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

THE OFFICE OF THE OHIO CONSUMERS' COUNSEL'S COMMENTS REGARDING COLUMBIA GAS OF OHIO'S OCTOBER 9, 2003 STIPULATION AND RECOMMENDATION

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I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC") herein files with the Public Utilities Commission of Ohio ("Commission") these comments on Columbia Gas of Ohio, Inc.'s ("Columbia") Stipulation and Recommendation filed in the above-captioned dockets on October 9, 2003. These comments are filed pursuant to the attorney examiner's entry of November 13, 2003.

The OCC is a participant in Columbia's collaborative process, which was first established in 1994. However, the OCC is not a signatory party to the stipulation filed October 9, 2003. The OCC opposes the stipulation because it harms residential ratepayers and is not in the public interest. The stipulation also violates important regulatory principles and practices. Therefore, the Commission cannot find that the stipulation meets the criteria established for the approval of settlements. *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 123. In these comments, the OCC will explain why the Commission must reject Columbia's October 9, 2003 stipulation.

II. ARGUMENT

A. The Stipulation violates important regulatory principles and practices by unlawfully providing Columbia pre-approval for the next six years to contract for pipeline capacity at levels that have not been shown to be reasonable.

The stipulation pre-approves Columbia's decision to contract for 100% (in the first year of the term of the stipulation) and 95% (in years two through six) of its design peak-day pipeline capacity requirements. Stipulation at 10. This means that Columbia is pre-approved to contract for 100% (and subsequently 95%) of pipeline capacity required to serve not only the peak-day requirements of its gas cost recovery ("GCR") customers but also the peak-day requirements of choice customers as well.

The stipulating parties have found the 100-95% level of contracting over this six-year term to be reasonable and have asked the Commission to approve their finding. The stipulation states that the prudence of Columbia's decisions regarding the amount of firm pipeline capacity for which to contract for the years November 1, 2004 through October 31, 2010 shall not be subject to review in Columbia's GCR proceedings. Stipulation at

20. The stipulation also states that the primary purpose of Columbia's management/ performance audits during the six-year term of the stipulation will be to examine Columbia's pipeline capacity assets to ensure that the assets are sufficient to meet the estimated design peak-day consumption of Columbia's core market customers. Stipulation at 20.

The issue is not whether the assets will be sufficient; the issue is whether the assets are excessive. According to the management/performance auditor in Columbia's current GCR audit proceeding, there are a number of reasons why a decision to contract for 100% of capacity required to serve choice customers is unreasonable. *Columbia Gas of Ohio, Inc.,* Management and Performance Audit, Case No. 02-221-GA-GCR at 4-47. The auditor finds that "retention of pipeline capacity for 100% backup of choice suppliers presumes a catastrophic 100% non-performance by these suppliers." Id. at 4-47-48. The auditor also finds such a presumption to be unrealistic and inconsistent with Columbia's experience under the choice program. The auditor finds unrealistic the contention that pipeline capacity would be unavailable in the market in the unlikely event that Columbia requires such capacity. Id. at 4-48-49.

The auditor also noted that if Columbia re-contracts for 100% of the capacity required to serve choice customers, a significant portion of the re-contracted capacity must be with Columbia's affiliates. Id. at 4-47. The great bulk of Columbia's current pipeline capacity is with Columbia's parent NiSource, Inc. ("NiSource") affiliates. The auditor notes that the affiliate capacity is built specifically to serve Columbia's markets. Id. at 4-49. If a supplier ceases to participate in the choice program and returns its customers to Columbia, these NiSource affiliate pipeline facilities will remain in place and still be available to serve customers. Id.

Commission approval of the stipulation would foreclose further consideration of the reasonableness of Columbia's pipeline capacity contracting for the entire six-year term of the stipulation. Stipulation at 10. Given that the current management/ performance audit has raised issues that cast serious doubt on the reasonableness of the stipulated level of pipeline capacity, the Commission should not approve the stipulation and thereby foreclose further consideration of these issues for the current GCR audit proceeding and for the entire six-year term of the stipulation.

The stipulation's intentional restriction on Commission review in the essential area of Columbia's pipeline capacity contracting violates important regulatory principles and practices. The Commission's statutory authority extends to consideration of Columbia's contracting for pipeline capacity in the context of the GCR management/performance audits conducted pursuant to R.C. 4905.302. The Commission must reject the stipulation and decline to pre-approve Columbia's pipeline capacity contracting for a term extending through October 31, 2010. The Commission should exercise its authority and evaluate Columbia's capacity contracting in hearings pursuant to the GCR management/performance audit proceedings.

B. The stipulation violates important regulatory principles and harms ratepayers by increasing choice program costs and then pre-approving Columbia's recovery of such costs from ratepayers.

