

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Co- )  
lumbia Gas of Ohio, Inc. for Approval of ) Case No. 16-2422-GA-ALT  
an Alternative Form of Regulation to Ex- )  
tend and Increase Its Infrastructure Re- )  
placement Program. )

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**MOTION OF COLUMBIA GAS OF OHIO, INC.,  
TO TAKE ADMINISTRATIVE NOTICE OF  
CITED AND RELATED DOCUMENTS**

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Pursuant to Rule 4901-1-12(C), Ohio Admin. Code, Columbia Gas of Ohio, Inc. ("Columbia") respectfully requests that the Commission take administrative notice of two categories of documents:

- (1) documents cited in the Application and pre-filed testimony that are not otherwise in the evidentiary record;<sup>1</sup>
- (2) applications, pre-filed testimony, and stipulations in Columbia's 2007, 2008, and 2011 Infrastructure Replacement Program (IRP) proceedings and the annual Rider IRP proceedings in which OCC participated.

Supreme Court of Ohio precedent gives the Commission latitude to take administrative notice of facts outside the record of a case. Excluding the documents in category (1) could hamper the parties' abilities to address the other parties' contentions. And the Office of the Ohio Consumers' Counsel (OCC) will not be prejudiced by the Commission taking administrative notice of the documents in category (2), because OCC has been actively involved in many of the prior IRP proceedings and is familiar with the contents of the filings in those dockets.

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<sup>1</sup> Columbia is not asking the Commission to take administrative notice of Commission opinions, entries, or orders, because "it is not required that any party to a Commission proceeding request administrative notice of a Commission order to cite the order in its brief." *In re Application of Columbia Gas of Ohio, Inc. for Approval of Demand-Side Management Programs*, Case No. 16-1309-GA-UNC ("*In re Columbia Gas DSM*"), Opinion and Order, ¶31 (Dec. 21, 2016) (citing *In re Ohio Power Co.*, Case No. 10-2376-EL-UNC, et al., Opinion and Order, at 16 (Dec. 14, 2011)).

A memorandum in support of this motion is attached.

Respectfully submitted,

/s/ Eric B. Gallon

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## MEMORANDUM IN SUPPORT

### 1. Introduction

The parties to this case conferred and reached agreement on a process to expedite the consideration of Columbia's Application; the Joint Stipulation and Recommendation; and OCC's objections to both. In particular, the parties agreed that they would not object to the admission into evidence of Columbia's Application; the testimony of Columbia's witnesses in support of the Application; the Report by the Staff of the Public Utilities Commission of Ohio; OCC's Objections; the Joint Stipulation and Recommendation; the Supplemental Direct Testimony of Melissa L. Thompson; and the testimony of OCC's witnesses in opposition to the stipulation. The parties further agreed that they would waive cross-examination of all witnesses.

At the hearing, the Commission adopted the parties' proposal and admitted into evidence the documents listed above, along with Commission Staff's letter of compliance (filed March 24, 2017). A review of OCC's testimony, however, reveals that OCC's witnesses relied on several documents that are not in the evidentiary record – most of them from Columbia's prior IRP proceedings. Columbia now moves the Commission to take administrative notice of those non-record documents, and other related filings from those prior IRP cases.

### 2. The Commission should take administrative notice of documents cited in the parties' filings in this case, and the filings in other, related cases.

The Supreme Court of Ohio has held that "[t]here is neither an absolute right for nor an absolute prohibition against the commission taking administrative notice of facts outside the record of a case."<sup>2</sup> "Rather," the Court held, "each case must be resolved on its facts \*\*\*."<sup>3</sup> When considering whether to take administrative notice of a particular fact, the Court has considered factors including "whether the complaining party had prior knowledge of, and had an adequate opportunity to explain and rebut, the facts administratively noticed."<sup>4</sup> And, the Commission

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<sup>2</sup> *In re Ohio Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218, ¶29, citing *Canton Storage & Transfer Co. v. Pub. Util. Comm.*, 72 Ohio St.3d 1, 8, 647 N.E.2d 136 (1995).

