FILE

0 44

RECEIVED-DOCKETING DIV

2003 DEC 22 PM 2:38

PUCO

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 Choice[SM] 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**

REPLY COMMENTS OF COLUMBIA GAS OF OHIO ON THE STIPULATION FILED OCTOBER 9, 2003

Stanley J. Sagun, Assistant General Counsel
Stephen B. Seiple, Lead Counsel
200 Civic Center Drive
P.O. Box 117
Columbus, OH 43216-0117
Telephone: (614) 460-4648
Fax: (614) 460-6986
Email: sseiple@nisource.com

Attorneys for
COLUMBIA GAS OF OHIO, INC.

December 22, 2003

TABLE OF CONTENTS

Topic **Page No.**

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 Choice^{SM} 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

REPLY COMMENTS OF COLUMBIA GAS OF OHIO ON THE STIPULATION FILED OCTOBER 9, 2003

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" (hereinafter referred to as the "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 November 13, 2003, the Commission provided interested stakeholders with the opportunity to file written comments on the 2003 Stipulation. The Commission directed that comments be filed by December 8, 2003, and reply comments be filed by December 22, 2003. Columbia Gas of Ohio, Inc. ("Columbia") submitted its Comments on December 8, 2003, as did other stakeholders. Columbia disagrees with some of the comments filed by other stakeholders, and therefore, Columbia respectfully submits its Reply Comments in accordance with the Commission's Entry of November 13, 2003.

As noted in Columbia's initial Comments, the agreement embodied in the 2003 Stipulation meets the Commission's criteria for evaluation of such agreements. The 2003 Stipulation represents an appropriate balancing of risks and incentives. Most importantly, it will ensure continued service reliability for core market customers in an unstable and unpredictable energy environment. While ensuring service reliability, the agreement will also continue and enhance Columbia's Customer Choice^SM[1] program, all with no increase in base rates. As noted in the Comments filed by Interstate Gas Supply Inc. and WPS Energy Services, the 2003 Stipulation also promotes market stability and competition.

As described in Columbia's initial Comments, the Collaborative process has worked well as evidenced by the fact that prior Collaborative stipulations and recommendations have dealt with complex regulatory issues in an integrated manner, resulting in regulatory outcomes, approved by the Commission, that have yielded significant benefits for all stakeholders, including customers. A prime example of the success of this approach is the development, implementation and evolution of Columbia's CHOICE program, one of the most successful programs of its kind in the nation. The reason for the program's success rests in the process used to develop and implement the program. Columbia and its stakeholders have worked together in a problem-solving

[1] Customer Choice^SM is a service mark of Columbia Gas of Ohio, Inc. CHOICE® is a registered service mark of Columbia Gas of Ohio, Inc.

environment to craft innovative solutions to difficult regulatory problems. *See also* the Comments of the Ohio Farm Bureau Federation. This problem-solving environment has proven to be far more conducive to "win-win" outcomes for all participants than litigated regulatory proceedings where there are sometimes "winners" and always "losers." Columbia's ongoing efforts to involve stakeholders in the resolution of complex regulatory issues provides the Commission with an opportunity to support a ***balanced*** resolution of issues that, taken individually, may have a myriad of potential outcomes.

The Staff's Comments are critical of the Collaborative process and seem to urge a return to more traditional means of issue resolution in regulatory proceedings – i.e., separate cases for separate types of issues with no interest in formulating integrated, balanced outcomes. Comments of the Staff of the Public Utilities Commission of Ohio ("Staff Comments") at 10; *see also* the Office of the Ohio Consumers' Counsel's Comments ("OCC Comments") at 4. While Staff was at one time an avid supporter of the Collaborative process – and perhaps the most important party in establishing the process – Staff's inexplicable retreat from this progressive form of integrated issue resolution is unfortunate. Suffice it to say that very few parties truly believe the public interest is served by litigating base rate issues in base rate cases, gas cost issues in GCR cases, forecast issues in forecast cases, tariff issues in myriad applications, and customer choice issues in different dockets; with no attempt being made to integrate all the policy and real-world operating issues in some fashion that works when the utilities and other stakeholders have to implement outcomes in the real world.

As critical as the Staff Comments are, even Staff admits that, "Columbia's Choice program has been a model for the nation and has provided substantial benefits to customers." Staff Comments at 10. Staff's Comments seem to imply that Staff believes that it now knows better than the diverse multitude of stakeholders in the Collaborative, that once upon a time the Collaborative members may have known how to create the best model in the country, but that, for some unexplained reason, the Collaborative has lost that type of ability. According to the Staff's logic, the Commission should abandon capacity choice for marketers altogether, remove incentive for Columbia, and risk future shortages of capacity without any demonstration that Staff's proposal would be successful if imposed upon the stakeholders who have a real interest in the outcome of all the issues embodied in the 2003 Stipulation. If Staff had its way, it would put the future of capacity reliability in the hands of marketers with no long-term obligation to serve. Columbia believes that the same balancing of risks with rewards, on both a near-term and long-term basis, that made the first two Collaborative CHOICE programs into the "model for the nation" are still at work in the 2003 Stipulation, and are the key to a continuation of a successful program.

The Staff erroneously refers to the Collaborative process as a "*de facto* alternative regulation process." *Id.* What the Collaborative process really is, is an alternative, and more effective, form of issue resolution. Whether by the piece-meal litigation approach now espoused by Staff, or by integrated settlement agreements produced by interested stakeholders, the end regulatory process is the same – the issues must be presented to the Commission and it is the Commission that must decide what is in the public interest. That regulatory process, that weighing of the public interest, is the same whether the Commission has before it a record in contested litigation, a partial settlement agreed to by a number of parties or stakeholders, or a unanimous settlement of all parties and stakeholders.

Staff disingenuously suggests that the 2003 Stipulation be rejected "in favor of a more thorough review of the issues in the pending GCR audit proceeding." *Id.* As discussed hereinafter, what the Staff really prefers is blind adherence to the findings of the management/performance audit report in Case No. 02-221-GA-GCR as opposed to any real dialogue about all the interrelated issues that Columbia faces, and meaningful ways to address those interrelated issues. If the Commission does not approve the 2003 Stipulation, there will be less review of fewer issues in the GCR Case. That is not in the public interest. The 2003 Stipulation, however, presents for Commission consideration, an integrated resolution of many complex, interrelated issues. For the reasons described in Columbia's Comments and these Reply Comments, the 2003 Stipulation is in the public interest and should, therefore, be approved by the Commission.

II. COLUMBIA NEEDS TO RETAIN MOST OF ITS PIPELINE CAPACITY IN ORDER TO ENSURE CONTINUED RELIABLE SERVICE TO CORE MARKET CUSTOMERS, AND THE 2003 STIPULATION THUS ENSURES CONTINUED RELIABLE SERVICE

As the Staff correctly notes in its Comments, "the decision to recontract...is the driving force behind the creation of the funding sources detailed in the Stipulation." Staff Comments at 2. Staff and others – e.g. the Office of the Ohio Consumers' Counsel ("OCC") – are critical of the 2003 Stipulation's provision that permits Columbia to recontract for firm capacity sufficient to meet the design peak day requirements of up to 100% of Columbia's core market (sales and CHOICE customers) and General Transportation Service ("GTS") customers' Standby Sales requirements through October 31, 2005, and sufficient to meet the design peak day requirements of up to 95% of Columbia's core market and GTS customers' Standby Sales requirements for the period November 1, 2005 through October 31, 2010. The issue with respect to the appropriate level of capacity for which Columbia should contract post-2004 centers upon the importance of reliable gas service for core market customers. Columbia views its supply responsibility to provide reliable, secure service to its highest priority customers as its primary goal. The Staff and OCC apparently believe that reliable service can be provided at capacity levels less than those provided for in the 2003 Stipulation, and are willing to gamble on the reliability of the service to core markets customers as part of the grand experiment that they apparently recommend. However, it is Columbia and the Commission, ultimately, that will have to answer to customers were the Staff and OCC experiment to be implemented, and prove unsuccessful. There simply is no reason, nor policy rationale, that would justify such a risk. Columbia and the Commission are responsible for overseeing service to residential and small commercial customers, and long-term reliability of capacity cannot be compromised.

