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

Introduction

The Office of the Ohio Consumers' Counsel ("OCC") hereby submits these reply comments pursuant to the attorney examiner's entry of November 13, 2003. Herein, the OCC responds to the comments filed December 8, 2003 regarding Columbia Gas of Ohio, Inc.'s ("Columbia") Stipulation and Recommendation filed in the above-captioned dockets on October 9, 2003. The OCC's failure to respond herein to any comment does not necessarily mean that the OCC accepts the position taken. With respect to any of the issues raised by the stipulation, the OCC respectfully refers the Commission to the OCC's initial comments filed in these dockets on December 8, 2003, which comments are hereby incorporated by reference.

A. The Commission must reject the stipulation and exercise its statutory authority to determine the reasonableness of Columbia's pipeline capacity contracting decisions in gas cost recovery proceedings.

While Columbia stresses the reliability that it claims will result from the stipulation, the issue presented by the stipulation is whether Columbia's pipeline capacity contracting levels are far in excess of what is actually required to assure reliability. Pursuant to the stipulation, Columbia will renew its contracts with interstate pipelines, including its own NiSource affiliate pipelines, to provide Columbia the capacity to serve as much as 100% of its core market customers, including choice customers. The management/performance auditor in Columbia's current audit proceeding questions whether Columbia's capacity contracting decisions are reasonable, realistic and consistent with Columbia's experience under the choice program. *Columbia Gas of Ohio, Inc.*, Management and Performance Audit, Case No. 02-221-GA-GCR at 4-47-49.

Columbia also stresses the certainty that it claims will result from the stipulation, but the issue is whether Columbia's pipeline capacity contracting will continue to escape regulatory oversight. Columbia Comments at 6. To the extent that the certainty Columbia seeks results in a lack of regulatory oversight of its capacity contracting decisions, such certainty is not in the public interest.

The stipulation forecloses the Commission's authority to review Columbia's pipeline capacity contracting for the entire six-year term of the stipulation. As the OCC argued in its initial comments, the Commission should not forgo for the stipulation's entire six-year term its statutory authority to review Columbia's capacity contracting decisions in the context of the gas cost recovery ("GCR") audit proceedings. Columbia itself points to the problems that result when regulators are not given needed levels of oversight authority. Columbia Comments at 6-7. Given that the stipulation denies the Commission the level of oversight authority that the General Assembly saw fit to confer upon it, the Commission should reject the stipulation and maintain its oversight authority.

Columbia's reference to the "unstable and rapidly changing environment" of natural gas markets should also cast doubt on the wisdom of pre-approving Columbia's pipeline capacity contracting for the entire six-year term of the stipulation. Columbia Comments at 7. If gas markets continue to experience rapid change and increasing volatility throughout the entire six-year term of the stipulation, the Commission will not want to have pre-approved so far out into the future Columbia's pipeline capacity contracting decisions. If governmental aggregation pursuant to Sub. H. B. 9 results in choice participation rates as high as 82% by the end of calendar year 2007 as Columbia itself is projecting, again, the Commission will not want to have pre-approved Columbia's pipeline capacity contracting decisions for as far into the future as the stipulation provides. See OCC Attachment A at 3, Columbia's response to OCC Interrogatory No. 3.

The Commission Staff warns the Commission not to be locked into Columbia's proposal for such an extended period of time. Staff Comments at 2. Given the questionable and controversial nature of Columbia's proposal for re-contracting to serve 100% of its core market customers, the lack of Commission oversight is not reasonable. The length of the stipulation is too long a period of time to remove such an important issue as the level of capacity contracting from the Commission's purview. The Commission should reject the proposed stipulation in favor of a thorough regulatory review of this issue in GCR audit proceedings.

B. The stipulation harms ratepayers.

While Columbia itself makes little or no effort to support the various stipulated funding provisions, Interstate Gas Supply, Inc. ("IGS") and WPS Energy Services, Inc., dba FSG Energy Services ("WPS") fill the void by arguing in support of several of Columbia's stipulated funding provisions. IGS and WPS argue that the stipulation makes Columbia responsible and at risk for certain choice program costs. IGS and WPS Comments at 11.

