

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
COLUMBIA GAS OF OHIO, INC. FOR  
APPROVAL OF AN ALTERNATIVE FORM OF  
REGULATION TO EXTEND AND INCREASE  
ITS INFRASTRUCTURE REPLACEMENT  
PROGRAM.

CASE NO. 16-2422-GA-ALT

### SECOND ENTRY ON REHEARING

Entered in the Journal on May 9, 2018

#### I. SUMMARY

{¶ 1} The Commission denies the application for rehearing of the January 31, 2018 Opinion and Order filed by Ohio Consumers' Counsel.

#### II. DISCUSSION

{¶ 2} Columbia Gas of Ohio, Inc. (Columbia or Company) is a natural gas company, as defined in R.C. 4905.03, and a public utility, as defined in R.C. 4905.02, and, as such, Columbia is subject to the jurisdiction of the Commission.

{¶ 3} On February 27, 2017, Columbia filed an alternative rate plan application, pursuant to R.C. 4929.05, 4929.051(B), 4929.11, and 4909.18, to continue its Infrastructure Replacement Program (IRP) and the associated cost recovery mechanism, Rider IRP, until December 31, 2022.

{¶ 4} On January 31, 2018, the Commission approved, pursuant to a Joint Stipulation and Recommendation, Columbia's alternative rate plan application to continue its IRP and the associated rider mechanism, with certain modifications.

{¶ 5} Ohio Adm.Code 4901:1-19-08 requires, within 30 calendar days after the Commission issues an order granting an alternative rate plan filed under R.C. 4929.05, that the applicant shall either file notice with the Commission of the applicant's intention to

implement the alternative rate plan as directed by the Commission and file a final and redline copy of the revised rate schedules or withdraw the alternative rate plan if the Commission modifies or does not approve the application as filed.

{¶ 6} On March 2, 2018, Columbia filed its notice of intent to implement its alternative rate plan as directed by the Commission in the January 31, 2018 Opinion and Order. Further, Columbia stated that the Commission's approval to continue its IRP does not affect the rate schedules and, therefore, no revised rate schedules were attached to the notice.

{¶ 7} R.C. 4903.10 states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission within 30 days of the entry of the order upon the Commission's journal.

{¶ 8} On March 2, 2018, Ohio Consumers' Counsel (OCC) filed an application for rehearing of the Opinion and Order approving Columbia's application to continue its IRP, asserting two assignments of error. On March 12, 2018, Columbia filed a memorandum contra OCC's application for rehearing.

{¶ 9} By Entry on Rehearing dated March 28, 2018, the Commission granted rehearing for further consideration of the matters specified in OCC's application for rehearing.

{¶ 10} In OCC's first assignment of error, OCC notes that the Ohio Supreme Court recently issued a decision in the appeal of FirstEnergy's alternative energy rider (AER) case. *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co. (Ohio Edison AER Case)*, Slip Opinion No. 2018-Ohio-229. As OCC interprets the *Ohio Edison AER Case*, the Commission ordered FirstEnergy to return approximately \$43 million in imprudently incurred charges to customers. OCC asserts that, on appeal, the Court held that FirstEnergy's quarterly tariff filing constituted Commission approval of a new rate and the

new AER tariff did not specifically state that the rates were subject to refund. OCC notes that the Court, therefore, found that the Commission order to refund the overcharges to customers constituted unlawful retroactive ratemaking in violation of the filed rate doctrine of R.C. 4905.32. In light of the Court's decision, OCC submits that, because Columbia's Rider IRP is automatically approved, subject to subsequent true-up, the Commission should order that the tariff permanently include language that the rider is subject to refund. Further, OCC suggests that the Commission include an ordering clause that Rider IRP is subject to refund if charges are found to be unreasonable, imprudent, or unlawful by this Commission or the Supreme Court of Ohio.

{¶ 11} In the second assignment of error, OCC notes that the Tax Cuts and Jobs Act of 2017 (TCJA), which was effective January 1, 2018, reduced the federal corporate income tax rate from 35 percent to 21 percent. Although OCC recognizes that the Commission has initiated an investigation into the new corporate tax rate in Case No. 18-47-AU-COI, OCC argues the Rider IRP rate caps adopted in this proceeding reflect the 35 percent tax rate and, therefore, are overstated. *In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI (*Tax COI Case*), Entry (Jan. 10, 2018).

{¶ 12} In its memorandum contra, Columbia emphasizes, among other arguments, that Rider IRP is reconciled and reviewed before the Commission approves any rate adjustment. Columbia submits that Rider IRP is calculated based on actual calendar year data for the prior year after a Staff investigation and an opportunity for intervenors to file objections. Further, in regards to the TCJA, Columbia contends OCC's claims as to the alleged effect on the Rider IRP rate caps are unsupported by the record and unnecessary.

{¶ 13} By Finding and Order issued on April 25, 2018, in Case No. 17-2374-GA-RDR, the Commission approved language proposed by certain parties for inclusion in the Rider IRP tariff. OCC, which was a party to that case, did not oppose the added tariff language.

The tariff language addresses the reconciliation or adjustment of the Rider IRP rate if the rider is determined to be unlawful, unreasonable, or imprudent by the Commission or the Supreme Court of Ohio, as well as to reflect the Commission's ultimate decision in the *Tax COI Case* or any case ordered by the Commission to address the tax reform changes in the *Tax COI Case*. *In re Columbia Gas of Ohio, Inc.*, Case No. 17-2374-GA-RDR, Finding and Order (Apr. 25, 2018) at ¶ 34-35. We, therefore, find that OCC's first assignment of error should be denied as moot. The actual Rider IRP rates are reviewed and reconciled before the rates are adjusted as part of the annual adjustment proceeding. Further, the Commission concludes, given that the actual Rider IRP rate to be incurred by customers is determined in the Company's annual Rider IRP adjustment proceedings, as opposed to the present proceeding, and the Rider IRP adjustment application prospectively incorporates the reduced tax rate, it is not necessary that the caps established in this proceeding be adjusted to reflect the reduced corporate tax rate. Accordingly, we find OCC's second assignment of error should also be denied.

### III. ORDER

{¶ 14} It is, therefore,

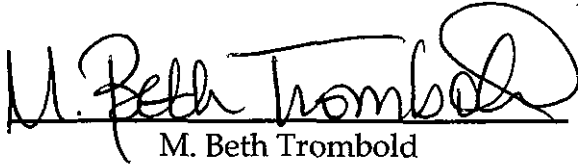
{¶ 15} ORDERED, That OCC's application for rehearing be denied. It is, further,

{¶ 16} ORDERED, That a copy of this Second Entry on Rehearing be served upon all persons of record.

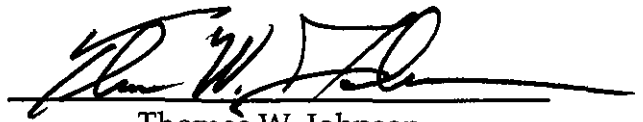
THE PUBLIC UTILITIES COMMISSION OF OHIO



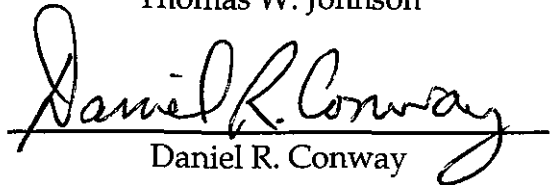
Asim Z. Haque, Chairman



M. Beth Trombold



Thomas W. Johnson



Daniel R. Conway

Lawrence K. Friedeman

GNS/vrm

Entered in the Journal



Barcy F. McNeal  
Secretary

**MAY - 9 2018**