A. Undue Reliance Upon The Exeter Audit Report Is Ill-Advised

The Staff, OCC, Shell Energy Services Company, LLC ("Shell"), Suburban Natural Gas Company and Waterville Gas & Oil Company (jointly referred to as "SNG/WGO") base their disagreement about capacity recontracting upon a single source – that being the management/performance audit report filed by Exeter Associates, Inc. in Case Nos. 02-221-GA-GCR and 02-121-GA-FOR on July 25, 2003 ("Exeter Audit Report"). *See* Staff Comments at 4-5; OCC Comments at 3-4, 6-8; Comments of Shell Energy Service Company, LLC ("Shell Comments") at 4-6; and, Joint Comments of Suburban Natural Gas Company and Waterville Gas & Oil Company ("SNG/WGO Comments") at 3-4.

It is unfortunate that all these parties have abdicated their responsibility to undertake any meaningful independent analysis of capacity recontracting issues, and have instead chosen to rely upon an untested report by an outside entity, whose report was based on nothing more than responses to a few sets of written data requests and a perfunctory half-day of interviews with Columbia personnel. Nonetheless, Staff, OCC, Shell and SNG/WGO treat the Exeter Audit Report findings and recommendations as if they are gospel. The fact that the signatory parties to the 2003

Stipulation discussed for ***months***[2] the capacity issues addressed by the Exeter Audit Report, and came to different conclusions than did Exeter, should lead any objective person to conclude that the Exeter Audit Report findings cannot, and should not, be accepted at face value – not in the 02-221-GA-GCR docket, and certainly not in the instant dockets.

B. Columbia Needs To Retain Historic, Or Near Historic, Levels Of Pipeline Capacity To Ensure Continued Reliable Service To Core Market Customers

In essence, what the Staff, OCC and Shell are arguing, based on the Exeter Audit Report, is that given that nearly half of Columbia's customers are now CHOICE customers, there is no need for Columbia to contract for capacity to serve these customers. *See* Staff Comments at 4-5; OCC Comments at 3-4; Shell Comments at 4-5. This argument is overly simplistic, as explained below.

Columbia historically has contracted for, and plans to continue to contract for, capacity sufficient to meet the peak day and seasonal requirements of its remaining sales customers, capacity required for assignment to CHOICE marketers and to provide balancing services for CHOICE customers, and a small reserve under its supplier of last resort responsibilities to back up any marketer that fails to deliver its required gas supplies. Columbia can also exercise capacity recall rights on released capacity and all capacity assigned to CHOICE marketers in the event a substantial provider of last resort requirement must be satisfied. Supply reliability is most critical during periods of extreme cold and on peak days. Thus, the capacity levels for which Columbia plans to contract repre-

[2] The discussions began in 1999-2000, and the Collaborative spent many days and hours discussing the issues during 2003. While all of the rationale behind the 2003 Stipulation is not detailed in the agreement, the stipulation is the product of these discussions among all stakeholders who chose to participate in the process – including Staff and OCC. The Collaborative members spent much time discussing capacity recontracting issues and merchant function issues. Contrary to the suggestion of some commenters (*see* Comments of Dominion Retail, Inc. at 3; Shell Comments at 4), the Collaborative did indeed consider these issues, at length.

sent the firm peak day capacity Columbia requires to serve its core market customers on a design peak day.

Despite the migration of customers to the CHOICE program, there are two reasons why Columbia must contract for the full peak day requirements of its core market customers: (1) to provide a long-term guarantee that service to core market customers will not be placed at risk; and, (2) to maintain grandfathered Maximum Daily Delivery Obligations ("MDDO") rights that are vital to ensure reliable service to Columbia's GCR, CHOICE and GTS customers.

1. Long-Term Reliability

Long-term reliability is critical because it ensures that the human-needs requirements of Columbia's core market customers will not be placed at risk. Non-LDC suppliers that contract for capacity for terms of less than twelve months may lose the capacity when the contract expires, placing customers at risk. Small residential and commercial customers that vitally depend on this capacity are generally unaware of the risks that non-LDC suppliers take in order to reduce their rates a few pennies on the dollar below the LDC's GCR rates. To date, this risk has been nullified by the existence of Columbia's long-term contractual rights. Columbia needs to maintain these contractual rights into the future in order to provide a "safety net" for core market customers in the event that the willingness of non-LDC suppliers to take risks might otherwise severely impact service to these core market customers.

2. Preservation of Grandfathered MDDO Rights

MDDOs define a pipeline's maximum daily delivery obligation to each individual city gate receipt point. In the Order 636 restructuring proceedings Columbia was able to negotiate MDDO rights that in total exceed Columbia's firm capacity entitlements. These MDDO rights in excess of the capacity entitlements are grandfathered for Columbia as long as Columbia maintains its existing contracts or direct renewals of those contracts. If, for example, Columbia were to have to bid for its existing capacity entitlements on the Columbia Gas Transmission Corporation's ("Columbia Transmission") electronic bulletin board, Columbia would lose these grandfathered rights. The resulting MDDOs would then be equal to only the capacity entitlements. Today, these grandfathered MDDO rights enable Columbia to provide significant benefits to both its CHOICE and GTS markets – Columbia is able to manage demand growth behind isolated markets without the need to contract for additional capacity to that specific market. These grandfathered MDDO rights enable Columbia to efficiently utilize capacity. If Columbia did not have these grandfathered MDDO rights Columbia would need to contract for capacity based on the calculated requirements of each individual distribution system. The sum total of these individual market needs would exceed the total calculated on a statewide or Columbia Transmission market area basis as currently done. Thus, these grandfathered MDDO rights provide delivery assurance to each individual Columbia market while minimizing contractual pipeline requirements, resulting in significant cost savings.

Additionally, these grandfathered rights enable Columbia to provide CHOICE and GTS suppliers the ability to deliver supplies to Columbia in the Columbia Transmission Market Area in which their customers reside and to provide displacement service for local gas supplies. Without these grandfathered MDDO rights Columbia would not be able to provide displacement service and would require, in varying degrees, GTS and CHOICE marketers to contract for pipeline capacity to individual city gates behind which their customers reside.

The level of recontracting reflected in the 2003 Stipulation is necessary to preserve, to the greatest extent possible, the grandfathered MDDO rights that are indispensable in the operation of Columbia's highly dispersed distribution systems.

C. Columbia's Recontracting Is Not Based Upon An Assumption That All Marketers Will Fail; However Columbia Does Have To Be Prepared To Fulfill Its Provider Of Last Resort Functions

Based solely upon their reliance upon the Exeter Audit Report, Staff, OCC and Shell take exception with Columbia's need to contract for capacity to serve all core market customers because of the perception that recontracting for this level of capacity presumes a "100% marketer failure rate," and this it is claimed, is an "unrealistic assumption." Staff Comments at 5; OCC Comments at 3; Shell Comments at 4-5. This presumption on the part of Exeter was not provided to Exeter by Columbia, but instead appears to be Exeter's simplistic opinion of why the capacity is needed. Exeter's assumption is wrong. Nonetheless, whether or not the assumption is realistic, the bottom line is that Columbia is the provider of last resort, and Columbia must have the resources available to it to provide service under all conditions. While 100% market failure may be unlikely, in such a "worst case scenario" it is Columbia that will be expected to provide service, and such service will be critical if large scale marketer failure were to occur during a period of extreme cold weather. Columbia can only fulfill this provider of last resort function if retains the pipeline capacity necessary to serve the core market customers.

The presumptuous claim of Exeter that Columbia's need for capacity to serve all core market customers because of a "100% marketer failure rate" demonstrates Exeter's lack of understanding regarding basic LDC operations. Under Columbia's CHOICE program, marketers are required to deliver gas supplies to Columbia in the Columbia Transmission market area in which the marketers' customers reside. Through the flexibility afforded by the grandfathered MDDO rights discussed earlier, Columbia receives gas at the many individual city gates that exist in each market area. Behind those city gates there is no means for Columbia to differentiate between customers whose marketer delivered the required gas supplies from those customers whose marketer failed to deliver adequate supplies. Thus, if a marketer fails to deliver adequate gas supplies, Columbia has no ability to stop a customer whose marketer failed to deliver gas supplies from consuming gas. The net affect is that all customers behind these city gates have their service placed at risk due to the failure of a single marketer. The operational reality is that failing to adequately plan and perform for a small number of customers places all customers at risk. Columbia's intent to recontract for the peak day requirements of its core market customers has everything to do with assuring long term reliability and is not premised on an assumed failure of all marketers.