Columbia's own analysis of the funding provisions shows that the actual risk to Columbia is negligible. Columbia projects the funding from the stipulation's various sources to exceed choice program costs by $68 million even before adding funding from post-in-service carrying charges ("PISCC") and other deferrals totaling an additional $124.2 million more. See OCC Attachment A at 2, Columbia's response to OCC Interrogatory No. 3. In other words, the funding from the stipulation's various sources is projected to exceed choice program costs by $68 million **and in addition to that excess $68 million, Columbia will accumulate PISCC and other deferrals totaling another $124.2 million** during the term of the stipulation. Therefore, rather than putting Columbia at risk for choice program costs, the stipulation is designed to over-fund such costs.

Moreover, with regard to the excess $68 million that the stipulation is designed to generate for Columbia, $46.4 million is provided by direct contributions from ratepayers in the form of the migration cost rider. Id. Even if there were no such direct contributions from ratepayers through the rider, the stipulation would still over-fund Columbia's projected choice costs by $21.6 million. Thus, even if the Commission were to reject the cost migration rider, the stipulation would still over-fund Columbia's projected choice program costs by $21.6 million plus the $124.2 million in PISCC and other deferrals. Therefore, given Columbia's own analysis, rather than putting Columbia at risk, the stipulation is designed to over-compensate Columbia for its projected choice program costs.

The over-funding of choice program costs is particularly improper when, as the Staff points out, Columbia's stipulated provision for re-contracting pipeline capacity actually creates stranded costs. Staff Comments at 2. With the October 2004 expiration of a significant amount of Columbia's capacity contracts, Columbia has the opportunity to shape its capacity portfolio to eliminate stranded costs. According to the Staff, 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 levels of migration experienced by Columbia. Staff Comments at 2. The Staff believes that Columbia's decision to re-contract at the stipulated levels is the driving force behind the creation of the stipulation's funding sources. Re-contracting at a level that more realistically reflects the impact of the choice program would eliminate the need for these funding sources. Staff Comments at 3.

With regard to other purported benefits of the stipulation, the OCC does not agree with Columbia that customers will benefit from the stipulation's base rate freeze. Columbia Comments at 7. As the Staff points out, the PISCC and other deferrals render the base rate freeze provision worthless to customers. Staff Comments at 5. Even though Columbia would not file a base rate case until October 31, 2010, that rate case would include carrying charges on the plant investments (including the unamortized balance of accrued PISCC) and the unamortized balance of deferred depreciation and property tax expense from the stipulated period. Columbia would not forgo recovery of any of these costs, but merely recover them at a later time. PISCC compensates Columbia for the delay in cost recovery. In addition, the numerous exceptions to the rate freeze, especially the stipulation's failure to preclude automatic cost adjustments pursuant to R.C. 4929.11, also render the stipulated rate freeze of dubious value to ratepayers. Staff Comments at 6-7.

Columbia also claims incorrectly that the stipulation will result in reduced demand rates for GCR customers. The 2003 stipulation itself creates no such result. Rather, the reduced demand rates result from the termination of the 1999 Columbia stipulation. Once the 1999 stipulation terminates, Columbia will no longer be able to calculate the GCR based on the provisions of that stipulation. The termination of the 1999 stipulation is the sole factor that reduces demand rates for GCR customers.

Columbia also implies that the stipulation brings about enhanced capital program investment in line extensions, economic development, pipeline safety and infrastructure reliability. Columbia Comments at 6. The stipulation's impact on such matters is actually nothing more than its provisions for the deferral of PISCC and all depreciation and property tax expense on all property on which PISCC is calculated. Stipulation at 21. As the OCC stated in its initial comments, 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. As the Staff of the Commission correctly points out in its comments, the PISCC provisions allow Columbia an opportunity to recover expenses in a future proceeding that, absent the approval of the stipulation, Columbia would not be able to recover. Staff Comments at 6.

Finally, Columbia also points to the continued customer benefits from the choice program. While consumers have experienced savings from participation in the program, the management/performance auditor in Columbia's current GCR audit proceeding casts doubt that customer benefits from the choice program have recently been as robust as Columbia is projecting such savings to be during the term of the stipulation. Columbia Comments at 7. Columbia has estimated that customer savings from choice may be as high as $50 million to $63 million per year during the six-year term of the stipulation. See OCC Attachment A at 2. Such estimates greatly inflate the more recent experience for customer savings under the choice program. The management/performance auditor provides total customer savings for each month from November 2000 through October 2002. Management/Performance Audit at 7-7. For an entire year from August 2001 through July 2002, the aggregate savings to customers in the choice program actually were negative. During the last year of the audit period, choice customers were disadvantaged by $64.3 million. Id. at 7-6. Therefore, Columbia's projections for customer benefits from the choice program do not reflect the recent experience of choice customers.

