

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Service.) Case No. 94-987-GA-AIR
In the Matter of the Application of Columbia Gas of Ohio, Inc. to Establish the Columbia Customer ChoiceSM Program.) Case No. 96-1113-GA-ATA
In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained Within the Rate Schedules of Columbia Gas of Ohio, Inc. and Related Matters.) Case No. 98-222-GA-GCR
Application of Columbia Gas of Ohio, Inc. to Revise its Tariffs to Establish a New Gas Transfer Service.) Case No. 03-1459-GA-ATA

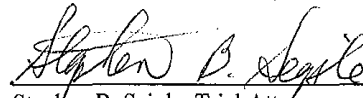
MOTION OF COLUMBIA GAS OF OHIO, INC.
TO STRIKE THE SECOND APPLICATION FOR REHEARING
OF THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Pursuant to Ohio Administrative Code § 4901-1-12, Columbia Gas of Ohio, Inc. moves that the Commission strike the Second Application for Rehearing of the Office of the Ohio Consumers' Counsel filed on May 14, 2004, in the above proceedings. The Second Application for Rehearing is outside of the thirty-day period set forth in Ohio Rev. Code §4903.10, and the Commission thus lacks statutory authority to consider the Second Application for Rehearing.

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Respectfully submitted,
COLUMBIA GAS OF OHIO, INC.

A handwritten signature in black ink, reading "Stephen B. Seiple", is written over a horizontal line.

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**BEFORE
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In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend Filed Tariffs to Increase the Rates and Charges for Gas Service.)	Case No. 94-987-GA-AIR
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On October 9, 2003, the “Fourth Amendment to Joint Stipulation and Recommendation in Case No. 94-987-GA-AIR and Second Amendment to Joint Stipulation and Recommendation in Case No. 96-1113-GA-ATA and Stipulation and Recommendation in Case No. 03-1459-GA-ATA” (“2003 Stipulation”) was filed with the Commission. Attachment A to the 2003 Stipulation, the proposed revised tariffs, was not filed on October 9, 2003, but was subsequently filed on October 31, 2003. By Entry dated March 11, 2004 (“March 11 Entry”), the Commission found that “the 2003 stipulation with the proposed tariff changes and accounting treatments be only approved and adopted as modified by the Commission in this decision.” March 11 Entry at 21.

On April 9, 2004, Columbia Gas of Ohio, Inc. (“Columbia”) and other parties filed a “Joint Application for Rehearing or, in the Alternative, Application for Approval of Modified Stipulation” (“Joint Application for Rehearing”). The Office of the Ohio Consumers’ Counsel (“OCC”) also filed an application for rehearing the same day. On April 19, 2004, the OCC filed a pleading styled, “Motion to Dismiss the Joint Application for Rehearing or, In the Alternative, Memorandum Contra Application for Rehearing and Motion to Dismiss the Modified Stipulation and Memorandum in Support” (“OCC Memorandum Contra”). That same date Columbia filed a Memorandum Contra the OCC Application for Rehearing. On April 28, 2004, Columbia filed a Memorandum Contra the OCC’s Motion to Dismiss. On May 3, 2004, the OCC filed a Reply to Columbia’s Memorandum Contra (“OCC Reply”).

On May 5, 2004, the Commission issued an Entry on Rehearing (“Entry on Rehearing”) in which it denied the OCC’s Application for Rehearing, and granted, in part, the Joint Application for Rehearing. However, in its Entry on Rehearing the Commission made it clear that it was rejecting the modified stipulation (“2004 Stipulation”) attached to the Joint Application for Rehearing, and instead the Commission further modified the 2003 Stipulation. Entry on Rehearing at 11-12.

On May 14, 2004, the OCC filed a Second Application for Rehearing. Pursuant to Ohio Administrative Code § 4901-1-12, Columbia files its Motion to Strike the OCC’s Second Application for Rehearing.

II. ARGUMENT

Parties to Commission proceedings have a right to request rehearing of Commission orders. Ohio Rev. Code § 4903.10. Under the statute, such applications for rehearing must be filed

within thirty days after the entry of the order upon the journal of the Commission¹. The OCC timely sought rehearing of the Commission's March 11 Entry when it filed an application for rehearing on April 9, 2004. However, the OCC's Second Application for Rehearing is nothing more than a renewed attack upon the 2003 Stipulation and the March 11 Entry, and a repeat of earlier OCC arguments. The OCC's second attack on the March 11 Entry was filed well beyond the statutory thirty-day period specified in Rev. Code § 4903.10.² In essence, the OCC is asking for "a second bite at the apple," and its pleading is an untimely application for rehearing upon which the Commission lacks statutory authority to rule.

In its Second Application for Rehearing the OCC raises the following issues: (1) the Joint Application for Rehearing did not set forth specifically the grounds upon which the March 11 Entry was considered to be unreasonable or unlawful; (2) the 2004 Stipulation was the result of exclusionary settlement discussions; (3) Columbia's retention of Off-System Sales and Capacity Release revenues is unreasonable; (4) the authority granted Columbia to account for post-in-service carrying charges and related deferrals is unreasonable; and, (5) a base rate freeze that does not preclude automatic adjustment mechanisms authorized by Rev. Code § 4929.11 is unreasonable. All of these same arguments were previously set forth by the OCC in its Application for Rehearing, the OCC Memorandum Contra and/or the OCC Reply. Thus, the OCC is doing nothing more than asking the Commission to again consider all of the arguments it raised with respect to the March 11 Entry – arguments that the Commission has already considered and rejected. The OCC initially made these arguments in a timely manner, but Rev. Code 4903.10 does

¹ The statute provides, in pertinent part, "After any order has been made by the public utilities commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in the proceeding. Such application shall be filed within thirty days after the entry of the order upon the journal of the commission."

² The statutory deadline for filing applications for rehearing of the Commission's March 11 Entry was April 12, 2004.

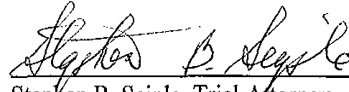
not permit the OCC to continue to attack the March 11 Entry by filing applications for rehearing after the statutory deadline -- in this case, April 12, 2004. *See, In the Matter of the Applications of a Settlement Agreement Between the Public Utilities Commission of Ohio and SRS, Inc.*, PUCO Case No. 01-2675-TR-UNC, Entry on Rehearing (December 20, 2001) (finding that a party's attempt to substitute a corrected copy of an application for rehearing constituted a second application for rehearing which was outside the thirty-day period, and thus denied).

Nothing in the applicable statutes or Commission rules permits parties to file applications for rehearing of entries on rehearing, as the OCC has attempted to do here. If the OCC's Second Application for Rehearing is not stricken, the Commission will be giving its tacit approval for the filing of endless requests for rehearing of entries on rehearing. The Commission should not countenance this type of conduct.

III. CONCLUSION

The OCC is attempting to repeat its arguments in opposition to the Commission's March 11 Entry and the 2003 Stipulation. These repeated arguments are not timely, and the Commission may not lawfully consider the OCC's Second Application for Rehearing. For the reasons discussed herein, the OCC's Second Application for Rehearing should be stricken in its entirety.

Respectfully submitted,
COLUMBIA GAS OF OHIO, INC.

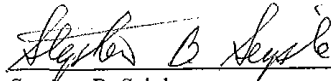

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion of Columbia Gas of Ohio, Inc. to Strike the Second Application for Rehearing of the Office of the Ohio Consumers' Counsel was served upon all parties of record by regular U. S. mail this 24th day of May 2004.



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