BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

COLUMBIA GAS OF OHIO, INC.'S
MEMORANDUM CONTRA
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S
APPLICATION FOR REHEARING

I. BACKGROUND

On March 25, 2016, Columbia Gas of Ohio, Inc. ("Columbia") filed an application to request a waiver from Ohio Admin. Code 4901:1-13-11(B)(9). That rule requires gas utility bills to include the "rate for purchase of the gas or natural gas commodity, expressed in dollars and cents per Mcf or Ccf."

Columbia's application was the result of a stipulation approved in Case No. 12-2637-GA-EXM ("2012 Stipulation"). In that case, Columbia, along with Staff of the Public Utilities Commission of Ohio and other stakeholders (collectively, the "Stipulation Parties"), agreed to implement numerous billing enhancements for the competitive retail natural gas suppliers ("CRNGS") participating in Columbia's CHOICE Program.[1] Two of these bill enhancements, Bill Ready and CHOICE Prepay, require Columbia to bill customers a charge, not a rate, provided by the CRNGS. Bill Ready is "the billing method which the Supplier provides charges to Columbia that are ready to be placed on the bill."[2] CHOICE Prepay provides customers the opportunity to prepay the supplier's commodity portion of the bill, and a "credit amount will be provided by the Supplier and applied to the customer's

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[1] *See In the Matter of the Joint Motion to Modify the December 2, 2009 Opinion and Order and the September 7, 2011 Second Opinion and Order in Case No. 08-1344-GA-EXM*, Case No. 12-2637-GA-EXM, Amended Joint Motion to Modify Orders Granting Exemption, Joint Exhibit 2 (Amended Stipulation and Recommendation) (November 27, 2012) at 14-16.
[2] *Id.* at 15.

bill; the credit will be used to offset suppler charges."[3] The Stipulation Parties further agreed that, to the extent the billing enhancements conflicted with the Commission's rules, Columbia would file an application requesting a waiver of those conflicting provisions.[4] The Commission approved the stipulation in Case No. 12-2637-GA-EXM by Opinion and Order dated January 9, 2013.

By Entry dated July 20, 2016, the Commission granted the waiver requested in this docket for a "temporary, two-year period or sooner, if possible, upon completion of implementing billing system changes."[5] While Columbia had requested an indefinite waiver, Columbia supports the Commission's decision to grant the temporary rule waiver. However, on August 19, 2016, the Office of the Ohio Consumers' Counsel ("OCC") filed an Application for Rehearing. For the reasons explained below, Columbia urges the Commission to deny the OCC's Application for Rehearing.

II. ARGUMENT

A. The Commission's Entry Complies with Ohio Revised Code § 4922.22(C)(2)

In its first assignment of error, the OCC argues that the Entry permits Columbia to not comply with Ohio Revised Code § 4922.22(C)(2).[6] That statutory provision requires CRNGS bills contain, "[T]o the maximum extent *practicable*, separate listing of each service component to enable a customer to recalculate its bill for accuracy."[7]

In its Entry, the Commission rejected this argument, and held:

> Columbia's proposal to provide, on Bill Ready or CHOICE Prepay customer bills, the average price paid for the natural gas commodity

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[3] *Id.*

[4] *Id.*

[5] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Administrative Code Section 4901:1-13-11(B)*, Entry (July 20, 2016) at 1.

[6] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Administrative Code Section 4901:1-13-11(B)*, OCC Application for Rehearing at 3-5.

[7] Ohio Rev. Code § 4922.22(C)(2) (emphasis added).

> per Ccf, along with the customer's usage information, is not inconsistent with the statute and will enable the customer to recalculate the bill for accuracy.[8]

The OCC raised this same argument in its opposition to Columbia's application. The OCC maintained that the CRNGS customers cannot recalculate bills without the rate for purchase of the natural gas commodity, in dollars and cents per Mcf or Ccf.[9] In repeating this argument in its Application for Rehearing, the OCC has not made any new arguments, and the Commission should, therefore, reject the OCC's assignment of error.

With regard to Ohio Revised Code § 4922.22(C)(2), the General Assembly provided the Commission with considerable latitude in determining what information must be on CRNGS' customer bills in order to allow the customers to recalculate their bills. The General Assembly did so by including the phrase "to the maximum extent practicable." Notably, the General Assembly used the word "practicable" instead of the word "possible." In Ohio it is a cardinal rule of statutory construction that a court must first look to the language of the statute itself. If a statute's language is clear and unambiguous, Ohio courts are required to apply that plain language.[10]

In construing the plain language of Ohio Revised Code § 4922.22(C)(2), the Commission correctly concluded that it would not be practicable to *immediately* require Columbia to provide rate information from CRNGS for Bill Ready and CHOICE Prepay service, and thus it provided Columbia with a period of up to two years to provide such rate information on customer bills.[11]

Subsequent to the Commission's issuance of its July 20, 2016 Entry in this case, Columbia has begun to explore how long it will take to modify its billing system in order to comply with the Commission's Entry. It appears that it will take Columbia at least a year to implement the required billing changes. Because of the complexity of these billing system changes, Columbia will use its best efforts to

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[8] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Administrative Code Section 4901:1-13-11(B)*, Entry (July 20, 2016) at 6, ¶16.