Under the 2003 Stipulation, for the period November 1, 2005 through October 31, 2010, Columbia will retain sufficient capacity to meet the design peak day requirements of up to 95% of Columbia's core market and GTS customers' Standby Sales requirements. There are currently 18 marketers flowing gas to Columbia's CHOICE customers. If only the two largest CHOICE marketers were to fail, with only 95% of the capacity necessary to serve the peak day requirement of core market customers, Columbia would be faced with significant operating problems due to a lack of sufficient capacity. After the sudden collapse of Enron (a company once widely touted as the exemplar of the open-market policy advocates), no one can suggest that such marketer failures will never occur. Furthermore, the financial collapse of marketers is not the only threat to the CHOICE program. Perhaps more likely is a situation in which a marketer attempts to contract only seasonally for capacity, but loses the capacity to a higher or longer term bidder. In such a circumstance one might expect to see such a marketer unceremoniously exit the CHOICE program, leaving behind no firm capacity to serve firm customers.

D. Once Columbia Decides Not To Recontract For Capacity, That Capacity May Not Be Available In The Future If Subsequently Needed To Provide Service To Core Market Customers

Again, relying solely upon the Exeter Audit Report, Staff and OCC naively argue that should Columbia contract for capacity at a level significantly less than 100% of core market demand, Columbia could reacquire pipeline capacity if needed to serve core market customers in a timely manner[3] in the event of a marketer failure. Staff Comments at 4-5; OCC Comments at 3. While the Staff and OCC may be willing to gamble that the capacity will be available on short notice, Columbia's experience is that such a gamble would be extremely risky.

The Staff and OCC apparently harbor the misconception that once pipe is laid in the ground, the firm obligation for gas delivery to points served by the pipe is always available, whether committed under contract or not. Firm service to Columbia's customers should be too important for the Staff and OCC to merely accept this notion without further scrutiny or questioning. Firm pipeline capacity is not a "birth right" of Columbia's customers, particularly in the post FERC Order 636 era. Columbia must compete, pay for, and protect that capacity against the sale of the pipelines' firm contract obligations to others. Though some aspects of the pipeline's capacity was built for the purpose of serving Columbia's markets, the existence of physical connections does not ensure the availability of transportation service capacity to supply gas. There is no reason that the capacity now serving Columbia markets will always be available to Columbia, and often times capacity has gone elsewhere.

Columbia's recontracting for capacity guarantees that the pipeline capacity contracted for Ohio customers remains accessible for the benefit of Ohio customers. Pipeline capacity is only

---

[3] For all practical purposes such a reacquisition must occur within 24 hours in order to prevent potential significant loss of service to core market customers.

firm when supplies are delivered to the pipeline at those points the pipeline was designed to receive supplies. If no supplies are delivered the capacity is useless. The majority of Columbia's core market customers are served by distribution systems that receive supplies from Columbia Transmission. Columbia Transmission's system in most locations is dependent upon storage supplies and services that have been contracted to serve those markets. If that storage service is not preserved to meet the needs of Columbia's core customers the pipelines will find other customers for this service. The probability is high that many of those customers would be outside Columbia's service territory. If this occurs these storage supplies would be diverted to serve these other customers leaving the pipeline facilities that have traditionally served Columbia's core customers with inadequate supply. Inadequate supply reduces the availability of reliable capacity that for the majority of Columbia's service territory is the only capacity available.

A pipeline's ability to assure firm service in a contract is made possible by more than just the pipe diameter and an original firm contractual obligation. Rather the continued availability of firm pipeline service is constrained by the supplies available in different portions of the system, pressure capability under even the most extreme conditions, and the firm contract obligations that the pipeline has committed to other customers of the pipeline, be they in the same town or in another state.

In fact, once a firm long-term contract is terminated with a pipeline, that pipeline has immediate incentives to market that long-term firm obligation capability elsewhere. It is the pipeline's obligation to do so in order to prevent rate increases to other customers and protect shareholder value. Though it is possible that the new contract would be behind the same city gate, it is unlikely, as CHOICE marketers seldom invest in maximum rate, multi-year agreements. It is more likely the capacity will be committed elsewhere.

The comments filed in this docket provide a prime example of this possibility. SNG/WGO promote the reduction of Columbia's core market capacity so that they can obtain some portion of it[4]. SNG/WGO Comments at 3-4. If SNG/WGO obtain the capacity it will no longer be available to Columbia or to Columbia's CHOICE marketers. These are small LDCs whose service territories are close to Columbia's, although similar migration of capacity can occur to others of greater magnitude or further distance.

The fact that the facilities were originally constructed to serve Columbia markets cannot be assumed to mean that only Columbia markets can be served by this capacity. The complex nature of Columbia Transmission's reticulated pipeline system requires the delivery of supply from many locations, many of which are storage. While the physical pipeline would remain in place, the ability to fully utilize the pipeline's capacity is contingent upon the supplies being delivered to that pipeline. If storage and upstream capacity resources are not retained specifically for use within Columbia's service territory, and in many areas specifically for core market use, Columbia Transmission may market this capacity to other users, changing the historic flow patterns on its system. Thus, while the pipeline would remain in the ground and physically connected to Columbia, the ability to utilize the pipeline capacity would, at a minimum, be impaired, and conceivably could be stranded in its entirety because the necessary supply has been diverted to other Columbia Transmission customers.

There is, and should be, concern about all the capacity for which Columbia does not recontract. Each 1% of Columbia's current capacity portfolio is equal to approximately 20,000

---

[4] SNG/WGO claim to be interested in only an insignificant, modest portion of any capacity not retained by Columbia. SNG/WGO Comments at 4. If that is the case, one is left wondering whether the 5% of capacity that Columbia will not retain after October 31, 2005 might be sufficient to satisfy SNG/WGO's tenuous interest in this proceeding.

dth/day. If, for example, Columbia does not recontract for 10% of that capacity, and it is instead contracted for by power plants, other LDCs or other entities, that is potentially 200,000 dth/day of capacity that Columbia no longer has available to it to meet its provider of last resort obligation on a peak day. A deficiency of this magnitude would have severe consequences on all of Columbia's customers. If it is later found that Columbia needs that capacity to fulfill its provider of last resort obligations, replacing it will likely be very difficult, time consuming and expensive.

Having the capacity under a long-term contract commits the pipeline to maintaining the pipeline capacity and pressure. Minus such commitments, the pipeline has no obligation or incentive to maintain the capacity at its original level. If Columbia does not recontract for capacity, it may be that age and condition activities to serve the original contracted level would not be required at the lesser contract level and the FERC-approved capacity of the system would be derated. In order to restore such lost capacity, betterment/construction on the pipeline would be needed at the expense of Columbia's customers. The incremental costs of such projects can be very large, often exceeding the demand charges of currently held capacity contracts by multiples.

III. THE 2003 STIPULATION PROVIDES A REASONABLE OPPORTUNITY FOR COLUMBIA TO RECOVER CHOICE PROGRAM CAPACITY COSTS

The Staff and OCC are critical of the 2003 Stipulation because it creates CHOICE program capacity costs. The Staff contrasts the 2003 Stipulation with the earlier Collaborative stipulation in Case No. 94-987-GA-AIR et al. ("1999 Stipulation"), and notes what it characterizes as a fundamental difference – i.e., in 1999 the parties had to deal with stranded costs that existed because of the CHOICE program and Columbia's existing pipeline contracts, whereas now Columbia "has an opportunity to shape its capacity portfolio to eliminate CHOICE program capacity costs." Staff Comments at 2; *see also* OCC Comments at 5.

Columbia does not totally disagree with Staff and OCC that the 2003 Stipulation may create CHOICE program capacity costs. As long as Columbia remains the provider of last resort for core market customers, and as long as there are no significant disruptions in the service provided by the larger CHOICE marketers, then, yes, there likely will be CHOICE program capacity costs to be dealt with. And, Columbia agrees with Staff and OCC that it could "shape its capacity portfolio" to minimize CHOICE program capacity costs. However, as discussed earlier herein, this minimization of CHOICE program capacity costs, as defined by Staff and OCC (reduced capacity requirements to match GCR sales customers requirements, CHOICE balancing, and perhaps capacity assignment to CHOICE marketers), would come at the expense of reliable service for core market customers. Thus, Staff's and OCC's emphasis is on minimizing CHOICE program capacity costs, blithely assuming reliable service will be unaffected; while Columbia believes that the paramount concern is the ensured continuation of reliable service to all core market customers, with a balanced scheme for the resolution of CHOICE program capacity cost issues[5]. This fundamental difference over what is most in the public interest underlies the basic policy determination that the Commission must consider as it evaluates the 2003 Stipulation.

