

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Co- )  
lumbia Gas of Ohio, Inc. for a Waiver of ) Case No. 16-0653-GA-WVR  
Ohio Administrative Code Section )  
4901:1-13-11(B). )

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**RESPONSE OF COLUMBIA GAS OF OHIO, INC. TO  
OPPOSITION OF THE OHIO CONSUMERS' COUNSEL**

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On March 25, 2016, Columbia Gas of Ohio, Inc. ("Columbia") filed in this docket an Application to request a waiver from Ohio Admin. Code 4901:1-13-11(B)(9). Columbia supported its waiver Application with ample rationale for the waiver, even including an alternative average rate in the bill message section to help inform customers about their competitive retail natural gas supply ("CRNGS") provider product. On May 6, 2016, the Office of the Ohio Consumers' Counsel ("OCC") filed comments in opposition (hereinafter "Objections") to Columbia's waiver application. The Public Utilities Commission of Ohio ("Commission") should reject OCC's Objections and approve the Application.

**I. BACKGROUND**

In Case No. 12-2637-GA-EXM ("Exemption Case"), the Commission approved an Amended Stipulation and Recommendation ("Stipulation") that extended a previous Columbia exemption from the gas cost recovery ("GCR") mechanism as well as replaced the GCR with standard service offer and standard choice offer auction.

A large number of issues were resolved in the Exemption Case including an agreement to several billing enhancements for CRNGS providers. Among those changes were the implementation of the Bill Ready billing option (as an additional option to Rate Ready billing) for CRNGS providers.<sup>1</sup> In a *Rate Ready* billing situation, a CRNGS provider supplies a specific rate per Mcf to Columbia. Columbia then calculates the CRNGS provider's commodity charge based on the CRNGS

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<sup>1</sup> Amended Stipulation at 15 (¶44).

provider rate per Mcf and Columbia metered consumption and puts that calculated charge on the customer's bill. In a **Bill Ready** situation, Columbia transmits to the CRNGS provider the customer's metered consumption data and the CRNGS provider transmits to Columbia a customer specific charge that is ready to be placed on the bill. In other words, in a Rate Ready situation, Columbia calculates the CRNGS provider charge to be placed on the bill whereas, in the Bill Ready situation, the CRNGS provider charge is calculated by the CRNGS provider and Columbia simply places that charge on the bill.

The Stipulation also included provisions associated with implementation of the billing enhancements. The Stipulation states:

46. To the extent that any of the billing enhancements listed above conflict with the requirements of Columbia's tariff or Commission regulations, Columbia will file an application with the Commission requesting a waiver of those conflicting requirements. OCC reserves all its rights to advocate positions regarding the content and timing of communications with customers.<sup>2</sup>

In addition to OCC's reservation in paragraph 46 of the Stipulation, the Stipulation includes<sup>3</sup> the following language: "In addition, the Amended Stipulation does not limit OCC's future advocacy with regard to the Monthly Variable Rate provision and/or the Billing Enhancements provision, following the approval of this Amended Stipulation and consistent with its terms."

Columbia filed its waiver Application in this docket on March 25, 2016. OCC filed a Motion to Intervene (which Columbia does not oppose) on April 20, 2016, as well as Objections to the waiver request on May 6, 2016. Columbia hereby replies to OCC's Objections.

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<sup>2</sup> Amended Stipulation at 16 (¶46).

<sup>3</sup> Amended Stipulation at 1 (FN 1).

## II. ARGUMENT

### A. The Commission already approved the billing enhancements and the Commission should reject OCC's assertions to the contrary.

OCC asserts in its comments that approving the waiver of the Commission's rules would violate Section 4929.22 of the Ohio Revised Code.<sup>4</sup> The Commission should reject OCC's arguments because the Commission already approved the Bill Ready billing, and in so doing it must be assumed that the Commission had no concerns about the legality of the new billing options. OCC's delayed arguments regarding the legality of the waiver are unfair.