<sup>3</sup> *Id.*

<sup>4</sup> *Allen v. Pub. Util. Com.*, 40 Ohio St.3d 184, 186, 532 N.E.2d 1307 (1988).

routinely takes administrative notice of filings in related proceedings,<sup>5</sup> particularly where the party seeking to exclude the evidence was also a party to the prior proceeding.<sup>6</sup>

Here, Columbia asks the Commission to take administrative notice of documents that the parties to this proceeding have relied upon in their filings, so as to allow the other parties to discuss and characterize those same documents. Columbia further asks the Commission to take notice of documents from Columbia's prior IRP proceedings – many of which were cases in which OCC intervened and actively participated. Allowing the parties to cite and discuss such documents will enable the Commission to appreciate the full context of the parties' arguments, without undue prejudice to any party.

## **2.1 The Commission should take notice of documents cited in the parties' filings.**

OCC filed testimony for three witnesses in this proceeding. Two of those witnesses (Dr. Duann and Mr. O'Neill) relied on documents that are outside the evidentiary record, not appended to their testimony, and not Commission opinions, entries, or orders. Those documents are:

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<sup>5</sup> See *In the Matter of the Application of Ameritech Ohio for Authority to Amend its Tariff*, Case No. 97-1729-TP-ATA, Entry to Address Filed Comments and Entry on Rehearing, ¶47 (Dec. 2, 1999) (taking notice that Ameritech had filed an application to amend its tariff in another docket three years prior); *In the Matter of the Joint Petition of Afford-A-Call Corp. and Litel Telecommunications Corporation, DBA LCI International, for Consent and Authority to Merge and Consolidate*, Case No. 93-1558-TP-AMT, Finding and Order, ¶1 n. 1 (Nov. 24, 1993) (taking administrative notice that one of two utilities seeking to merge had filed an application seeking a name change in another docket). Cf. *In the Matter of the Application of Ohio Power Co. and Columbus Southern Power Co. for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, Opinion and Order, at 15-16 (Dec. 14, 2011) (denying Ormet Primary Aluminum Corp.'s motion to strike portions of post-hearing briefs relating to Ormet's "prior applications for reasonable service arrangements" and related filings and finding that portions of the brief "discussing Ormet's electric service history" provided important context).

<sup>6</sup> See *Allen*, 40 Ohio St.3d at 186 (affirming the Commission's decision to take administrative notice of the record in a prior proceeding where the objecting parties "were parties to [that prior] proceeding and, as such, arguably had knowledge of, and an adequate opportunity to explain and rebut, the evidence"). See also *In re Columbia Gas DSM*, Opinion and Order, ¶ 32 (taking administrative notice of a stipulation in a prior case, over OCC's objection, where OCC was a party to the prior case and a signatory to the stipulation).

### Direct Testimony of Daniel J. Duann, Ph.D.:

| Page | Footnote | Cited Material   |
|------|----------|--|
| 7    | 8        | <i>In re Annual Application of Columbia Gas of Ohio for an Adjustment to Rider IRP and Rider DSM Rates</i> , PUCO Case No. 16-2236-GA-RDR (the “2016 Rider IRP Filing”), Application, Schedule AMRP-1 (Feb. 27, 2017).   |
| 8    | 10       | <i>In re Application of Columbia Gas of Ohio for Authority to Amend Its Filed Tariffs to Increase the Rates</i> , PUCO Case No. 08-72-GA-AIR et al. (“the 2008 IRP Extension Proceeding”), Prefiled Testimony of Jeffrey P. Hecker (Oct. 8, 2008)                      |
| 11   | 13       | S&P Global Market Intelligence, <i>Regulatory Focus</i> (Jan. 18, 2017).   |
| 16   | 20       | Public Service Commission of Maryland, <i>In the Matter of the Application of Columbia Gas of Maryland, Inc. for Adjustment to Its Gas Base Rates</i> , Case No. 9447, Joint Motion for Approval of Agreement of Unanimous Stipulation and Settlement (July 28, 2017). |
| 17   | 21       | <i>In re Application of Duke Energy Ohio, Inc. for an Increase in Electric Distribution Rates</i> , PUCO Case No. 17-0032-EL-AIR, Staff Report (Sept. 26, 2017).   |
| 21   | 23       | 2016 Rider IRP Filing, Application, Schedule AMRP-11 (Feb. 27, 2017).  |