The 2003 Stipulation provides that Columbia is responsible for all CHOICE program capacity costs created by continuation of the CHOICE program through October 31, 2010. The agreement then provides Columbia with several revenue sources with which to manage the CHOICE program capacity costs: (1) revenue from capacity assigned to CHOICE marketers; (2) revenue from CHOICE balancing services; (3) Off-System Sales and Capacity Release revenue;

[5] CHOICE program costs could also be eliminated by requiring mandatory 100% assignment of capacity to marketers. However, Columbia and the Collaborative have always believed that this alternative would significantly hamper the success of the CHOICE program. The balanced package embodied in the 2003 Stipulation enhances the already successful CHOICE program, maintains long-term reliability and reduces net costs to customers.

(4) and revenue from the Migration Cost Rider. As discussed below, this package of revenue opportunities sets forth a reasonable method of dealing with CHOICE program capacity costs.

A. It Is Reasonable For Marketers That Benefit From The CHOICE Program To Be Responsible For 75% Of The CHOICE Program Capacity Costs

Pursuant to the 2003 Stipulation, CHOICE marketers shall be responsible for no less than 75% of the design peak day capacity demand costs for that marketer's Columbia CHOICE program customers. All revenue attributable to CHOICE marketers electing to take capacity as part of the Customer Choice program will be retained by Columbia to help offset CHOICE program costs. The only parties to criticize this portion of the 2003 Stipulation were Dominion Retail, Inc. ("Dominion Retail"), Shell and the City of Findlay. Comments of Dominion Retail, Inc. ("Dominion Retail Comments") at 4-5; Shell Comments at 5-6; Comments of the City of Findlay ("Findlay Comments") at 2.

For reasons known only to it, Dominion Retail, a marketer with a very small market share in Columbia's CHOICE program, never expressed any interest in the Collaborative negotiations until after the 2003 Stipulation was filed. Likewise, the City of Findlay has never expressed any interest in Columbia's Collaborative process. Shell, a marketer with a slightly larger percentage of Columbia's CHOICE market[6] was a late entrant into the Collaborative process. Had Dominion Retail and Findlay elected to participate they would have known, and Shell does know, that this provision of the agreement was marketer driven. As noted in the IGS/WPS Comments,

> After consideration of historic capacity assignment taken from Columbia, marketers, such as IGS and WPS-FSG, participating in Collaborative negotiations, proposed that Choice program marketers shall be responsible for no less than 75% of the design peak day capacity demand costs for each marketer's Choice program aggregation pool.... By taking this capacity, Choice program marketers share in

---

[6] The marketers opposing the 2003 Stipulation have only about 12% of Columbia's CHOICE market. Those marketers that support the 2003 Stipulation have about 85% of Columbia's CHOICE market.

> the burdens of making Choice available and also mitigate stranded costs. This arrangement also ensures the ready availability of firm capacity to marketers participating in the program, while ensuring the availability of firm capacity to Columbia when a marketer exits the market for any reason, including catastrophic marketer defaults during peak winter delivery conditions.

IGS/WPS Comments at 8.

It is only fair that CHOICE marketers share in the burden of mitigating capacity costs attributable to the program in which they participate. Regardless of affiliation, Columbia must physically receive gas into the individual distribution system from which an individual customer receives the gas. Columbia has approximately 800 of these individual systems. Most of these are small, connected only to Columbia Transmission and under any rational evaluation have no economic alternative pipeline service options. The FERC establishes Columbia Transmission's rates and Columbia simply assigns the capacity to CHOICE marketers at the FERC-approved rate. Columbia has evaluated, and will continue to evaluate, any and all economic options for capacity into its highly dispersed distribution system. Thus for these reasons, and for the reasons explained in the IGS/WPS comments, Dominion Retail's, Findlay's and Shell's Comments[7] are without merit.

---

[7] Shell also suggests that the capacity cost provisions of the 2003 Sipulation might somehow violate both state and federal antitrust laws. Shell Comments, at 5-6. Shell has cited to no case authority and has only made vague, conclusory allegations in this regard which are clearly insufficient to establish that these provisions somehow constitute an unreasonable restraint of trade. Indeed, the Commission has previously approved the mandatory assignment of 100% of an LDC's capacity to choice marketers, implicitly finding such an approach to be reasonable and consistent with applicable law. *In Re the Application of The East Ohio Gas Company*, PUCO Case No. 96-1019-GA-ATA, Opinion and Order (July 2, 1997). Further, the U.S. Supreme Court and lower courts have consistently found that such requirements contracts are valid under the antitrust laws. *See, e.g., Tampa Elec. Co. v. Nashville Coal Co.*, 365 U.S. 320 (1961).

Shell's argument, moreover, ignores the fact that it is the Commission that ultimately determines the rates, terms, and conditions of participating in the CHOICE program. Neither the Sherman Antitrust Act (15 U.S.C. § 1 et seq.) nor the Ohio Valentine Act (Ohio Rev. Code § 1331.01 et seq.), which is governed by the same standards (*see Reddy v. Good Samaritan Hospital and Health Center*, 137 F.Supp.2d 948, 967 (S.D.Ohio 2000)), were intended to restrain the official acts of state government agencies, such as the Commission. *Parker v. Brown*, 317 U.S. 341 (1943).

B. Dominion Retail's Desire For A Free CHOICE Balancing Service Option Is Unreasonable

Under the 2003 Stipulation, as is also currently the case under the 1999 Stipulation, CHOICE marketers must make an annual election of the type of balancing service to be provided by Columbia – full balancing or non-temperature balancing. All revenue derived from these CHOICE balancing services will be retained by Columbia to help offset CHOICE program costs. Dominion Retail is the only party to question this provision of the 2003 Stipulation.

Dominion Retail questions the cost-justification of the balancing fees. Dominion Retail Comments at 5. However, Columbia has suggested no change to the balancing fees currently in effect, and unless proposing an increase to an existing rate of this type, it need not justify the fee in the manner suggested by Dominion Retail.

It is impossible to exactly predict the daily demand of highly temperature-sensitive residential and small commercial customers. There is always an imbalance. Under the interstate pipeline tariffs that apply to Columbia's interstate pipeline service, Columbia is the party that must balance demand and supply at its numerous city gates. That is, Columbia, as the city gate operator is the party responsible to balance demand and supply. This balancing is done primarily through no-notice pipeline storage services contracted for from upstream pipelines. Choosing no balancing fees, as suggested by Dominion Retail, pushes the unavoidable responsibility and cost of providing this service onto others. Columbia offers balancing options to marketers to provide them options in how they wish to manage their operations on Columbia's system consistent with the requirements imposed upon Columbia by the upstream pipelines.

What Dominion Retail really would like is obvious – it wants a free ride. Even though Columbia must balance on the interstate pipeline system, Dominion Retail would like to conveniently ignore this fact and not have to balance at all, thereby avoiding any costs and placing all the cost burden and responsibility on Columbia. *Id.* The Commission should not countenance this type of irresponsible behavior.

C. The Use Of Off-System Sales And Capacity Release Revenues To Help Offset CHOICE Program Capacity Costs Is Reasonable

1. The Use Of Incentives For Off-System Sales And Capacity Releases Is Appropriate

Like the 1999 Stipulation, the 2003 Stipulation provides that revenues generated by Off-System Sales and Capacity Releases will be used to offset CHOICE program capacity costs. However, unlike the 1999 Stipulation, and in response to concerns raised by the OCC and Staff, the 2003 Stipulation further provides that if Off-System Sales and Capacity Release revenue in any given year exceeds $35 million, the revenue in excess of $35 million is to be shared with all core market customers.

Both Staff and OCC note that absent Commission approval of the 2003 Stipulation revenue generated by Off-System Sales and Capacity Releases would be credited to the GCR. Staff Comments at 10; OCC Comments at 10. That legal conclusion appears to be consistent with Commission precedent. *In the Matter of the Long-Term Forecast Report of Vectren Energy Delivery of Ohio and Related Matters*, Case No. 00-120-GA-FOR, et al., Finding and Order (September 25, 2001) (The Commission held that without prior Commission approval, the benefit of all pipeline capacity/asset management arrangements shall be credited to GCR customers, and that only the Commission is vested with the authority to determine a fair and reasonable apportionment, if any, of such revenues.) Because the Staff and OCC both oppose the 2003 Stipulation, apparently they would prefer that all Off-System Sales and Capacity Release revenues be credited to the GCR.