As a threshold matter, the Commission already found that the billing enhancements were permissible under Ohio law. The Commission, as a creature of statute, has no authority except that provided by the General Assembly.<sup>5</sup> The Commission's precedent reaffirms this principle as it relates to the evaluation of settlements. The third prong of the Commission's review of settlements asks whether the settlement violates any important regulatory principles or practice. The Commission's precedent makes clear any illegal provisions in a settlement violate an important regulatory principle or practice.<sup>6</sup> Neither the statute nor the applicable Commission rules have changed since the Commission approved the Stipulation. Thus, the Commission implicitly found that a waiver of the Commission's rules related to implementing Bill Ready billing would not violate any statutory provisions.

Moreover, the OCC's tardy argument is unfair, especially to Columbia and the CRNGS providers. The Stipulation was joined by Columbia, Staff, several CRNGS providers, and OCC. Nowhere did anyone in the case raise any concerns about the legality of the provisions in the Stipulation. OCC's advocacy goes beyond just arguing verbiage or presentation; it goes to the very ability to implement a viable Bill Ready billing option at all. To bring this concern up years after the Commission approved the Stipulation, and after Columbia and the CRNGS providers put time, effort, and resources into implementing the Stipulation and Bill Ready billing option, is unfair and unreasonable.

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<sup>4</sup> Objections at 1-2.

<sup>5</sup> *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957, ¶ 51.

<sup>6</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, et al., Entry on Rehearing at 13 (February 11, 2009) ("It is clearly a violation of an important regulatory principle or practice for a stipulation to violate the face of a statute.")

The Commission already found the Stipulation does not violate any statutory provisions. Further, the late arguments of OCC are unfair to all the other signatory parties to the Stipulation. The Commission should not entertain OCC's arguments as to the legality of the waiver request.

**B. Even assuming the Commission entertains OCC's Objections, Columbia's waiver request does not violate state law.**

OCC specifically claims the waiver request violates R.C. § 4929.22(C). OCC's interpretation of the statute is misplaced and should be rejected by the Commission.

The analysis of OCC's arguments starts with the statute and the Commission's rules. R.C. § 4929.22(C)(1) and (2) states as follows:

(C) Minimum content of customer bills. The rules shall include all of the following requirements, which shall be standardized:

- (1) Price disclosure and disclosures of total billing units for the billing period and historical annual usage;
- (2) To the maximum extent practicable, separate listing of each service component to enable a customer to recalculate its bill for accuracy;

Additionally, the Commission's rules at Ohio Admin. Code 4901:1-13-11, applicable to natural gas utilities related to billing, state the following, in pertinent part:

(B) Bills issued by or for the gas or natural gas company shall be accurate and rendered at monthly intervals and shall contain clear and understandable form and language. Each bill shall display all of the following information:

(9) The rate for purchase of the gas or natural gas commodity, expressed in dollars and cents per Mcf or Ccf, reflecting either of the following:

- (a) The gas cost recovery rate.

(b) The rate for the commodity service, if the company has been granted an exemption under section 4929.04 of the Revised Code.

OCC's Objections assert the substance of Columbia's waiver request violates R.C. § 4929.22(C). The Commission should reject OCC's misinterpretation of state law.

Ohio law does not define exactly what the word "price" means. The Commission has defined it in the rule to mean a "rate" expressed in dollars or cents per Mcf or Ccf. This is not the only interpretation of what "price" could reasonably mean. The "price" of the CRNGS provider's service, meaning the total amount owed to the CRNGS provider, is conveyed through Bill Ready billing. Even without the average, per Ccf cost Columbia proposed as an alternative to include with the bill, Columbia is only asking for a waiver from the Commission's current interpretation of what needs to go on the bill under R.C. § 4929.22(C). The alternative interpretation that only the total charge is the "price" charged by the CRNGS provider is both reasonable and lawful under R.C. § 4929.22(C)(1).

