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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Commission's	)	
Investigation of the Customer Choice	)	Case No. 98-593-GA-COI
Program of Columbia Gas of Ohio, Inc.	)	
	)	
In the Matter of the Commission's	)	
Investigation of the Energy Choice	)	Case No. 98-594-GA-COI
Program of the East Ohio Gas Company.	)	
	)	
In the Matter of the Commission's	)	
Investigation of the Customer Choice	)	Case No. 98-595-GA-COI
Program of the Cincinnati Gas & Electric	)	
Company.	)	
	)	
In the Matter of the Application of Columbia	)	Case No. 98-549-GA-ATA
Gas of Ohio, Inc. for Statewide Expansion	)	
Of the Columbia Customer Choice Program.	)	
	)	
In the Matter of the Application of Columbia	)	Case No. 96-1113-GA-ATA
Gas of Ohio, Inc. to Establish the Columbia	)	
Customer Choice Program.	)	
	)	
In the Matter of the Application of the East Ohio	)	
Gas Company for Authority to Implement Two	)	Case No. 96-1019-GA-ATA
New Transportation Services, for Approval of a	)	
New Pooling Agreement, and for Approval of a	)	
Revised Transportation Migration Rider.	)	

MEMORANDUM IN OPPOSITION TO THE APPLICATION FOR REHEARING  
OF THE CINCINNATI GAS & ELECTRIC COMPANY AND THE COLUMBIA  
GAS OF OHIO, INC. REQUEST FOR CLARIFICATION OR, IN THE  
ALTERNATIVE, APPLICATION FOR REHEARING

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### **Introduction**

On June 18, 1998, the Public Utilities Commission of Ohio ("Commission") issued a Finding and Order ("Order") in the above-captioned proceedings. Subsequently, applications for rehearing from that order were filed by the Cincinnati Gas & Electric Company ("CG&E"), Columbia Gas of Ohio ("Columbia"), the East Ohio Gas Company ("East Ohio") and Enron Energy Services. As a party to these proceedings, the Ohio Consumers' Counsel ("OCC") hereby responds to the Application for Rehearing from the Commission's Order filed by CG&E on July 17, 1998 ("CG&E Application") and the Columbia Gas of Ohio Inc. Request for Clarification or, in the Alternative, Application for Rehearing ("Columbia Application").

While CG&E and Columbia raise several issues in their respective applications, OCC's comments are limited only to two specific items: (1) concerns expressed by CG&E and Columbia about the Commission's prohibition on information sharing between LDCs and affiliated entities; and (2) requests CG&E has made within its application to approve recovery of certain expenses related to the CG&E Customer Choice Program in advance of regulatory review.

#### **I. Information sharing between LDCs and affiliated companies requires further exploration.**

Meaningful competition is the linchpin of a successful residential gas transportation program. The sharing of certain customer information between an affiliate of an LDC participating in a residential transportation program and the LDC undercuts the competitive structure the Commission, OCC and the other stakeholders have worked so hard to construct. Ultimately, it hurts the consumer because lack of meaningful competition means lack of a meaningful choice. Accordingly, the Commission has

required the LDCs to place affiliate codes of conduct in their tariffs that prohibit exactly that type of objectionable and noncompetitive activity.

In its comments to the Commission Staff Report in the above-referenced dockets OCC urged the Commission to consider the use of the affiliate code of conduct as a tool to prevent LDC/affiliate information sharing from having an adverse effect on the state of competition in Ohio's gas transportation programs. The Commission, in its Order, provided an interpretation of the information sharing prohibitions contained in the affiliate code of conduct, stating, on page twenty-two of the Order, "[w]e also reiterate that the affiliate code of conduct prohibits sharing of information between the regulated LDC and its nonregulated affiliates. This information sharing prohibition is also applicable to the nonregulated service companies." In other words, the Commission's interpretation established what appears to be an absolute prohibition on LDC/affiliate information sharing.

The applications submitted by Columbia and CG&E respond to the Commission's interpretation. Notably, Columbia points out that if the Order's above-cited language is read to include all affiliated entities, Columbia would be unable to report financial data to its corporate parent. Columbia represents that since this is a necessary part of its corporate operations, the Commission's order should be clarified to indicate that the sharing of "customer" information between the LDC and non-regulated affiliates should be prohibited. Columbia then suggests that "customer" information should include information relating to transportation service, information related to transportation agreements and customer lists. CG&E states in its application that a prohibition on information sharing between an LDC and its service company would cause serious

difficulties for LDC operations. For instance, CG&E points out that its service company provides legal, accounting, call center and many other services to the LDC.