Columbia must again lament the fact that Staff and OCC appear to have forsaken any previous interest in progressive forms of regulation; that they now prefer ineffectual punitive forms of regulation rather than more efficient incentives. Under the 1999 and 2003 Stipulations, Off-System Sales and Capacity Release revenues are used to the benefit of all core market customers because the revenues have been, and will be, used to make the CHOICE program available, without any increase in base rates. Columbia is responsible for funding the CHOICE program capacity costs and thus has an incentive to maximize such revenues. Columbia is further encouraged to maximize such revenues, because it has an opportunity to retain any revenue over and above total CHOICE program capacity costs. To allay fears that Off-System Sales and Capacity Release revenues might exceed the levels predicted in negotiations, the 2003 Stipulation provides that core market customers will now have an opportunity to share such revenues. This is another example of a "win-win" solution resulting from the Collaborative process.

If the Commission does not approve the 2003 Stipulation, what incentive does Columbia have to engage in Off-System Sales and Capacity Release transactions? Obviously, the answer is little, if any. Not only will there be minute benefits for GCR customers, but a new method of funding CHOICE program capacity costs will have to be devised. While the Staff and OCC might want the Commission to believe that if capacity contracts match GCR demand there will be no CHOICE program capacity costs, that would be an overly broad assumption. Even with no capacity to backup failing marketers or to provide balancing services – an extremely risky proposition as discussed earlier herein – the normal flux in CHOICE participation levels may well create ongoing CHOICE program capacity costs that must be funded in some fashion.

The disposition of Off-System Sales and Capacity Releases revenues, provided for in the 1999 and 2003 Stipulation has benefited, and will continue to benefit, core market customers. In contrast, were the Staff and OCC position to be adopted, there are no benefits for anyone.

2. Operational Sales Do Not Adversely Impact The GCR

Citing another erroneous observation in the Exeter Audit Report, Staff contends that "Columbia's past practice of recording OSS only when the revenue generated exceeds the costs of capacity and commodity utilized in the transaction has resulted in millions of dollars of additional costs included for recovery through Columbia's GCR." Staff Comments at 8.

The Staff has mischaracterized certain costs of selling gas in a warmer market, making it sound as though any time Columbia makes an Off-System Sale that loses money, the GCR customers bear that loss. This simply is not the case. Beginning with the earliest definitions of Columbia's Off System Sales, "Operational Sales" have always been excluded from the calculation of margin of Columbia's Off-System Sales. *See* the Prepared Direct Testimony of Elwood I. Shoemaker in PUCO Case No. 95-223-GA-GCR, docketed December 1, 1995, page 23. This definition was incorporated into the 1999 Stipulation, and approved by the Commission. When Off-System Sales and Operational Sales were first defined by Columbia in 1995, it was recognized at that time that there would be occasions when the best economic alternative for Columbia's GCR customers would be to sell gas at a loss. This type of sale, referred to as an Operational Sale, does not occur often, but when it does, it is transacted to prevent a higher cost from hitting the GCR. The most obvious and common example of this is the avoidance of penalties that would occur for exceeding contracted storage injection rights on warmer days in autumn or winter months. On such a day, Columbia may have the option of incurring storage injection penalties, keep whole charges incurred by swinging down on firm supply contracts, or a loss from selling the gas off system (being a warmer day with related operational problems, it is likely that prices will be lower than the original purchase price of the gas, as not only Columbia, but others are also selling gas into a market that does not have room for it). When, among the available options, selling the gas off system results in the least cost for Columbia's customers, that path is selected. Such Operational Sales have nothing to do with incremental, incentive-oriented activity, and should remain a tool for handling warmer operational conditions regardless of the type of incentives provided under a Commission-approved Off-System Sales program.

3. The 2003 Stipulation Violates No Codes Of Conduct

Without any substantiation whatsoever, Shell has raised the specter that Columbia might use its capacity to make Off-System Sales in states other than Ohio. Shell Comments at 8. Shell intimates that such transactions might violate "generally accepted codes of conduct," without specifying what these codes of conduct are, or how any Off-System Sales would violate such codes of conduct. The only code of conduct currently applicable to Columbia's CHOICE program is the code of conduct contained in Columbia's tariff. If Shell has reason to believe that Columbia has violated its tariff, then it is free to file a complaint under Ohio Rev. Code § 4905.26. Otherwise, it is irresponsible for Shell to allege possible violations of unspecified codes of conduct, and the Commission should give no weight to Shell's comments on this issue.

Shell's Comments also ignore the operational fact that pursuant to Columbia Transmission's FERC-approved tariff, capacity sold/used by and LDC customer in the market area of another LDC is sold at secondary points. Secondary capacity on Columbia Transmission's system is subject to interruption regardless of its source. Thus, no competitive advantage would accrue to Columbia.

D. The Migration Cost Rider Is Reasonable

To further offset CHOICE program capacity costs, the 2003 Stipulation also includes a Migration Cost Rider, which will be assessed to all core market customers (i.e., CHOICE-eligible customers) once CHOICE participation hits 60% of eligible customers. As explained by IGS/WPS, "inasmuch the Stipulation places the risk of the CHOICE program's capacity costs on

Columbia, it allows Columbia to retain revenues from the Migration Cost Rider, which increases in value as CHOICE participation levels increase, as an incentive to Columbia to promote CHOICE participation." IGS/WPS Comments at 6-7.

The OCC Comments question whether ratepayers should be obligated to pay the rider. OCC Comments at 8. However, the OCC makes no argument that the charge is any way unlawful, and the OCC's argument is thus nothing more than an attempt to muddle the issue.

The Staff criticizes the rider stating, "sales customers pay in full for their capacity costs through Columbia's GCR and pay a portion of the capacity costs of Choice customers." Staff Comments at 9. The rider, applicable to all core market customers, represents a reasonable charge (and, in fact, no charge at all until CHOICE participation reaches 60%) to provide all core market customers with the opportunity to have CHOICE available to them and to continue the historic service reliability these customers require. While the rider is applicable to sales customers, the reduced GCR demand costs that will result upon the expiration of the 1999 Stipulation more than offset the rider at any CHOICE participation level, so that GCR customers receive a net benefit.

IV. THE 2003 STIPULATION CONTINUES AND ENHANCES COLUMBIA'S CHOICE PROGRAM

Columbia's 1999 Stipulation, approved by the Commission, continued Columbia's CHOICE program through October 2004. The 2003 Stipulation would continue the CHOICE program through October 2010, and enhance the program, as explained by IGS/WPS:

> The Stipulation provides for continued availability of an enhanced Choice program throughout Columbia's service territory through October 31, 2010. Further, the Stipulation provides for the expansion of the Choice program's availability to customers with arrearages, affording these consumers benefits that include savings opportunities and product choices, such as fixed and variable rates. Importantly, the Stipulation creates incentives for Columbia to increase Choice participation levels, by reducing barriers to participation.... [T]he Stipulation expressly

> provides for an ongoing Columbia duty to improve the Choice program. Thus approval of the Stipulation will enable the Choice program to continue and expand.

IGS/WPS Comments at 6-7.

Pursuant to the Commission's Entry adopting the 1999 Stipulation, Columbia's CHOICE program has Commission approval to proceed only through October 31, 2004. (*See* paragraph number 5 of the Stipulation filed in PUCO Case Nos. 94-987-GA-AIR et al. on October 25, 1999, adopted by the Commission in an Entry dated December 2, 1999, p. 13.) By approving the 2003 Stipulation, the Commission will ensure that the current, successful CHOICE program is continued through October 2010, and enhanced.