Moreover, even if the Commission were to adopt OCC's interpretation of the word "price" as a per Ccf requirement, Columbia's waiver application meets this statutory standard. The word "actual" does not appear before the word "price" in R.C. § 4929.22(C)(1). As explained in the Application, in conjunction with the waiver, Columbia proposes to provide these customers with a bill message on Bill Ready bills that will inform customers, *on average*, what they are paying for the gas commodity per Ccf.<sup>7</sup> Thus, customers would receive an average "price" for their commodity. Customers will still also receive their usage on their bills<sup>8</sup> in order to permit customers to "recalculate their bills for accuracy."<sup>9</sup> Under either scenario, Columbia will continue to provide each month the customer's billing units, as required by R.C. § 4929.22(C)(1), and the ability to recalculate their bills, as required by R.C. § 4929.22(C)(2).

Columbia's proposal meets all the requirements of R.C. § 4929.22(C) and OCC's assertions to the contrary are incorrect. The Commission has ample statutory authority to grant the waiver requested by Columbia.

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<sup>7</sup> Application at 2.

<sup>8</sup> Columbia is not asking for a waiver of Ohio Admin. Code 4901:1-13-11(D)(8) requiring billing determinants on customer bills.

<sup>9</sup> R.C. § 4929.22(C)(2); OCC Objections at 2.

### C. Good cause exists to grant the waiver.

OCC's Objections also protest a waiver of the rule for policy reasons, arguing that customers need more information, not less, in order to make informed decisions about their CRNGS provider contracts.<sup>10</sup> Further, OCC argues that neither Bill Ready billing nor the Stipulation prohibits Columbia from receiving and putting the actual rate on customer's bills.<sup>11</sup> The Commission should reject OCC's objections as they are easily dispatched and good cause exists to grant the waiver request.

As explained in the waiver Application, the Stipulation (as approved by the Commission) contemplated that a waiver of the Commission's rules might be needed in order to effectuate the CRNGS provider billing provisions of the Stipulation. Good cause exists simply in order to carry out the provisions of the Stipulation approved by the Commission. The Commission should grant the waiver in order to enable Columbia to make good on its commitment to providing these billing options that have already been approved by the Commission.

Additionally, contrary to OCC's assertions, customers will be given an adequate amount of information to inform them of the results of their decision to purchase commodity from a CRNGS provider. Specifically, customers will still know their total commodity price, usage, and average rate for the billing period. And Columbia will provide a tailored bill message that will include the CRNGS provider's name and contact information. Columbia is providing all the information needed for the customer to investigate and make a decision about the value of his/her CRNGS provider contract.

Columbia's Application is also supported by the very Revised Code section OCC cherry-picked as the basis of its opposition. Specifically, R.C. § 4929.02(A)(2) establishes the state policy to "promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options *they elect* to meet their respective needs."<sup>12</sup> (Emphasis Added). Columbia's Application does just that for customers. The alternative suggested by Columbia provides customers all

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<sup>10</sup> Objections at 2-4.

<sup>11</sup> Objections at 5-6.

<sup>12</sup> Columbia's Application is also supported by R.C. § 4929.02(A)(6), which states it is the policy of this state to "Recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment." Granting Columbia's request would further this policy goal set forth by the General Assembly.

the information available to Columbia in the Bill Ready construct from the product chosen by the customer. Further, the CRNGS provider's contact information is listed on the bill if the information provided by Columbia does not satisfy the customer's questions about the contract the customer chose to meet their needs. As noted in the Application, the customer's CRNGS provider is in the best position to explain to customers the CRNGS provider's Bill Ready rates under the confidential contract the customer chose to enter into with the CRNGS provider.<sup>13</sup>

