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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend its 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 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
In the Matter of the Application of Columbia Gas of Ohio, Inc. to Revise its Tariffs to Establish a New Gas Transfer Service.	:	Case No. 03-1459-GA-ATA

COMMENTS OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO IN OPPOSITION TO COLUMBIA GAS OF OHIO'S STIPULATION

INTRODUCTION

These comments respond to the October 9, 2003 Stipulation filed by Columbia Gas of Ohio, Inc. (Columbia or Company) in the above referenced cases. The stipulation is the result of an agreement reached by only some of the participants in the Columbia collaborative process and it differs from prior stipulations in a very significant way. In prior stipulations, all parties, including the Staff, accepted the need to fund some level of stranded costs. The Company had capacity contracts in place through 2004 which, as customers migrated to choice, would become stranded. Staff did not sign the 1999 amendment to the original stipulation, not because Staff

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believed that recovery of stranded costs was inappropriate, but rather because it was believed the Company was then substantially over-recovering its stranded costs even considering the level of risk they were assuming.

The circumstances surrounding the currently proposed stipulation are fundamentally different than in the past. With the October 2004 expiration of a significant amount of Columbia's capacity contracts, the Company has an opportunity to shape its capacity portfolio to eliminate stranded costs. The Staff asserts that the stipulation's provision for re-contracting for capacity to serve 100% (reduced to 95% after October 1, 2005) of its core market customers is unreasonable given the current and recent levels of migration experienced by the Company. Unlike the circumstances surrounding previous stipulations where stranded costs were a given, with this proposed stipulation Columbia is actually creating stranded costs and then setting up a funding mechanism to collect those costs. Staff agrees with the audit report in Case No. 02-221-GA-GCR in which the auditors concluded that retention of pipeline capacity to serve 100% of the requirements of Choice customers presumes a likelihood of 100% non-performance by Choice suppliers.[1] This presumption is unrealistic and inconsistent with Ohio's experience with Choice.

Approval of this stipulation would also prevent further Commission review of the stipulation and related issues through the year 2010. Given the successful development to date of the competitive market on the Columbia system, the Commission should not be locked into this proposal for such an extended time period.

The Company's decision to re-contract at this level is the driving force behind the creation of the funding sources detailed in the stipulation. Re-contracting at a level that more realist-

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1 *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained within the Rates Schedules of Columbia Gas of Ohio, Inc. and Related Matters*, Case No. 02-221-GA-GCR (MP Audit Report at 4-47 & 4-48) (DATE) (hereinafter "MP Audit Report at ___").

ically reflects the impacts of the Choice program would eliminate the need for these funding sources. The stipulation should be rejected.

FIRM CAPACITY

According to the stipulation, the signatory parties agree that it is reasonable for Columbia to contract for firm capacity sufficient to meet the design peak day requirements of up to 100% of its core market customers and GTS customers' Standby Sales requirements. This amount is reduced by 5% of the design peak day requirements after October 1, 2005. Core market customers include both GCR and Choice customers. Columbia proposes to recover through GCR rates only those capacity costs used to serve GCR customers. For the remaining capacity, Choice marketers will be responsible for no less than 75% of the design peak day capacity demand costs for each marketer's Choice customers. Marketers may elect to meet this requirement by taking assignment of any combination of capacity or balancing services from Columbia.

The proposed stipulation provides that all revenues attributable to marketers electing to take capacity assignment from Columbia are retained by Columbia. A funding mechanism is then established to recover the remaining capacity costs. That mechanism includes the following: Columbia will retain 100% of off-system sales and capacity release revenues up to $35 million. Revenues in excess of $35 million are shared between Columbia and core market customers with the sharing percentage varying according to the level of participation in the Choice program. Columbia's share would initially be 50% and would rise to 80% if participation reaches 80% of eligible customers. A second funding mechanism in the form of a migration cost rider will be assessed to all core market customers. The rider will not be effective until migration reaches the 60% level at which time the rider will be set at \$0.03 per Mcf. The rider will increase to a maximum of \$0.055 if migration reaches the 85% level. Columbia is responsible for all stranded costs not recovered from these funding sources.

Staff asserts that the stranded costs in question are created by Columbia, thus the recovery of these costs should be the sole responsibility of Columbia. Columbia creates these stranded costs by choosing to re-contract capacity at a level far in excess of what is reasonably required to serve GCR customers and to provide balancing services. Stranded costs occur when a new regulatory policy, like the customer choice program, is overlaid on top of a pre-existing regulatory/pricing structure. Such was the case in the prior Columbia collaborative stipulations, where customer migration to Choice was happening when the Company had a minimal opportunity to mitigate stranded costs by shedding capacity.