The OCC would ignore the December 2, 1999 Entry, and claims that the CHOICE program will continue with or without Commission approval of the 2003 Stipulation. OCC Comments at 14. In fact, the OCC goes so far as to contort the facts by making it seem as if it is Columbia who would unilaterally act to terminate the program, *Id.*, when it is clear that the Commission has, to date, approved the operation of the CHOICE program only through October 2004. The OCC seems to believe that the enactment of Sub. H.B. 9 somehow automatically ensures continuation of the current CHOICE program. That is not necessarily the case, and it may be that applications would have to be filed under Ohio Rev. Code § 4929.29 to continue the CHOICE program beyond October 2004[8]. However, the Commission need not worry about the legal procedures involved in continuing the CHOICE program if the 2003 Stipulation is ap-

[8] If the CHOICE program, and the funding for the program costs, as set forth in the 2003 Stipulation are not approved, it may well be that any successor program will look far different than the current CHOICE program. For example, to minimize CHOICE program capacity costs Columbia, among other things, might have to sacrifice reliability, rely upon mandatory assignment of capacity, and/or reduce balancing options.

proved, for approval of the Stipulation ensures that the CHOICE program continues, without the need for costly and protracted litigation.

The OCC also alleges that the 2003 Stipulation "bypasses the statutory requirements of R.C. 4929.25." *Id.* at 6. Had Columbia filed an application to recover costs under Ohio Rev. Code § 4929.25, then the requirements of that statute would be applicable. However, Columbia filed no such application, and nothing in Ohio law provides that said statute is the only permissible way of recovering CHOICE program capacity costs.

V. THE RATE FREEZE EMBODIED IN THE 2003 STIPULATION HAS VALUE FOR CUSTOMERS

The 2003 Stipulation extends Columbia's base rate freeze for an additional six years, through October 2010, thereby extending Columbia's base rate freeze for a total of 16 years (1994 through 2010). Indeed, this type of rate stability was one of the factors that led the Commission to conclude that Columbia's 1999 Stipulation was in the public interest. *See* Columbia Comments at 7-8, citing PUCO Case No. 94-987-GA-AIR et al., Entry (December 2, 1999) at 13.

A. The 2003 Stipulation Does Not Guarantee Columbia Recovery Of Its Costs

Staff is concerned that maintaining existing rates locks in so-called "over-recovery" of costs. Staff Comments at 6. Once again, Staff has failed to provide any recognition of the "win-win" nature of the 1999 Stipulation. Columbia assumed all the risks of recovering capacity costs attributable to the CHOICE program, and in return for efficiently managing those risks was permitted an opportunity to retain specified revenues. Thus, to the extent Columbia's has benefited from the 1999 Stipulation, such benefits accrued only because Columbia efficiently managed

CHOICE program capacity costs, again demonstrating the value of a balanced approach that includes incentives.

Furthermore, it appears that Staff has performed no analysis beyond a review of Columbia's annual reports. A cursory review would have revealed that the Columbia returns to which Staff referred were driven in large part by Columbia's ability to retain "Contract Cost Reduction Revenue" under the 1999 Stipulation. There is no similar provision in the 2003 Stipulation, and the expiration of this portion of the 1999 Stipulation will result in an annual reduction in revenues of approximately $50 million per year. With the end of this revenue source, and given the risk attendant with the recovery of all CHOICE program capacity costs, the 2003 Stipulation does not guarantee Columbia recovery of all its costs.

B. The Exceptions To The Base Rate Freeze Do Not Diminish The Value Of The Base Rate Freeze

Staff further opines that the exceptions to the base rate freeze enumerated in the 2003 Stipulation make it of "dubious value to rate payers." *Id.* at 7. Columbia disagrees. The stay-out provision is intended to allow Columbia to control its normal expenses, but recognizes that there may be circumstances beyond its control which could necessitate base rate adjustments – e.g., increases in federal income taxes. Thus, the exceptions exist only as a "safety net" in case of unforeseen events. In fact, paragraph 3 of the 2003 Stipulation permits any signatory party to reopen the agreement in the event of significant or major changes in conditions. Columbia's previous Collaborative stipulations have contained similar lists of exceptions to the base rate freeze, and Columbia has never utilized any of the exceptions to initiate a base rate case. The Commission found the base rate freeze in the 1999 Stipulation to be in the public interest, notwithstanding a list of enumerated exceptions, and the Commission should again so find in this instance.

C. Authorization Of Post-In-Service Carrying Charges And Related Deferrals Does Not Diminish The Value Of The Base Rate Freeze

As discussed hereinafter, the 2003 Stipulation provides for Columbia's accrual of Post-In-Service Carrying Charges ("PISCC") and related deferrals. Both Staff and OCC contend that authorization of PISCC would diminish the value of the base rate freeze. Staff Comments at 5; OCC Comments at 13. Columbia believes that customers would rather put off paying for Columbia's plant investments as long as possible. Rate stability is important to customers. While the deferrals create regulatory assets that "serve to increase base rates," as noted by the OCC (OCC Comments at 13), the regulatory assets may be more than offset by other cost of service factors, as noted by Staff. *See* Staff Comments at 6. Of course, this far in advance no one can predict what a cost of service study might look like in 2010 or later years.

D. The Continued Ability To File For Automatic Adjustment Mechanisms Under Ohio Rev. Code § 4929.11 Does Not Diminish The Value Of The Base Rate Freeze

Ohio Rev. Code § 4929.11 was enacted as part of H.B. 476 in 1996. This statute enables utilities to file for automatic adjustment mechanisms so that rates will fluctuate automatically in accordance with changes in a specified cost. Apparently, the OCC is dismayed that this statute was enacted, because it complains about its application every chance it gets[9]. And, in this case, the OCC complains that the base rate freeze is negated by Columbia's ability to file for "increases" under Ohio Rev. Code § 4929.11. OCC Comments at 13. Columbia is at a loss to fully understand the OCC's concern. As long as any automatic adjustment mechanism recovers any

[9] The Commission recently rejected the OCC's interpretation of Ohio Rev. Code § 4929.11. *In the Matter of the Joint Application of The East Ohio Gas Company d.b.a. Dominion East Ohio, Columbia Gas of Ohio, Inc., Vectren Energy Delivery of Ohio, Northeast Ohio Natural Gas Corp., and Oxford Natural Gas Company for Approval of an Adjustment Mechanism to Recover Uncollectible Expenses*, PUCO Case No. 03-1127-GA-UNC, Finding and Order (December 17, 2003) at 10.

specified cost on a dollar-for-dollar basis, equity is served – the utility recovers only its actual costs, no more and no less. There is no "increase." Nonetheless, the statute permits all utilities to request approval of automatic adjustment mechanisms, subject to Commission approval, and the base rate freeze is not diminished by the mere availability to Columbia of the ability to request automatic adjustment mechanisms, if and when circumstances should warrant such action.

VI. The 2003 Stipulation's Limitations On GCR Audits Is Necessary And Reasonable

The 2003 Stipulation limits the scope of Columbia's GCR audits during the term of the agreement. Under the 2003 Stipulation, the prudence of Columbia's decisions regarding the amount of firm pipeline capacity for which to contract for 2005-2010 shall not be subject to review in Columbia's GCR cases. Furthermore, in recognition of the fact that Off-System Sales and Capacity Release revenues through October 31, 2010 are being retained by Columbia to help it offset CHOICE program capacity costs, the agreement provides that all Off-System Sales and Capacity Release arrangements agreed to before October 31, 2010 shall not be subject to review in Columbia's GCR cases. The primary purpose of the management/performance audits in Columbia GCR cases (covering audit periods through October 31, 2005) will be to examine Columbia's gas supply capacity assets and firm gas supply portfolio to ensure that said assets and said firm gas supply portfolio are reasonable, and sufficient to meet the estimated design peak day consumption of Columbia's core market customers and GTS customers' Standby Sales requirements for 2005. For the years 2006-2010, the primary purpose of the management/performance audits in Columbia GCR cases (covering audit periods through October 31, 2010) will be to examine Columbia's gas supply capacity assets and firm gas supply portfolio to ensure that said assets and said firm gas supply portfolio are reasonable, and sufficient to meet

95% of the estimated design peak day consumption of Columbia's core market customers and GTS customers' Standby Sales requirements.

Staff, OCC and Shell have taken exception to the limits placed on Columbia's GCR audits and are concerned primarily about the restrictions on audits of Columbia's capacity portfolio and of Columbia's Off-System Sales and Capacity Releases. Staff Comments at 7-9; OCC Comments at 4, 9; Shell Comments at 8.