Finally, putting customers' actual rates on the bill would defeat the purpose of Bill Ready billing. As noted in the Application and explained above, under Bill Ready billing, the CRNGS provider sends the total charge to Columbia to put on the bill (rather than the rate per Ccf). CRNGS providers prefer this method of billing for certain products, especially those in which the CRNGS provider offers to customers a product with a monthly price that is not based on a per Ccf rate. For example, under the flat bill scenario (where a CRNGS provider charges a customer a flat rate per month for commodity regardless of the amount of gas consumed by the customer), there is not an applicable per Ccf rate to put on the bill in the section of the bill that displays CRNGS provider charges. OCC's suggestion would actually provide customers incorrect or confusing information for products in which Bill Ready billing is the most conducive to providing customers the most accurate information about their CRNGS provider contract. As a last point, as explained in the Application, Columbia will provide customers with an average price per Ccf in the bill message section to educate the customer about his/her average per Ccf rate.

Good cause exists to grant Columbia's requested waiver and the Commission should reject OCC's Objections.

**D. The Commission should reject OCC's request to include the Standard Choice Offer ("SCO") rate on customers' bills.**

OCC's Objections also ask the Commission to require Columbia to put the SCO price on customers' bills to provide a convenient method for customers to determine whether they are saving money with their CRNGS provider contract. The Commission should reject OCC's suggestion.

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<sup>13</sup> Application at 2.

The Commission already rejected the idea of putting the SCO rate on customer bills in its recent investigation into the retail marketplace for natural gas.<sup>14</sup> OCC cites no other instances where an Ohio natural gas utility is putting its default service price on its shopping customers' bills. Columbia should not be the guinea pig. Any holistic conversation about whether and how to put the SCO (or gas cost recovery rate in the case of Duke) on customers' bills, including a discussion of cost recovery for billing system changes and other costs incurred by Ohio's natural gas utilities to put the SCO (or gas cost recovery price in the case of Duke) on customers' bills, should occur only in a rulemaking.

**E. Columbia remedied issues with its Bill Ready billing system software.**

Finally, OCC contends Columbia should suspend its Bill Ready billing indefinitely until Columbia has sufficient time to test and implement needed software changes to correct an issue related to showing whether a meter was actually read for that month or if the reading was an estimate. OCC also makes a tenuous connection to Columbia's successful automated meter reading device program. As noted by Columbia, this issue was remedied by Columbia and the software correction will be in place by the first billing cycle of June 2016. Columbia's Bill Ready billing system is working appropriately and there is no need to suspend it for any period of time. OCC's unsupported objection should be rejected on its merits, but also as moot if the Commission issues an order in this case after May 31, 2016.

### **III. SUMMARY**

The Commission should reject OCC's Objections. The Commission already implicitly found waivers of its rules related to implementing Bill Ready billing would not violate the Ohio Revised Code. OCC's late arguments are also unfair to the parties who signed the Stipulation and who have worked to implement the Bill Ready option in the Stipulation. Even if the Commission does consider the substance of OCC's objections, the Commission has ample authority to approve Columbia's Application as the rule waiver combined with the average bill message satisfy the entirety of R.C. § 4929.22.

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<sup>14</sup> *In the Matter of the Commission's Review of the Natural Gas Retail Market Development*, Case No. 13-1307-GA-COI, Entry at 10-11 of Attachment A (February 13, 2014).

The Application is reasonable and good cause exists to grant the waiver, both to implement the Stipulation already approved by the Commission and for the practical reasons described above. Further, this proceeding is not the venue to begin requiring natural gas utilities to place the SCO price on customers' bills. Finally, the Commission should deny OCC's request for Columbia to cease its Bill Ready billing as the actual versus estimated meter reading problem has been promptly addressed by Columbia and remedied beginning with bills in June 2016 and will likely be moot due to timing of a Commission order in this case.

Respectfully submitted by,

**COLUMBIA GAS OF OHIO, INC.**

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## CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 23rd day of May, 2016 upon the parties listed below.

/s/ Joseph M. Clark  
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Summary: Response to Office of the Ohio Consumers' Counsel's Opposition to Application for Waiver electronically filed by Mr. Joseph Clark on behalf of Columbia Gas of Ohio, Inc.