply comments are due July 9, 1999. Columbia Gas of Ohio, Inc. ("Columbia") hereby submits its initial comments.

INSTEAD OF RELYING ON COMMENTS AND REPLY COMMENTS, THE COMMISSION SHOULD INITIATE AN INFORMAL WORKSHOP PROCEDURE TO ADDRESS CODE OF CONDUCT ENFORCEMENT ISSUES.

The Commission's Entry observes that there have been customer complaints related to alleged violations of the Codes of Conducts. The Entry further reflects the Commission's con-

cern about the entire dispute resolution process for alleged Code of Conduct violations, noting specifically that: (1) marketers need more opportunity to dispute claimed violations of the Codes of Conduct; (2) utilities do not have enough flexibility to address noncompliance with the Codes of Conduct -- utility tariffs provide only the limited options of suspension or termination; and, (3) the utilities alone are left with discretion to suspend or terminate marketers.

Despite the fact that Columbia has not had access to the Commission's customer comment and complaint data, Columbia agrees that the Commission's concerns are matters that should be discussed by all interested participants in the open access programs. However, these concerns have not gone unaddressed before the initiation of the current docket.

Prior to the filing of its application to expand its CHOICE® Program state-wide, Columbia met with all of the marketers interested in participating in its program, as well as with the Commission Staff and the Office of Consumers' Counsel ("OCC"). In a series of workshops prior to the filing of Columbia's application on March 31, 1998, in PUCO Case No. 98-549-GA-ATA, Code of Conduct enforcement was discussed by the workshop participants, but no major changes in Code of Conduct enforcement were agreed upon.

In a Finding and Order issued on June 18, 1998 the Commission approved the requested expansion of Columbia's program. In dealing with Code of Conduct matters, the Commission stated:

> Staff believes that the marketer codes of conduct have been successful in achieving their purpose.
>
> * * * * *
>
> Staff recommends that stakeholder groups in each of the three programs review the codes of conduct and make recommendations to the Commission for possible deletions or additions as the programs expand and mature.
>
> * * * * *

> The Commission finds that the staff's recommendations...are appropriate.
>
> * * * * *
>
> Accordingly, the Commission direct the staff to continue to review the codes of conduct and report and make recommendations to the Commission.

In re the Application of Columbia Gas of Ohio, Inc. for Statewide Expansion of the Columbia Customer Choice[SM] Program, PUCO Case No. 98-549-GA-ATA, *et al.*, Finding and Order (June 18, 1998) at 39-40.

Following the issuance of the June 18, 1998 Order, the Staff scheduled an informal conference to discuss various matters, as directed by said Order. This informal conference, designated "Flame Forum #1" by Staff, was held on August 20, 1998. The Staff designated two groups of issues for discussion at the forum, and Group 1 was devoted to a discussion of Code of Conduct issues. No consensus agreement on Code of Conduct enforcement issues resulted from the Flame Forum.

As part of its ongoing Collaborative discussions, Columbia continued to raise Code of Conduct issues after the Flame Forum. In fact, prior to the beginning of the last winter heating season, the members of the Columbia Collaborative were considering some comprehensive dispute resolution alternatives in relation to Code of Conduct enforcement. However, the deliberations on the Code of Conduct enforcement issues were tabled, due to a desire to gain more experience as to the nature and types of conduct that might need to be addressed before further considering such issues.

As Columbia began to prepare for the second year of its state-wide CHOICE® program, Columbia's Marketer Working Group, formed in conjunction with its Customer Choice[SM] Program, earlier this year formed three subgroups to discuss enhancements to the Customer

Choice[SM] Program. One of the subgroups was formed to deal specifically with dispute resolution. That subgroup has begun its work, but does not yet have a proposal ready for submission to the Commission.

During the past several months, the number of complaints related to the activities of marketers engaged in door-to-door marketing began to increase. Columbia, the Commission Staff and the OCC experienced this increase in complaint activity. As a result, these parties, along with representatives of the Attorney General's office, have recently met with several marketers to further discuss Code of Conduct enforcement issues.

In the midst of all the above-described efforts to address the dispute resolution issues, the Commission, without warning to or consultation with interested parties, issued the June 2 Entry in this docket. Columbia is concerned that the Commission's initiation of this docket may be a premature reaction to the recent spate of complaints about door-to-door marketing. Whatever the motivation for the initiation of this docket, the process contemplated by the Commission's Entry is not the most effective or efficient method of dealing with Code of Conduct issues.