With the expiration of substantial amounts of its capacity contracts in 2004, Columbia has a key opportunity to reshape its capacity portfolio to more closely match its Choice program migration. Two of the other three major Ohio local distribution companies (LDCs) have adopted this strategy and eliminated stranded costs as an issue. As is reflected in the 2002 management performance audit, Columbia asserted that its decision on re-contracting TCO capacity was based on its concerns for system reliability. MP Audit Report at 4-46 he audit report demonstrates that Columbia's decision is based on a concern that, if Columbia does not re-contract for that capacity, other shippers would acquire it to serve other markets or TCO would reconfigure its system to serve non-Columbia markets. MP Audit Report at 4-47. If that were to happen, and a Choice supplier was forced to return its customers to sales service, Columbia argues it may not have sufficient pipeline capacity available to perform its provider of last resort obligation.

Beyond Columbia's assertions, there is no evidence that significant amounts of this capacity would be acquired by shippers to serve non-Columbia markets. Even if such evidence existed, retention of pipeline capacity for 100% of the Choice market presumes a 100% marketer failure rate. Given the experience to date, Staff agrees with the auditors that this is an unrealistic assumption. Customer participation levels under the Choice program have been stable since early 1999, and defaults by suppliers have involved a small number of customers. It also does not recognize the likelihood of any governmental aggregation to further speed customer migration to choice over the proposed six year duration of the stipulation.

BASE RATE ISSUES

The stipulation allows Columbia to capitalize post-in-service carrying charges (PISCC) on eligible plant investment with in-service dates between November 1, 2004, and December 31, 2010.[2] Additionally, the Stipulation provides for unlimited deferral of depreciation expense and property tax on all PISCC eligible investments.

The PISCC provision renders the rate stay-out provision worthless to customers. While Columbia would not be able to file a rate case until October 31, 2010, that rate case would include carrying charges (by inclusion in rate base) on the plant investments (including the unamortized balance of accrued PISCC), and the unamortized balance of deferred depreciation and property tax from the stipulated period. Items of expense in the Company's next rate case would include depreciation and property tax, and an amortization of the balances of deferred depreciation and property tax. Columbia would not forgo recovery of any cost, simply relegating that recovery to a later time. PISCC compensates Columbia for that delay. In other words,

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2 Eligible plant investments are described on Attachment E to the Stipulation.

Columbia would then have an opportunity to recover expenses in a future proceeding that, absent approval of this stipulation, it would not recover.

Staff is further concerned that maintaining existing rates may simply lock in over-recovery of existing costs for an additional six years. Since the last rate case, Columbia's expenses have decreased. A review of Columbia's recent annual reports to the Commission indicate earned returns, albeit on total company data, substantially above that last authorized by the Commission in a base rate proceeding. Maintaining any existing over-recovery would only benefit Columbia, not its customers. Staff is also concerned that approval of the stipulation grants Columbia permission to defer and subsequently recover those costs expected to increase without any consideration of expected cost decreases, such as reduced payroll. Finally, Staff is concerned that these deferrals are open-ended with no provisions to evaluate the level of deferrals until a rate case is actually filed.

The stipulation also carves out numerous exceptions to the rate freeze. Exceptions to the freeze are those adjustments that: (1) are specified in Commission orders relating to the Customer Choice program; (2) are specified in Commission orders related to alternative recovery mechanisms authorized by the Commission under 4929.11 Ohio Revised Code; (3) are specified in Commission orders related to public way fees authorized by the Commission under 4939.07 Ohio Revised Code; (4) may result from Commission or FERC action affecting Ohio utilities or natural gas utilities generally; (5) are necessary to reflect changes in the tax rates paid by Columbia; (6) are necessary to reflect changes in municipal, Ohio or federal law affecting utilities, or natural gas utilities, generally; (7) are necessary to reflect environmental remediation costs or to reflect changes in environmental or public and employer health and safety requirements imposed by federal or state law; (8) may be recommended by the collaborative as a result of the ongoing discussions contemplated by this 2003 Stipulation; or (9) are specified in Commission orders relating to unbundling costs. In short, these exceptions and the PISCC provisions make the rate freeze of dubious value to ratepayers.

LENGTH OF THE AGREEMENT

The proposed stipulation runs through October 31, 2010. If it is approved, the GCR auditors in the next three management performance audits will be foreclosed from evaluating the Company's capacity portfolio. Given the questionable and controversial nature of Columbia's proposal to re-contract to serve 100% of its core market customers, this lack of oversight clearly is not reasonable. The stipulation relies on assumptions that at this time, are at best, educated guesses. The level of Choice program participation, the revenues to be generated from capacity release and off-system sales, and the amount of PISCC that will be deferred are all unknown at this time. With this amount of uncertainty, it is simply unreasonable to approve a stipulation that prevents the Commission from overseeing the matters covered by this stipulation for such a lengthy period of time.

The stipulation, if approved, also precludes the Commission from re-evaluating the provider of last resort issue. Although there are no specific proposals currently under consideration, the length of this stipulation is too long a period of time to remove such an important issue from the Commission's purview.