### Direct Testimony of Daniel E. O’Neill

| Page | Footnote | Cited Material  |
|------|----------|---|
| 13   | 12       | <i>In re Application of Columbia Gas of Ohio for Approval of an Alternative Form of Regulation</i> , Case No. 11-5515-GA-ALT (“the 2011 IRP Extension Proceeding”), Joint Stipulation and Recommendation (Sept. 26, 2012).                  |
| 28   | 30       | Minutes of the Federal Open Market Committee, December 13-14, 2016, <a href="https://www.federalreserve.gov/monetarypolicy/files/fomcminutes20161214.pdf">https://www.federalreserve.gov/monetarypolicy/files/fomcminutes20161214.pdf</a> . |

If the Commission were to deny this Motion, Columbia could be hampered in its ability to rebut the OCC's contentions regarding and interpretations of the cited documents, diminishing the value that the parties' briefs provide to the Commission. In effect, OCC would be permitted to rely on documents outside the evidentiary record, but Columbia and the other parties would be prohibited from characterizing those same documents. And the same would be true in reverse; OCC would be forbidden to discuss any documents outside the evidentiary record that Columbia relied upon in its Application or testimony, except to the extent one of OCC's witnesses addressed those documents in testimony.

Because the parties' arguments rely upon citations to numerous documents, some of which are not Commission opinions or orders or otherwise currently in the evidentiary record, the Commission should take administrative notice of the entirety of those documents, particularly in light of the parties' agreement to waive cross-examination.

## **2.2 The Commission should take notice of documents filed in prior IRP proceedings.**

The extensive relationship between the filings in Columbia's prior IRP proceedings and the Joint Stipulation and Recommendation in this proceeding also militates in favor of the Commission taking administrative notice of the documents filed in prior IRP proceedings.

As indicated above, OCC and Columbia have each cited to applications, stipulations, and testimony filed in the prior IRP proceedings. In order to properly discuss and/or rebut the parties' contentions regarding those prior case filings, the parties will likely need to cite and discuss other filings in those same cases that address the same or similar points. For example, where OCC has cited Staff testimony from the 2008 IRP Rate Proceeding to support its contentions, other testimony from the same proceeding may rebut those contentions. Moreover, information provided in Columbia's prior annual IRP filings will provide useful context for rebutting OCC's arguments in this proceeding, as OCC has relied on the most recent annual IRP proceeding to bolster its arguments.

And OCC will not be prejudiced by the admission of such evidence, because OCC has been consistently and substantively involved in the proceedings that established and extended the IRP and many of the annual proceedings and is familiar with the cited documents. The Supreme Court of Ohio has held that there is "nothing improper in the commission's taking administrative notice of the \* \* \*

record” of a prior proceeding in which the objecting party was involved “and, as such, arguably had knowledge of, and an adequate opportunity to explain and rebut, the evidence.”<sup>7</sup>

Accordingly, Columbia moves that the Commission take administrative notice of the applications, stipulations, and pre-filed testimony filed in the following Commission proceedings:

- *In re Application of Columbia Gas of Ohio for Approval of Tariffs to Recover, Through an Automatic Adjustment Clause, Costs Associated with the Establishment of an Infrastructure Replacement Program and for Approval of Certain Accounting Treatment*, Case No. 07-478-GA-UNC;
- the 2008 IRP Extension Proceeding, Case No. 08-73-GA-ALT, et seq.;
- the 2011 IRP Extension Proceeding, Case No. 11-5515-GA-ALT; and
- Columbia's annual proceedings to adjust Rider IRP, to the extent OCC intervened and participated in those proceedings or relied on filings from those cases in its pre-filed testimony here (PUCO Case Nos. 09-1036-GA-RDR, 10-2353-GA-RDR, 11-5803-GA-RDR, 12-2923-GA-RDR, and the 2016 Rider IRP Filing).

### **3. Conclusion**

For the reasons provided above, Columbia Gas of Ohio, Inc. respectfully requests that this Commission grant its Motion and take administrative notice of the following two categories of documents not already admitted into evidence or otherwise admissible:

- (1) documents cited in the Application and pre-filed testimony that are not otherwise in the evidentiary record;
- (2) applications, pre-filed testimony, and stipulations in Columbia's 2007, 2008, and 2011 Infrastructure Replacement Program (IRP) proceedings and the annual Rider IRP proceedings in which OCC participated.

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<sup>7</sup> *Allen*, 40 Ohio St. 3d at 186.

Respectfully submitted,

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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 3rd day of October, 2017, upon the parties listed below.

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Summary: Motion to Take Administrative Notice of Cited and Related Documents  
electronically filed by Cheryl A MacDonald on behalf of Columbia Gas of Ohio, Inc.