Columbia's Customer Choice[SM] Program is the result of extensive negotiations among entities representing Columbia's diverse customer base. The process that was utilized provided a forum for all issues to be aired, and an opportunity for issues to be discussed with significant give and take by interested stakeholders. Using this collaborative negotiation process, "win-win" solutions to almost every problem have been devised and submitted to the Commission for review and approval. The success of the program is evidence of the success of the collaborative process.

For reasons that are not clear to Columbia, the June 2 Entry makes no apparent attempt to create a process that will engender robust discussion of the Code of Conduct issues, and instead

relies on a unilateral Staff proposal and a stilted, formalistic comment and reply process. It is very unlikely that such an abbreviated process, relying solely upon written responses to the Staff proposal, developed without consultation with other interested parties, will yield any type of "win-win" result.

Instead of the comment and reply approach, in this instance the Commission should use the informal workshop approach that it has used in many other instances. The informal workshops are a generic, industry-wide engagement of all interested parties in a process successfully utilized by the Commission in the 85-800 case, long-term forecast rules, the electric roundtable, and in the Flame Forum mentioned earlier, just to name a few examples. By initiating an informal workshop to discuss Code of Conduct enforcement issues, the Commission will be able to more effectively involve all parties in a manner more likely to result in a more beneficial outcome supported by all interested entities.

Columbia recognizes that the dispute resolution issues currently being considered by the subgroup of its Marketer Working Group are very likely applicable to all three CHOICE® programs. Columbia is willing to share the work of this subgroup with all interested entities as a means of starting a Commission-sponsored informal workshop with all of the affected LDCs and interested parties.

In light of the above comments, Columbia urges the Commission to promptly establish an informal workshop to address Code of Conduct enforcement issues, and to postpone any action with respect to the Staff proposal until the informal workshop participants have been given an opportunity to submit a collective recommendation to the Commission for its consideration.

THE COMMISSION HAS FAILED TO PROVIDE A FACTUAL BASIS SUFFICIENT TO JUSTIFY MANDATED CHANGES TO UTILITY TARIFFS.

In its June 2 Entry the Commission cited concern about the enforcement of LDC Codes of Conduct. These concerns are based on "numerous consumer complaints" regarding alleged marketer misconduct. (*See,* Entry at 3-4.) However, mere Staff references to numerous consumer complaints, without more factual basis in the record, do not justify revision of LDC tariffs.

The Staff's complaint statistics are not included in the record in this case. To the best of Columbia's knowledge, the Staff's complaint statistics are not included in other Commission dockets either. Nowhere does the Entry specify the number of complaints Staff has received, nor the nature of the complaints.

Furthermore, Columbia suspects that there is not yet uniform agreement among the interested parties as to what constitutes a consumer "complaint." Is every customer call about a marketer logged as a complaint by Staff? Or must the customer allege some violation of the Code of Conduct before Staff logs the call as a complaint? Is any investigation of the customer's allegation required before Staff considers a call to be a complaint? The answers to these questions are not on the record. Without such record evidence, the parties are unable to determine the exact nature and magnitude of the problem.

In its June 18, 1998 Order approving expansion of Columbia's Customer Choice[SM] program, the Commission directed Staff to coordinate with the OCC the sharing of customer comment and complaint data for the LDC open access programs. (June 18, 1998 Order at 12.) To the best of Columbia's knowledge, even though the Commission and the OCC appear to discuss individual customer issues, the formal process envisioned for this coordination of data sharing has not yet occurred. However, even if it has, it is now apparent that the Commission's Order did not

go far enough. In order to effectively deal with consumer concerns, the customer comment and complaint data must be shared with the customers' marketer and LDC.

Without an adequate demonstration of the need for revisions to utility tariffs, supported by Staff evidence in the record, the Commission cannot legally mandate revisions to utility tariffs, and any Commission action in that regard is thus premature at the present time. As the Supreme Court of Ohio recently held, the Commission must base its decision in each case upon the record before it. *Tongren v. Public Utilities Commission*, 85 Ohio St. 3d 87, 91 (1999). Mere references to "findings" of the Commission's Staff, or Staff "recommendations," or Staff "review" does not constitute a sufficient record upon which the Commission may issue an order. *Id.* at 90.

As discussed above, Columbia suggests that the best way to address the Commission's concerns is through an informal Commission workshop. As part of that informal approach, the first item on the agenda should be a sharing of customer comment and complaint data among all participants, so that all the participants may come to some common understanding as to the scope and nature of any perceived problem.