GCR ISSUES

The auditors in the pending 2002 Management Performance Audit in Case No. 02-221-GA-GCR (2002 M/P audit) identified several issues that negatively affect GCR customers.

Commission approval of this stipulation would eliminate much of the Commission's ability to evaluate these issues not only in the pending 2002 M/P audits, but all subsequent audits through 2010. The following is a summary of what Staff believes are the significant issues identified by the 2002 management performance auditors.

1. Off-System sales and Capacity Release Revenue

The stipulation provides that off-system sales (OSS) and capacity release revenue (CRR) would all be retained by the Company up to the $35 million threshold, all to off-set capacity costs of customers participating in the Customer Choice program. Under this Stipulation, Columbia does not distinguish between its OSS and CRR revenue generated from unutilized capacity that is retained to meets sales customers' requirements and the unutilized capacity of Choice customers. Thus, revenue generated from OSS and CRR from capacity retained to meet the needs of sales customers goes first to meeting the $35 million threshold before any revenue is shared among Columbia's sales and Choice customers. As was the case prior to the 1999 stipulation and absent approval of this stipulation, OSS and CRR revenue generated from capacity retained to meet the needs of sales customers would be credited to Columbia's GCR mechanism, reducing costs to sales customers.

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. The auditors in the 2002 M/P audit noted that this use of OSS by Columbia resulted in an additional $2.7 million dollars of costs to sales customers. MP Audit Report at 5-23.

2. Migration Cost Rider

In this stipulation, Columbia proposes a "Migration Cost Rider" be placed on sales and Choice customers when Choice participation levels exceed 60%. The Migration Cost Rider, along with OSS and CRR will be used to off-set under-recovery of capacity costs associated with the Customer Choice program. This Migration Cost Rider is in addition to the capacity costs paid by sales customers through the Company's GCR. Thus sales customers pay in full for their capacity costs through Columbia's GCR and pay a portion of the capacity costs of Choice customers.

3. Choice Peaking Service

The stipulation contains a firm peaking service available to Choice marketers at no additional cost based upon each marketer's Choice balancing service election. This peaking service will require that the commodity provided by Columbia under this service be made up through the annual Choice volumetric true-up process. Staff stresses that this peaking service, at a minimum, needs to be audited in the course of future management performance audits to ensure that sales customers are not negatively impacted.

4. Volume Banking and Balancing Services

The 2002 Management Performance auditors recommend that the Volume Banking and Balancing Services (VBBS) that is provided to General Transportation Service (GTS) customers under Columbia's transportation tariffs be redesigned to reflect the benefits received and attendant costs of this service. MP Audit Report at 7-43. VBBS is provided through the use of Firm Storage Service (FSS) and Storage Service Transportation (SST) from Columbia Gas Transmission Corporation (TCO) and the costs are recovered through Columbia's GCR mechanism. Revenue collected under VBBS is credited to Columbia's GCR. The auditors noted that

Columbia discounted its VBBS service resulting in $2.7 millions less being credited to the Company's GCR. MP Audit Report at xxi. In the stipulation, Columbia and signatory parties agreed to the continued existence of the VBBS during the term of this 2003 stipulation. Staff asserts that, given the potential adverse impact on GCR customers, this service should be evaluated through each subsequent M/P audit.

CONCLUSION:

If this settlement is approved, the lack of scrutiny of the important issues covered by stipulations going back to 1996 will be extended for another six years. As every other LDC is required to do, Columbia should be required to defend its re-contracting decisions within its currently pending GCR proceeding. These issues deserve far more critical review than has occurred through the collaborative process, especially considering the significant number and diversity of collaborative participants that have not signed the agreement. Staff respectfully requests that the Commission reject the proposed stipulation in favor of a more thorough review of the issues in the pending GCR audit proceeding.

Columbia's Choice program has been a model for the nation and has provided substantial benefits to customers. Columbia has benefited, as well. There is no question that through prior stipulations to date, Columbia has been substantially compensated for its efforts. Given that the process in the offered stipulation has moved beyond even the Staff's rationale for opposing the 1999 stipulation, and the implementation of House Bill 9, the Staff contends the ongoing regulation of Columbia through collaborative stipulations is no longer in the best interest of Columbia's customers. The collaborative process should not be permitted to continue to operate as a *de facto* alternative regulation process. Although there is no question that the collaborative was instrumental in the early success of the Choice program, it is time that Columbia becomes subject to the same regulatory scrutiny as the other LDCs operating choice programs. The Staff respectfully requests that the Commission reject the October 9, 2003 stipulation filed in this proceeding.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Comments** submitted on behalf of the Staff of the Public Utilities Commission of Ohio was served by regular U.S. mail, postage pre-paid, or hand-delivered to the following parties of record, this 8th day of December, 2003.

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