At the same time, it must be recognized that once information leaves the LDC and is acquired by a non-regulated entity, that information may no longer be subject to the rules and regulations that govern the administration of Ohio's gas transportation programs. Potentially, information could leave the LDC, arrive at a non-regulated service company or corporate parent and make its way to an affiliate of the LDC that is participating as a marketer in the LDC's gas transportation program. Again, this undermines the bedrock of Ohio's choice programs—meaningful competition.

From what can be gleaned from the applications, two competing and legitimate concerns are at odds as a result of the Commission's Order. The limitations inherent in the rehearing process make it an inappropriate forum to accommodate these concerns. Instead, OCC urges the Commission to order the LDCs to engage in a collaborative-style dialogue with the stakeholders in their programs to devise innovative solutions to this particular problem and to present those solutions to the Commission for its consideration within 90 days.<sup>1</sup>

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<sup>1</sup> Although East Ohio has not explicitly raised the LDC/affiliate information sharing issue in its application, it, too, is likely to be affected by the Commission's interpretation of the affiliate code of conduct. Accordingly, East Ohio should also be ordered to engage in a collaborative process to devise innovative approaches to this issue.

**II. Recovery for expenses allegedly incurred by LDCs that are associated with the residential transportation programs should not be approved by the Commission before regulatory review.**

CG&E asserts in its application that the Commission should approve, in advance of any regulatory review, certain expenditures it allegedly will have to make as a result of activities it undertakes to comply with the Commission's Order. It is entirely inappropriate to provide CG&E with what would amount to regulatory *carte blanche*.

Although OCC is not opposed to engaging in discussions regarding recovery of certain program expenditures,<sup>2</sup> it is inappropriate to approve program expenditures in advance of any regulatory review. This is especially the case with respect to the audit and verification expenses for which CG&E has requested recovery. These items are clearly an issue for resolution in a base rate case. Although other categories of expenses CG&E asserts it should be entitled to recover may be considered in base rate proceedings, they are not appropriate for consideration here.<sup>3</sup>

Indeed, if many of CG&E's requests for recovery were granted, they essentially would amount to an increase in rates for CG&E customers. The Commission may increase base rates only through the statutory process. The General Assembly has provided important procedural and due process safeguards for cases where public utilities seek to increase their rates. Specifically, Ohio Revised Code Sections 4909.18 and 4909.19 provide for public notice of an application to increase rates, require a staff report in response to such an application and provide an opportunity for exceptions to the staff

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<sup>2</sup> OCC joined in the Stipulation and Recommendation in Public Utilities Case Number 95-656-GA-AIR, which allowed for recovery for one-time incremental costs CG&E incurred to establish and promote its Customer Choice Program.

<sup>3</sup> OCC reserves the right to re-enter its objection to recovery for the items CG&E has identified in its application at a later time.

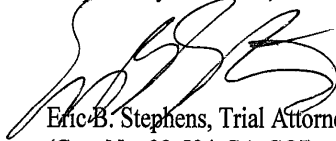
report. Additionally, those statutes contain requirements for public hearings dealing with applications to increase rates and make clear that the utility proposing a rate increase has the burden of proof to show that the increased rate would be just and reasonable.

The purpose of these requirements is to ensure that regulatory review is comprehensive, open and fair. In the present case there was no public notice of an application to increase rates. The Commission Staff has not filed a report dealing with the matter, and consequently, there was no opportunity for exceptions to that staff report. Most important, there was no hearing regarding a potential rate increase. Simply put, the applicant has not been required to bear the burden of showing that the proposed increases in rates are just and reasonable. Granting such increases here would defeat the fundamental purpose of Ohio's ratemaking statutes. Under these circumstances, the Commission has no choice but to deny CG&E's requests.

#### **Conclusion**

OCC respectfully requests that the Commission clarify its order to the extent needed to allow for the regular functioning of LDCs without the disclosure of information to the LDC's affiliated gas marketer. In addition, OCC urges the Commission to order the LDCs to engage in a collaborative-style dialogue with the stakeholders in their programs to devise innovative solutions to the information sharing problem and to present those solutions to the Commission for its consideration within 90 days. Finally, OCC respectfully requests that the Commission deny CG&E's improper requests for regulatory pre-approval of expenses associated with complying with the Commission's Order.

Respectfully submitted,



Eric B. Stephens, Trial Attorney  
(Case No. 98-594-GA-COI)

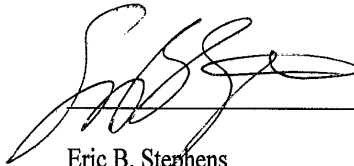
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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served by regular U.S. mail on all parties  
listed on the attached service list this 27th day of July, 1998.



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