SPECIFIC CONCERNS ABOUT THE STAFF PROPOSAL

The Staff proposal was apparently drafted by Staff alone, without any consultation with the LDCs or other interested parties. As a result, it will not be surprising if there may be parts of the Staff proposal that may be of concern to some parties. As discussed above, Columbia believes that Code of Conduct enforcement issues are best left to an open, inclusive process involving all interested stakeholders. While the Staff proposal may form an appropriate starting point for workshop discussions, should the Commission elect to forgo use of the more effective open discussion process, Columbia notes its concerns with the Staff proposal.

First, the Staff proposal requires that the LDC send marketers a "letter of probable violation" whenever a possible marketer violation of the LDC tariff has been identified. This approach is ambiguous and administratively burdensome. The standards to be used in order to identify when a marketer practice may be a violation of a tariff are not specified. Is a mere customer telephone call containing a question or concern to be deemed a prima facie allegation of a tariff violation and trigger the letter requirement? Or must there be some investigation of a customer inquiry before the obligation to send a letter is imposed? If so, how much investigation is required, and by whom? If every customer telephone call alleging a possible violation of the Codes of Conduct triggers the need for a letter, then the LDCs might be required to send out hundreds of letters, and in many cases some level of investigation might reveal that there has been no tariff violation. Obviously, if letters must be sent in response to every customer telephone call, the LDCs' obligation to send such letters will become burdensome and expensive.

Second, the Staff proposal contemplates an informal dispute resolution procedure, and Columbia supports such informal dispute resolution procedures. However, the Staff proposal provides that if the informal dispute resolution procedures are unsuccessful, then "the matter will be brought before the Commission for consideration." (Entry at 5.) Specifically mentioned, is the possibility of a complaint case under Rev. Code § 4905.26. As the Commission is aware, it does not have jurisdiction over marketers. *See Chrysler Corp. v. Tracy*, 73 Ohio St. 3d 26 (1995) (natural gas marketers are not natural gas companies). Thus, any wayward attempt to exert Commission jurisdiction over marketers is likely to result in protracted litigation, to the detriment of all the Customer Choice[SM] programs. Again, use of a negotiating process involving all parties may result in alternative approaches that could be agreed to by all interested parties, including marketers, and that avoid confronting this jurisdictional issue head on.

Third, the Staff proposal does not address one of the problems noted by the Commission in its Entry. In its Entry the Commission observed that LDCs do not have much flexibility to address non-compliance with Codes of Conduct – utility tariffs provide only the limited options of suspension or termination. The Staff's proposal does not address this inflexibility, and perhaps a set of graduated remedial measures needs to be devised in order to better enforce Codes of Conduct.

Fourth, the Staff proposal imposes a ten-day limitation for resolution for alleged Code of Conduct violations. This is an arbitrary time restriction that may or may not be administratively feasible. The advantages and disadvantages of such a time limitation need to be discussed by the interested parties.

Fifth, the Staff proposal assumes that when the informal dispute procedures are unsuccessful, then the dispute must go before the Commission. Despite the jurisdictional problem mentioned above, not all tariff violations should go before the Commission. For example, if the tariff violation is also a violation of Ohio's Consumer Sales Practices Act, then such violations should instead be brought to the attention of Ohio's Attorney General for appropriate action under that act. The Staff proposal fails to make reference to other government entities that may have a role in policing the competitive marketplace.

Sixth, the Staff proposal is primarily concerned with addressing alleged tariff violations, once a possible violation has been identified. Additional effort needs to be made by all interested parties to prevent tariff violations, and to ensure that reasonable grounds to believe a tariff violation may have actually occurred before dispute resolution procedures are invoked. These are matters that are best addressed in an informal workshop.

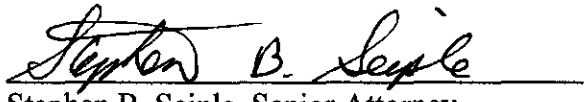
Finally, on June 11, 1999, the OCC filed a Motion for Clarification in this docket, noting

several ambiguities and problems with the Staff proposal. Columbia agrees with the substance of the OCC comments. Again, the types of ambiguities noted by the OCC are best dealt with in an open discussion, rather than through written pleadings.

In conclusion, Columbia believes that the many shortcomings in the Staff proposal can best be dealt with in an informal workshop, and Columbia urges the Commission to initiate the workshop procedure before acting on the Staff's proposal.

Respectfully submitted by

COLUMBIA GAS OF OHIO, INC.



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