[9] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Administrative Code Section 4901:1-13-11(B)*, Opposition to the Application of Columbia Gas Of Ohio, Inc. by the Office of the Ohio Consumers' Counsel (May 6, 2016) at 2.

[10] *Katz v. Fid. Nat'l Title Ins. Co.*, 685 F.3d 588, 2012 U.S. App. LEXIS 14561, 2012 FED App. 0219P (6th Cir.), 2012-2 Trade Cas. (CCH) P77,972, 2012 WL 2895100 (6th Cir. Ohio 2012).

[11] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Administrative Code Section 4901:1-13-11(B)*, Entry (July 20, 2016) at 5, ¶15.

implement the billing changes as soon as practicable; before the expiration of two years if possible.

The OCC concluded its first assignment of error by stating that "the phrase 'maximum extent possible' means that the PUCO should not grant a waiver that is longer than absolutely necessary."[12]The OCC does not cite to any legal authority to support its interpretation of Ohio Revised Code § 4929.22(C)(2), nor can it. Neither the Commission nor any court has held that the "maximum extent possible" language limits the ability of the Commission to grant a rule waiver that is "no longer than absolutely necessary." Even if the Commission were to acknowledge this standard, the Commission did exactly as the OCC is requesting. It required Columbia to implement the billing changes in two years "or sooner if possible."[13] Thus, for this reason and the reasons discussed above, the Commission should reject the OCC's first assignment of error.

As an aside to its first assignment of error, the OCC again argued in its Application for Rehearing that the Commission should include on customer bills the standard choice offer as a price-to-compare.[14] The Commission's Entry rejected this argument, holding that this waiver case is not the appropriate forum for requesting such a requirement. Instead the issue should be raised in a rulemaking docket.[15] The OCC has made no new arguments not previously considered by the Commission, and the Commission should again reject the OCC argument and deny the OCC's Application for Rehearing.

B. The Commission Sufficiently Detailed the Reasons Supporting its Decision

In its second assignment of error the OCC argues that the Commission failed to detail the reasons for the two-year waiver period, and notes that Columbia did not submit any evidence demonstrating how long it would take Columbia to reprogram its billing system.[16]

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[12] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Administrative Code Section 4901:1-13-11(B),* OCC Application for Rehearing at 5.

[13] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Administrative Code Section 4901:1-13-11(B)*, Entry (July 20, 2016) at 6, ¶16.

[14] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Administrative Code Section 4901:1-13-11(B),* OCC Application for Rehearing at 4-5.

[15] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Administrative Code Section 4901:1-13-11(B)*, Entry (July 20, 2016) at 6, ¶17.

[16] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Administrative Code Section 4901:1-13-11(B),* OCC Application for Rehearing at 5-7.

The OCC is correct in that Columbia submitted no evidence discussing how long it would take Columbia to reprogram its billing system to include more detailed CRNGS rate information. That is because the 2012 Stipulation approved by the Commission never contemplated that Columbia would reprogram its billing system to include such CRNGS rate information. Consistent with the 2012 Stipulation, Columbia's application in this docket requested a permanent waiver of Ohio Admin. Code 4901:1-13-11(B), which would not have required reprogramming of its billing system.

With its Entry in this proceeding, having required Columbia to implement billing system changes, the Commission explained that it, "recognizes that time is needed for any necessary software changes and for Columbia to obtain and determine how to provide rate information from CRNGS suppliers that is appropriate for Bill Ready and CHOICE Prepay service."[17] The Commission therefore gave Columbia up to two years to implement the billing changes. As discussed earlier herein, it will take Columbia at least a year to fully implement the Commission's Entry, thus validating the reasonableness of the Commission's decision to permit Columbia sufficient time to implement new billing system changes. Therefore, the Commission should reject the OCC's second assignment of error.