C. Commission approval of the stipulation is not a pre-condition necessary for the continuance of the choice program in Columbia's service areas.

The Commission should not accept the argument made by certain marketers that the choice program in Columbia's service area will suffer unless the Commission approves the stipulation. IGS and WPS state that the unknown future of Columbia's choice program is already impacting supplier business decisions and that there is reduced marketing activity in Columbia's choice program compared to the Dominion East Ohio market where ongoing competition is certain and the marketplace stable. IGS and WPS Comments at 2. IGS and WPS argue that approval of the stipulation is necessary to protect the Columbia market and that failure to approve the stipulation will result in a diminution of offers due to the uncertainty surrounding the post-November 1, 2004 period.

While the stipulation may act to give the marketers information about how the Columbia choice program will operate during the six-year term of the stipulation, the marketers cannot contend that there is no certainty in the absence of the stipulation. Columbia already has on file with the Commission the tariffs that prescribe the operation of the choice program in its service areas. Columbia also has pending an application to conform its tariffs to the requirements of Sub. H.B. 9 and the Commission's administrative rules adopted to implement the provisions of Sub. H.B. 9. There is no reason to believe that the Commission's rules and Columbia's tariffs are inadequate to provide marketers with the information they need to operate in Columbia's service areas. In addition, there is no comparable stipulation in the Dominion East Ohio service areas that would lend credence to the notion that a stipulation such as Columbia's is necessary for the success of the choice program.

Columbia cannot unilaterally terminate the choice program. Even if Columbia attempted to begin the process to end the choice program in its service areas, those seeking choice are not without remedy. Any effort on Columbia's part to withdraw its Sub. H.B. 9 tariffs would be met with certain opposition by various interested parties. Moreover, there are provisions in Sub. H.B. 9 that allow petitions to be filed with the Commission to require a natural gas company with fifteen thousand or more customers to provide distribution service. R.C. 4929.29. Therefore, it is not true that the choice program is dependent upon Commission approval of the stipulation.

Conclusion

The stipulation is a bad deal for residential ratepayers. It forecloses Commission review of Columbia's pipeline capacity contracting for the entire six-year term of the stipulation. It harms ratepayers by pre-approving funding sources and revenues for Columbia without the statutory procedures for the approval of such sources and revenues. It over-funds Columbia's own projections for costs due to customer migration. It allows for the creation of new regulatory assets that will cause Columbia's revenue requirement to increase at the time of Columbia's next base rate filing.

Thus, as the OCC stated in its initial comments, the Columbia stipulation fails the criteria set forth by the Commission and approved by the Supreme Court for the approval of settlements. 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.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of these *Reply Comments of the Ohio Consumers' Counsel* was served by first-class U.S. mail, postage prepaid, to the parties identified below, this 22nd day of December 2003.

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PUCO Case No. 94-987-GA-AIR, *et al.*
OCC Interrogatory No. 3
Respondent: Larry W. Martin

COLUMBIA GAS OF OHIO, INC.
RESPONSE TO OCC INTERROGATORIES

Interrogatory No. 3

Referring to the Stipulation at Paragraph 9, pages 11-12:

a. What are the annual estimated amounts for "Choice Program capacity costs" as defined in Paragraph 9?

b. In determining the costs in response to Subpart (a) of this interrogatory, what are the choice participation rates assumed?

c. What are all the other assumptions used in determining the costs in response to Subpart (a) of this interrogatory?

Response:

a. See Attachment 3(a), Line (2), CHOICE Program Costs.

b. See Attachment 3(a), Line (1), CHOICE Participation.

c. See Attachment 3(b).