The limitation on the scope of future GCR audits is critical if the agreements embodied in the 2003 Stipulation are to have any meaning. As explained earlier herein, a crucial element of the agreement is the levels of pipeline capacity for which Columbia will recontract. Once Columbia recontracts for the pipeline capacity, it needs some degree of assurance that its decisions will not be constantly second-guessed, and subject to possible repricing in GCR cases. The stakes are huge and the financial ramifications are immense. If the Commission agrees with the Signatory Parties that Columbia should retain the provider of last resort function through 2010, and that Columbia needs the levels of pipeline capacity specified in the 2003 Stipulation, to fulfill that role and ensure ***reliable*** service, then the Commission should be willing to endorse the Signatory Parties' agreement regarding capacity and protect that agreement from endless collateral attacks in future GCR cases.

Similarly, once the pipeline capacity has been recontracted, there will be CHOICE program capacity costs, and the revenue generated by Off-System Sales and Capacity Releases is one of the primary sources of funds that will be used to offset the CHOICE program capacity costs. While Columbia is willing to accept the financial risk that it will be responsible for all the CHOICE program capacity costs, given the financial tools that it has to work with pursuant to the 2003 Stipulation, it is not willing to accept the risk that others may constantly attempt to sabotage the agreement by crusading against Columbia's use of those tools and attacking the revenues used to offset CHOICE program capacity costs – i.e., Off-System Sales and Capacity Release revenues.

The reality of GCR management/performance audits is that the auditors are outside consultants, often not even from Ohio, who are paid significant sums of money to review LDC purchasing practices and strategies. In order to justify the fees they are paid, the unwritten, and perhaps unspoken, expectation is that the auditors will indeed find something that needs to be corrected in every audit, and the more significant the better. In this sense, the management/performance auditors are "hired guns," mercenaries paid to pick a fight. Add to this predetermined expectation of findings an anti-utility bias on the part of some auditors, and the results are predictable – in audit after audit an LDC will find itself having to defend its actions based on the "20/20" hindsight review of outside consulting firms, entities with no real stake in the day-to-day business of supplying energy to Ohio consumers. And because the management/performance auditors are able to view everything from an ivory tower, they sometimes do not hesitate to make findings and recommendations that are in direct conflict with Commission-approved stipulations, providing ammunition to those who may not agree with the provisions of a Commission-approved stipulation.

These concerns about the use of GCR audits to attempt to collaterally attack the Commission-approved stipulations are not mere conjecture, but are based on observable behaviors exhibited by management/performance auditors. The auditor in Columbia's 1998 GCR Case (PUCO Case No. 98-222-GA-GCR), Exeter, made recommendations that collaterally attacked the 1999 Stipulation. That same auditor in Columbia's 2002 GCR Case (PUCO Case No. 02-221-GCR) has made recommendations that continue to collaterally attack the Commission-approved 1999

Stipulation, as well as the Commission-approved stipulation in PUCO Case Nos. 01-2607-GA-CSS and 01-2620-GA-ATA. And, in anticipation of the 2003 Stipulation, the auditor has already begun its assault upon this agreement as well.

As noted in the IGS/WPS Comments, the uncertain future of Columbia's CHOICE program is already having a negative impact on the competitive marketplace. If the Signatory Parties' agreement as to how best to proceed is subject to repeated hindsight review and second-guessing, then uncertainty will only continue to fester and there will be no marketplace stability. If the Commission finds that the agreements contained within the 2003 Stipulation are reasonable, then it should be willing to protect those agreements from constant hindsight evaluation and collateral attack. If the Commission adopts the 2003 Stipulation, Columbia must have the latitude to operate under the agreement as approved without constant fear of outside intermeddling. Otherwise, the agreement is meaningless and will collapse.

While Columbia believes that the limitations on GCR audits are critical, for the reasons described above, that does not mean that Columbia desires to operate under the 2003 Stipulation in a "cloak of secrecy" as Shell as suggested. Shell Comments at 8. Columbia has always shared information about its operations with the Commission, as well as with all interested stakeholders in the Collaborative process. In fact, Columbia submits that it is as open about information sharing as any utility in the state, if not the most open. Paragraph 33 of the 2003 Stipulation ensures that this information-sharing will continue, expressly including information about Off-System Sales and Capacity Releases.

As set forth in the 2003 Stipulation, the nature of future GCR management/performance audits should be forward-looking and focused on reliability – i.e., whether Columbia has the ability to serve peak day needs of its customers.

VII. Approval Of Accounting For PISCC And Related Deferrals Is Necessary To Recognize Columbia's Investments In Plant Made During The Stay-Out Period

The 2003 Stipulation provides that during the period November 1, 2004 through December 31, 2010, Columbia is authorized to capitalize PISCC on certain investments with in service dates between November 1, 2004 and December 31, 2010. The agreement further provides that Columbia shall be permitted to defer for recovery all depreciation and property tax expense on all property on which PISCC is calculated. Staff, OCC and Shell all oppose this portion of the 2003 *Stipulation*. Staff Comments at 5-6; OCC Comments at 10-11; Shell Comments at 3.

It is reasonable for the Commission to authorize the booking of PISCC and related deferrals because by the end of the 2010, Columbia will have maintained a base rate freeze for 16 years, but invested substantial amounts of capital to continue to serve its customers. Since its last base case in 1994, Columbia has invested in excess of $530 million in gross plant with an increase in net plant investment in excess of $390 million.[10] Columbia further expects to invest an additional $450 million in gross plant during the period January 2004 through December 2010. The approval of the accounting for PISCC and related deferrals will encourage necessary investment in new plant additions. The PISCC accounting has limited impact on Columbia's future revenue requirement due to fact that recovery of these deferrals takes place over the life of the assets upon which they are generated rather the much shorter stay-out period.

The OCC argues that the accounting for PISCC and related deferrals may only be granted where necessary to maintain the financial integrity of the utility, or when justified by extraordinary circumstances. OCC Comments at 11. This assertion is incorrect. The Commission has recently approved similar accounting without finding that it was necessary to maintain financial

[10] These amounts are as November 2003.

integrity and without finding extraordinary circumstances. *In the Matter of the Commission's Investigation into the Policies and Procedures of Ohio Power Company, Columbus Southern Power Company, The Cleveland Electric Illuminating Company, Ohio Edison Company, The Toledo Edison Company and Monongahela Power Company Regarding the Installation of New Line Extensions*, PUCO Case No: 01-2708-EL-COI et al., Opinion and Order (November 7, 2002); *In the Matter of the Application of The Cincinnati Gas & Electric Company for an Increase in Rates,* PUCO Case No: 01-1228-GA-AIR et al., Opinion and Order (May 30, 2002).

Shell also expressed concern about the lack of current accounting for any of the deferred costs. Shell Comments at 3. Certainly, in a future rate case it can be expected that Staff and others will carefully examine the capitalized and deferred amounts to ensure that the accounting is accurate. In addition, Columbia has no objection if Staff wishes to review the accounts for the capitalized and deferred amounts at any time prior to a rate case.

VIII. THE SIX-YEAR TERM OF THE 2003 STIPULATION IS APPROPRIATE

The 2003 Stipulation is to apply to Columbia's operations for the period beginning November 1, 2004 and ending October 31, 2010. Staff, OCC, Shell and Dominion Retail all dislike the six-year term of the agreement. However, these parties state no fundamental objection to a six-year term, other than they do not like the fact that if the 2003 Stipulation is approved, the other provisions to which they object are effective for a period longer than they would like. Staff Comments at 2, 10; OCC Comments at 4; Shell Comments at 2; Dominion Retail Comments at 2.

In dealing with LDC contracts for interstate pipeline capacity, six years is not a long time – commitments of five, ten, fifteen and even twenty years are common. It is reasonable to ask the Commission to rule on a request to be able to serve core market capacity requirements for the next six years because the commitment needed to assure long term reliability must be taken for long-term increments. Shorter terms in CHOICE program designs constrain the flexibility of CHOICE marketers to make market, supply, and capacity assumptions and decisions.

IX. COLUMBIA HAS NO PRESENT PLANS TO EXIT THE MERCHANT FUNCTION PRIOR TO 2010

Columbia's merchant function role was discussed at length during the negotiations that led up to the filing of the 2003 Stipulation. As a result of those discussions, the 2003 Stipulation contemplates that Columbia will retain its merchant function through 2010. Dominion Retail's assertion that the Collaborative did not contemplate merchant function issues is dead wrong. *See* Dominion Retail Comments at 3.

However, as reflected in paragraph 34(E) of the agreement, Columbia has committed to engage in Collaborative discussions, prior to 2010, regarding issues related to merchant function roles. Dominion Retail (and perhaps Shell) opposes the 2003 Stipulation, primarily because it would prefer that Columbia terminate its merchant function in 2004, upon the expiration of the 1999 Stipulation. Dominion Retail Comments at 3; *see also* Shell Comments at 3.