Compounding the problem that the stipulated levels of pipeline capacity violate regulatory principles and practices by foreclosing the exercise of the Commission's R.C. 4905.302 authority for a six-year period is the fact that such levels of pipeline capacity are deemed by the stipulation to increase choice program costs. The effect of Columbia holding the stipulated levels of pipeline capacity is to create stipulated choice program costs. Stipulation at 11. In order to compensate Columbia for such stipulated choice program costs, the stipulation creates a migration cost recovery rider set at certain stipulated levels depending on certain percentages of customer migration. The stipulation pre-approves increases to the cost migration rider as choice migration increases beyond 60%. Stipulation at 17-18. Thus, the stipulation assumes that increased customer migration increases choice program costs that require increasing revenue collections from ratepayers.

Ohio law allows natural gas utilities to file applications to receive revenues for certain choice-related capacity costs that meet the statutory criteria. R.C. 4929.25. Those criteria include a Commission finding that: 1) the costs were prudently incurred, 2) the costs were legitimate, net, verifiable and directly due to capacity obligations entered into by natural gas companies on behalf of choice customers, 3) the costs are otherwise unrecoverable, and 4) the utility would otherwise be entitled an opportunity to recover the costs. In addition, pursuant to Ohio Adm. Code 4901:1-32-02(B), an applicant for the recovery of capacity costs caused by customer migration must describe the contract cost mitigation opportunities available under the existing capacity contracts. If a natural gas utility files an application pursuant to R.C. 4929.25, the Commission must hold a hearing to make its determination that the costs for which the utility seeks recovery meet the statutory criteria.

The stipulation allows Columbia to bypass the statutory requirements of R.C. 4929.25 and the regulatory requirements of Ohio Adm. Code 4901:1-32 for the recovery of capacity costs caused by choice migration. The stipulation does not allow the hearing required at R.C. 4929.25(A) for a Commission determination of the choice program costs that may be recovered from ratepayers. The stipulation does not require Columbia to show, as mandated by R.C. 4929.25, that choice program costs are prudently incurred, legitimate, net, verifiable and otherwise unrecoverable. The stipulation does not require that Columbia mitigate or eliminate choice program costs. Instead, the stipulation pre-approves the amount of program costs that Columbia will recover from ratepayers and provides for that pre-approved recovery.

The Commission should also consider the recommendations of the current management/performance auditor with respect to Columbia's mitigation of choice program costs. The management/performance auditor in Columbia's current audit proceeding finds that Columbia should contract for post-October 2004 pipeline capacity in a manner that eliminates or minimizes stranded costs. Id. at 4-49. The auditor states that Columbia should contract for pipeline capacity necessary to serve GCR customers, meet the balancing needs of choice customers and accommodate the capacity assignment elections of choice suppliers. Otherwise, the auditor finds that the capacity to meet the needs of choice customers should be contracted for only to the extent that choice customers are willing to bear the cost of that capacity. Id.

The management/performance auditor makes several recommendations for the mitigation of Columbia's choice program costs. The auditor points out that the expiration of the current capacity contracts in October 2004 provides Columbia with an opportunity to restructure its capacity portfolio. Id. at 4-50. Columbia should minimize the amount of capacity for which it contracts, investigate more cost-effective interstate pipeline arrangements with non-affiliate suppliers, and negotiate more flexible contract arrangements with its affiliate NiSource interstate pipelines. Id. The auditor recommends that Columbia's post-October 2004 contracts for pipeline capacity have staggered end dates to accommodate customer migration to choice programs and to minimize or eliminate stranded costs. According to the auditor, Columbia should seek to negotiate flexibility to adjust contract entitlements in light of anticipated changes to choice requirements. Columbia should also seek to minimize the contract terms under its new arrangements. Id. The auditor also recommends that the Commission oversee the negotiations for flexible, post-October 2004 pipeline capacity agreements that would allow Columbia to adjust contract entitlements as choice requirements change. Id. at 4-49.

The stipulation allows Columbia to avoid a Commission hearing pursuant to R.C. 4905.302 on the mitigation recommendations of the GCR management/performance auditor. As explained above, the stipulation pre-approves for a six-year term Columbia's choice program costs, finds them to be recoverable from ratepayers and establishes a migration cost recovery rider to collect revenues from ratepayers at certain levels of customer migration. The stipulation does not require Columbia to take any actions to mitigate choice program costs.

Given the mitigation issues raised by the management/performance auditor in the current proceeding and the requirements of R.C. 4929.25 with respect to the demonstration of the appropriate level of choice program costs that may be recoverable from ratepayers, the Commission should find that the stipulation violates important regulatory principles as set forth in Ohio law at R.C. 4929.25 and 4905.302. The Commission should also find that the stipulation harms ratepayers by requiring that they pay certain stipulated charges to Columbia based on certain stipulated levels of customer migration without regard to whether the charges recover costs that ratepayers are legally required to pay.