C. Good Cause Exists for the Commission's Granting of the Waiver

In the OCC's third assignment of error it argues that the Commission erred by finding good cause for the waiver.[18] The OCC notes that Columbia provided no evidence that it is currently unable to comply with Ohio Admin. Code 4901:1-13-11(B)(9), or that Columbia will be unable to comply for two years.[19]

OCC, without citation to any Commission precedent, contends that the Ohio Admin. Code 4901:1-13-05(C) "good cause" standard to grant a rule waiver requires a Commission finding that a utility is "unable to comply" with that particular rule. Similar to the OCC's arguments regarding Ohio Revised Code § 4922.22(C)(2), the OCC fails to provide any legal authority or Commission precedent to support its purported legal standard. Even if the Commission accepts the

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[17] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Administrative Code Section 4901:1-13-11(B)*, Entry (July 20, 2016) at 6, ¶16.

[18] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Administrative Code Section 4901:1-13-11(B)*, OCC Application for Rehearing at 7-8.

[19] *Id.*

inability to comply with a rule as one way to prove good cause, it is not the only method. For example, in a recent case the Commission found good cause to grant The East Ohio Gas Company d/b/a Dominion East Ohio's request to waive a rule because the company needed time to reprogram its information system[20] – the same basis for the rule waiver requested by Columbia in this case.

In Columbia's response to the OCC's initial opposition to its application, Columbia explained the history underlying this application.[21] The 2012 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.

In its Entry, the Commission recognized that billing system changes cannot be implemented overnight. And, for that reason the Commission properly found that good cause existed for it to grant Columbia a temporary waiver, of up to two years, in order to implement the required billing changes. While the OCC continually characterizes the waiver as a two-year waiver, the Commission granted a waiver of up to two years, and Columbia is expected to implement the billing changes sooner, if possible. Therefore, the Commission should reject the OCC's third assignment of error.

III. CONCLUSION

Distilled to its essence the OCC's Application for Rehearing is this: granting Columbia a two-year waiver to implement billing changes is too long – the Commission should set a more reasonable timeframe for compliance with Ohio Admin. Code 4901:1-13-11(B)(9).[22] However, the OCC's Application for Rehearing merely repeats arguments previously made in its Opposition to Columbia's application – arguments that the Commission rejected in its Entry. The OCC also mischaracterizes the waiver authorized by the Commission. The Commission did not provide

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[20] *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for a Waiver of Certain Rules in Ohio Adm.Code Chapters 4901:1-13 and 4901:1-18, Regarding Implementation of the Minimum Gas Service Standards and the Termination of Residential Service Rules*, PUCO Case No. 14-2203-GA-WVR, Opinion and Order (May 20, 2015).

[21] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Administrative Code Section 4901:1-13-11(B),* Response of Columbia Gas of Ohio, Inc. to Opposition of the Ohio Consumers' Counsel, (May 23, 2016) at 6 – 7.

[22] See *In the Matter of the Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Administrative Code Section 4901:1-13-11(B)*, OCC Application for Rehearing at 2.

a two-year waiver – it provided a waiver of *up to two years*. Columbia is to implement the required billing changes sooner if possible. Thus, the Commission has already provided the relief sought by the OCC's Application for Rehearing.

The Commission's Entry complies with the Ohio statutory provision that requires CRNGS rate information to be provided on CRNGS' customer bills, to the maximum extent practicable. As recognized by the Commission, it is not possible to immediately implement billing system changes that are required to be made pursuant to the Commission's Opinion and Order. The Commission therefore found good cause to grant Columbia a waiver of up to two years to implement the billing system changes.

WHEREFORE, for the reasons set forth above, Columbia respectfully requests that the Commission deny the OCC's Application for Rehearing.

Respectfully submitted by,

COLUMBIA GAS OF OHIO, INC.

/s/ Stephen B. Seiple
Stephen B. Seiple, Counsel of Record

Stephen B. Seiple, Asst. General Counsel
(0003809)
Joseph M. Clark, Sr. Counsel (0080711)
P.O. Box 117
290 W. Nationwide Blvd.
Columbus, Ohio 43216-0117
Telephone: (614) 460-4648
E-mail: sseiple@nisource.com
josephclark@nisource.com

(Willing to accept service by e-mail)

Attorneys for
COLUMBIA GAS OF OHIO, INC.

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 29th day of August, 2016 upon the parties listed below.

/s/Stephen B. Seiple
Stephen B. Seiple

Attorney for
COLUMBIA GAS OF OHIO, INC.

SERVICE LIST

Christopher Healey
Jodi Barr
Office of the Ohio Consumers' Counsel
10 West Broad St., Suite 1800
Columbus, OH 43215-3485
Christopher.healey@occ.ohio.gov
Jodi.barr@occ.ohio.gov

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Summary: Memorandum Contra The Office of the Consumers' Counsel's Application for Rehearing electronically filed by Cheryl A MacDonald on behalf of Columbia Gas of Ohio, Inc.