Ohio customers have more choices than do those in Atlanta Gas Light's service area, where the LDCs have been forced out of the merchant function[11]. The 2003 Stipulation, at a minimum, maintains choices for Columbia customers, including the purchase of Columbia GCR gas as an option. Dominion Retail and Shell's comments are aimed at removing Columbia as the provider of last resort, and eliminating the GCR, which effectively functions as a market price capping mechanism, and acts to protect all customers from price gouging. Without the GCR, Co-

[11] *Shell is an active participant in the Atlanta Gas Light service area.*

lumbia's residential and small commercial customers would face significant increased price risk. The efforts of Dominion Retail and Shell to remove Columbia from the merchant function are nothing more than a veiled attempt to eliminate competition and raise consumer prices for their sole benefit.

X. MISCELLANEOUS ISSUES

A. Comments Of Dominion Retail

1. Columbia Has No Control Over The Number Of Columbia Transmission Market Areas In Ohio

Dominion Retail claims that the number of market areas in Columbia's service territory should be reevaluated, and bases its suggestion on the fact that there are fewer market areas in the service territories of other Columbia LDC affiliates. Dominion Retail Comments at 2-3. Market areas are established by Columbia Transmission under its FERC-approved tariff. These areas reflect what Columbia Transmission believes must be in place for it to effectively operate and manage its system. Apparently, Dominion Retail has chosen to overlook the fact that Columbia and other LDCs on the Columbia Transmission system are required by Columbia Transmission to nominate to these market areas to receive primary firm service. The fact that Columbia Transmission has fewer operational areas in the smaller footprints of the jurisdictional service territories of Columbia's affiliate LDCs has nothing to do with the operational requirements to operate on Columbia Transmission's system in Ohio.

2. Columbia Is Committed To Investigating Supply Diversity Alternatives

Dominion Retail also suggests that Columbia should be required to add additional interconnections for new pipeline capacity, and cites Parma as an area in which additional pipeline capacity is needed. *Id.* at 6. Pursuant to paragraph 34(E) of the 2003 Stipulation, Columbia has renewed its commitment to continue to investigate supply diversity alternatives. With regard to Parma in particular, Columbia has already initiated negotiations for a supply diversity alternative and these negotiations have been productive, as noted in the Comments filed by North Coast Gas Transmission, LLC. Comments of North Coast Gas Transmission, LLC at 2.

3. Dominion East Ohio's Program Should Not Be Imposed Upon Columbia

Dominion Retail asserts that the Dominion East Ohio program should be the model for other LDCs and suggests elements of the Dominion East Ohio program should be imposed upon Columbia. Dominion Retail Comments at 6-7. Dominion Retail is an affiliate of Dominion East Ohio, and its comments are unbelievably, undeniably self-serving. As the Commission and the Collaborative participants are well aware, there are significant operational differences among all the Ohio LDCs, and "one size does not fit all." Dominion Retail's self-serving comments should be entitled to little, if any, credibility.

B. Comments Of Ohio Partners For Affordable Energy

Ohio Partners for Affordable Energy ("OPAE") raised two issues in its Comments. First, OPAE suggested that the 2003 Stipulation should be amended to provide for increased funding for weatherization programs. Comments of Ohio Partners for Affordable Energy ("OPAE Comments at 4. Second, OPAE recommended that Columbia compensate social service agencies for services that the agencies provide in conjunction with administering portions of the Commission's Percentage of Income Payment Plan ("PIPP"). *Id.* at 5-7. As noted in the OPAE Comments, Columbia and OPAE have initiated discussions about both of these issues. *Id.* at 4,7. However, Columbia does not anticipate that these discussions will conclude before the Commission acts upon the 2003 Stipulation. Nor does Columbia believe that any agreement reached with OPAE regarding weatherization funding or funding for PIPP administrative services need necessarily be submitted to the Commission for approval. Therefore, there is no need for the Commission to address this matter when it rules upon the 2003 Stipulation. However, Columbia is committed to continuing good faith discussions with OPAE regarding both matters addressed in OPAE's comments.

XI. CONCLUSION

For the reasons discussed in Columbia's Comments and in these Reply Comments, the 2003 Stipulation satisfies the criteria that the Commission utilizes to evaluate settlement agreements. While some stakeholders have expressed displeasure with some aspects of the agreement, on balance the 2003 Stipulation represents an appropriate balancing of risks and incentives. Most importantly, it will ensure continued service reliability for core market customers in an unstable and unpredictable energy environment. While ensuring service reliability, the agreement will also continue and enhance Columbia's Customer Choice program, all with no increase in base rates. The 2003 Stipulation is in the public interest and should, therefore, be approved by the Commission.

Respectfully submitted,
COLUMBIA GAS OF OHIO, INC.

Stephen B. Seiple

Stephen B. Seiple, Trial Attorney

Stanley J. Sagun, Assistant General Counsel
Stephen B. Seiple, Lead Counsel
200 Civic Center Drive
P.O. Box 117
Columbus, OH 43216-0117
Telephone: (614) 460-4648
Fax: (614) 460-6986
Email: sseiple@nisource.com

Attorneys for
COLUMBIA GAS OF OHIO, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Columbia Gas of Ohio, Inc. was served upon all parties of record by regular U. S. mail this 22nd day of December 2003.

Stephen B. Seiple
Attorney for
COLUMBIA GAS OF OHIO, INC.

SERVICE LIST

W. Jonathan Airey
Vorys, Sater, Seymour & Pease
52 E. Gay Street E
P.O. Box 1008
Columbus, OH 43216-1008

Thomas J. Augspurger
MidCon Corp.
747 E. 22nd Street
Lombard, IL 60148-5034

Langdon D. Bell
Bell, Royer & Sanders Co., LPA
33 South Grant Ave.
Columbus, OH 43215-3927

Sally W. Bloomfield
Bricker & Eckler, LLP
100 South Third Street
Columbus, OH 43215

Kerry Bruce
Ohio Building
420 Madison Ave., Ste 100
Toledo, OH 43064-1219

Brian E. Chorpenning
Chorpenning, Good & Mancuso
77 E. Nationwide Blvd.
Columbus, OH 43215

Denis E. George
Stand Energy Corp.
Brookwood Bldg., Suite 110
1077 Celestial Street
Cincinnati, OH 45202

Anne L. Hammerstein
Public Utilities Commission of Ohio
180 E. Broad Street
Columbus, OH 43266-0573

John C. Klein, III
Assistant City Attorney
109 N. Front St., Room 405
Columbus, OH 43215

Glenn S. Krassen
Bricker & Eckler LLP
1375 E. Ninth Street/Suite 1500
Cleveland, OH 44114-1718

Law Director
City of Parma
6611 Ridge Rd.
Parma, OH 44129

Helen L. Liebman
Jones Day
1900 Huntington Center
41 South High Street
Columbus, OH 43215

Janine L. Migden
Hahn, Loeser & Parks
1050 Fifth Third Center
21 East State Street
Columbus, OH 43215

Colleen L. Mooney
Assistant Consumers' Counsel
10 West Broad Street, 18th Floor
Columbus, OH 43215-3485

William S. Newcomb, Jr.
Vorys, Sater, Seymour & Pease
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008

M. Howard Petricoff
Vorys, Sater, Seymour & Pease
52 East Gay Street
P. O. Box 1008
Columbus, OH 43216-1008

Samuel C. Randazzo
McNees, Wallace & Nurick
Fifth Third Center
21 East State Street, Suite 1700
Columbus, OH 43215

A. Charles Tell
Baker & Hostetler
63 East State Street
Columbus, OH 43215

John W. Bentine
Chester, Willcox & Saxbe, LLP
65 East State Street
Suite 1000
Columbus, OH 43215

Judith B. Sanders
Bell, Royer & Sanders Co., LPA
33 South Grant Avenue
Columbus, OH 43215

David C. Rinebolt
337 South Main St., 4th Floor, Suite 5
P.O. Box 1793
Findlay, OH 45839-1793

Andrew J. Sonderman
Cooper & Elliott, LLC
2175 Riverside Drive
Columbus, OH 43221

David A. Hackenberg
Director of Law
314 West Crawford Street
P.O. Box 1544
Findlay, OH 45839