Assumptions:
Capacity reduction of 5% starting '06
PISCC beginning 11/1/04
Surcharge escalates as participation increases
Sharing of OSS/Cap Rel. over $35 M

30-Sep-03

Line No.		2005	2006	2007	2008	2009	2010	Total
1	CHOICE Participation	62%	67%	82%	82%	82%	82%	
		$M	$M	$M	$M	$M	$M	$M
2	CHOICE Program Costs	125.5	135.6	165.7	165.7	165.7	165.7	923.0.
3	Marketer Revenues							
4	Balancing Services	39.9	43.1	55.1	55.1	55.1	55.1	
5	Capacity Assignment	41.2	44.5	52.6	52.6	52.6	52.6	
6	Increase to 75%	13.0	14.2	16.6	16.6	16.6	16.6	
7	Total Marketer Revenues	94.1	101.8	124.3	124.3	124.3	124.3	693.1
8	Net CHOICE Program Costs	31.4	33.8	41.4	41.4	41.4	41.4	230.8
9	Less: 5% Capacity Reduction	-	10.0	10.0	10.0	10.0	10.0	50.0
10	Final Net CHOICE Program Costs	31.4	23.8	31.4	31.4	31.4	31.4	180.8
11	Sharing Mechanism on OSS/Capacity Rel.							
12	Capacity Release	14.8	16.0	18.8	18.8	18.8	18.8	106.0
13	Off-System Sales	16.4	16.0	16.0	16.0	16.0	16.0	96.4
14	Total OSS / Capacity Release	31.2	32.0	34.8	34.8	34.8	34.8	202.4
15	OSS/Cap Release Shared over $35 M	-	-	-	-	-	-	-
16	50% COH if CHOICE Part. < 60%							
17	60% COH if Part. 60% - 69%	-	-					
18	70% COH if Part. 70% - 79%							
19	80% COH if Part. >= 80%			-	-	-	-	-
20	Funding Sources							
21	Capacity Release + OSS after sharing	31.2	32.0	34.8	34.8	34.8	34.8	202.4
22	Surcharge Revenue = $0.03, $0.035, $0.05	5.3	6.1	8.8	8.8	8.8	8.8	46.4
23	Total Funding Sources	36.5	38.1	43.6	43.6	43.6	43.6	248.8
24	Net CHOICE Program	5.1	14.3	12.2	12.2	12.2	12.2	68.0
25	PISCC	2.9	9.8	17.0	24.2	31.6	38.7	124.2
26	**Total Funding**	**8.0**	**24.1**	**29.2**	**36.4**	**43.8**	**50.9**	**192.2**
27	Customer Benefits	2005	2006	2007	2008	2009	2010	Total
28	Net CHOICE SAVINGS	50	53	63	63	63	63	353.0
29	Net GCR Savings	11	10	5	5	5	5	39.7
30	Base Rate Freeze	17	17	17	17	17	17	102.0
31	**Total Customer Benefits**	**78**	**80**	**84**	**84**	**84**	**84**	**494.0**
32	**Net Benefit**	**69.9**	**55.4**	**54.9**	**47.7**	**40.3**	**33.2**	**301.2**

Attachment 3 (b)

Major Assumptions Used In Development Of Columbia's Response to OCC Interrogatory No. 3(a)

- The implementation of the opt-out provision of HB 9 by various governmental entities will result in a significant increase in Columbia's CHOICE Program participation rates.
- The implementation of the HB 9 opt-out provision by these entities will result in a CHOICE Program participation rate of 62% by October 31, 2005.
- CHOICE Program participation rates will increase an additional 5% during the calendar year 2006 as more municipalities elect to participate in the program.
- There will be a major increase in Columbia's CHOICE program participation rates during Calendar Year 2007 as the program grows in popularity. This will result a decision by major municipalities to become Natural Gas Aggregators and will result in an overall participation rate of 82% by the end of the calendar year 2007 which will remain constant for the balance of the term of the Stipulation.
- COH contracts for peak day capacity equal to 100% of the demand of core market and GTS standby customers for the first year, 2004-05.
- This peak day capacity contract level will be reduced to 95% of the demand of core market and GTS standby customers during the 2005-2006 gas year and remain constant for the balance of the term of the Stipulation.
- COH contracts for peak day capacity based on a design temperature with a 10% risk level.
- COH serves as the Provider of Last Resort.
- Total capacity costs are calculated based on projected contracted capacity and March 2003 pipeline rates.
- COH contracts for 70 MDth of Tennessee FT capacity and 433 MDth of Gulf FTS-1 capacity.
- COH contracts for either ANR or Panhandle capacity sufficient to meet operational needs on the west side of Toledo.