C. The stipulation also violates important regulatory principles and practices and harms ratepayers and the public interest by establishing, without Commission review, various funding sources for Columbia.

The stipulation also includes funding mechanisms for Columbia to collect additional revenues from the choice program. These funding mechanisms include revenues from gas marketers for banking and balancing services and assigned capacity and revenues from off-system sales and capacity release arrangements.

With regard to the revenues provided by marketers, these revenues result from the provision of services by Columbia to marketers. The current management/performance auditor finds that the Commission should review the volume banking and balancing services rate design in order to assure consistency between benefits and attendant costs. Id. at 7-42. The auditor also recommends that the Commission review other choice peaking and balance services in order to determine that rates are designed to recover the cost associated with the capacity resources required to provide the services. Id. at 7-43.

The stipulation forecloses Commission review of revenues provided by marketers for services performed by Columbia. These issues are appropriate subjects of review in the Commission's GCR management/performance audit proceedings. By foreclosing such review, the stipulation violates important regulatory principles and practices.

In addition to the revenues from marketers for various services performed by Columbia, the stipulation also establishes that refunds for marketers or non-choice transportation customers who have taken assignment of capacity from Columbia will be made without allowing the Commission an opportunity in advance of the refund to determine if the refund adversely affects GCR customers. Stipulation at 12-13. This stipulated provision, which represents a significant deviation from GCR procedures, should not be allowed. Given the Commission's statutory authority in GCR audit proceedings, this provision violates important regulatory policies and practices.

With regard to the revenues from off-system sales and capacity release arrangements, the stipulation provides Columbia too much discretion in the collection and disposition of off-system sales and capacity release revenues. The definition of off-system sales in the stipulation includes flowing gas sales, incremental gas sales, physical gas options, exchanges and contract management fees. Stipulation at Attachment B. The stipulation does not allow the Commission to exercise its statutory review and oversight authority with respect to the revenues from all these activities. The stipulation forecloses GCR auditing of the collection and disposition of all revenues from off-system sales as defined in the stipulation and capacity release arrangements that are agreed to before October 31, 2010. Stipulation at 20.

The stipulation also provides that the first $35 million in off-system sales and capacity release revenues each year through October 31, 2010 are retained by Columbia. After the first $35 million in any calendar year, the revenues in excess of $35 million are shared between Columbia and its core market customers. The stipulation also provides for Columbia's retention of larger percentages of revenues from off-system sales and capacity release revenues as migration levels increase. Stipulation at 16-17.

Pursuant to the operation of the GCR statute and rule, the revenues from off-system sales and capacity release arrangements should benefit GCR ratepayers. Off-system sales and capacity release use GCR assets to create revenues. Therefore, in the absence of a Commission finding that the sharing of revenues from off-system sales and capacity release arrangements is an appropriate method for the recovery of approved choice program costs, GCR customers should enjoy the benefits of such GCR-funded activities. To the extent that these revenues do not benefit GCR customers, important regulatory principles and practices are violated. In addition, any provisions that allow Columbia to retain revenues from off-system sales and capacity release harm GCR ratepayers.

D. The stipulation's provisions for the deferral of PISCC, depreciation and property tax expense violate important regulatory principles and harm ratepayers.

The stipulation allows Columbia to capitalize post-in-service carrying charges ("PISCC") on certain investments with in service dates between November 1, 2004 and December 31, 2010. Columbia is further permitted to defer for recovery all depreciation and property tax expense on all property on which PISCC is calculated. Stipulation at 21.

These deferrals will create, without any demonstration of any necessity for such deferrals, regulatory assets that Columbia will seek to recover from ratepayers at some future date. These deferrals will inflate Columbia's earnings during the years of the stipulation and increase the revenue requirement at the time of any subsequent base rate case. In short, these deferrals will result in ratepayers paying higher base rates in future years.

The Commission has granted PISCC and other such deferrals in very restricted circumstances in order to allow the utility applicant to maintain its financial integrity. *Ohio Water Service Company* Case No. 93-1959-WW-AAM, Entry (March 30, 1994). In another case, the Commission granted deferrals in "extraordinary circumstances." *East Ohio Gas Company* Case No. 92-555-GA-AAM, Entry (April 30, 1992). In the context of this stipulation, Columbia has not shown any financial distress or extraordinary circumstances that might require such deferrals. To the contrary, the stipulation includes an extended base rate freeze pursuant to which Columbia cannot file a notice of intent to file an application to increase base rates before February 1, 2010. Stipulation at 8. Columbia's agreement to such a base rate freeze illustrates that Columbia faces no immediate foreseeable financial hardship.

Given the lack of any financial emergency or extraordinary circumstance, there is no justification for PISCC and the other deferrals associated with it. The stipulation's deferral provisions create new regulatory assets that will only serve to increase base rates to be paid in the future. The PISCC and other deferrals associated with it violate important regulatory principles and practices. They also harm ratepayers and are not in the public interest.

E. The stipulation, as a package, does not include ratepayer benefits that serve to balance its numerous detrimental provisions.

Herein, the OCC has demonstrated that Columbia's October 9, 2003 stipulation violates numerous provisions of Ohio statutory and regulatory law. The stipulation violates regulatory principles and practices by foreclosing Commission review of Columbia's capacity contracting and recoverable choice program costs. The stipulation also provides Columbia with revenue collections and enhancements that are not permitted by Ohio law. The stipulation harms ratepayers and the public interest by requiring ratepayers to pay pre-approved charges for costs that the Commission has not found, pursuant to an evidentiary hearing, to be recoverable from ratepayers.

The Commission's criteria for the evaluation of settlements allow the Commission to consider the stipulation as a package so that certain beneficial provisions of a stipulation may outweigh certain detrimental provisions. In such a case, the stipulation "as a package" may be approved. In the case of the Columbia October 9, 2003, stipulation, no such beneficial provisions serve as a counter-weight to the numerous detrimental provisions.

For example, Columbia may point to provisions in the stipulation that limit Columbia's collections of revenues from ratepayers to recover choice program capacity costs. However, absent the stipulation, Columbia would not be pre-approved to collect any revenues for choice program costs from ratepayers at all. Absent the stipulation, Columbia is required to justify at an evidentiary hearing any revenues it collects from ratepayers for stranded choice program costs.

Similarly, Columbia may point to the revenue sharing provisions in the stipulation as a benefit to ratepayers. However, absent the stipulation, GCR customers would enjoy the benefits of all revenues produced by GCR assets.

Columbia may also contend that its agreement not to file a notice of intent to file an application to increase base rates before February 1, 2010 is a benefit to ratepayers. Stipulation at 8. However, such a base rate freeze has little or no value given that Columbia has not agreed to desist from filings pursuant to R.C. 4929.11. R.C. 4929.11 allows Columbia to file for an automatic adjustment mechanism so that its rates would fluctuate automatically in accordance with changes in a specified cost. Failure to preclude increases pursuant to R.C. 4929.11 negates much of the value of a base rate freeze as contained in the stipulation.

In addition, the value of the base rate freeze is greatly diminished by the stipulation's PISCC and other deferrals. By bringing out-of-test-year expenses into any test year for which a rate application is sought in the future, these deferrals create regulatory assets that will serve to increase base rates whenever a base rate application is filed. As stated above, such deferrals are detrimental to ratepayers. Such deferrals also negate the value of the stipulated base rate freeze.

Finally, Columbia may point to a provision in the stipulation that purports to address continuation of the choice program. Stipulation at 10. The choice program, which has been available system-wide in Columbia's service area since 1998, has provided opportunities for commodity savings for Columbia's customers. However, while Columbia might contend that the choice program was initially a voluntary initiative on Columbia's part that required a stipulation and agreement to continue, this is no longer the case. Columbia's current tariffs on file with the Commission provide for customer choice.

The enactment of Sub. H.B. 9 expanded choice programs to include opt-out governmental aggregation. Columbia currently has an application pending to conform its tariffs to the requirements of Sub. H.B. 9 and Ohio Adm. Code 4909:1-27. *Columbia Gas of Ohio,* Case No. 02-2903-GA-ATA. Those tariffs will set forth the procedures under which the choice program operates in Columbia's service area. Columbia cannot unilaterally terminate the choice program. The choice program will continue with or without Commission approval of the stipulation.

In sum, there is no package here providing ratepayer benefits that outweigh the harm caused by the stipulation. As with its particular provisions, the stipulation as a package does not meet the Commission's criteria for the approval of settlements.

III. CONCLUSION

The October 9, 2003 stipulation fails the criteria set forth by the Commission and approved by the Supreme Court for the approval of settlements. As discussed herein, the stipulation violates numerous important regulatory principles and practices. It harms ratepayers and is not in the public interest. Therefore the Commission cannot approve the stipulation. The Commission should continue to address the various issues raised by the stipulation in the context of Columbia's GCR financial and management/performance audit proceedings. In the event that Columbia seeks recovery of revenues through an application pursuant to R.C. 4929.25, the Commission should set the application for hearing as required by law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true copy of these *Comments of the Office of the Ohio Consumers' Counsel* was served by first-class U.S. mail, postage prepaid, to the parties identified below, this 8th day of December, 2003.

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