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 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 Long-Term Forecast Report of Columbia Gas of Ohio, Inc. and Related Matters.	)	Case No. 97-122-GA-FOR

ENTRY

The Commission finds:

(1) On June 3, 1994, Columbia Gas of Ohio, Inc. (Columbia) filed a notice of intent to file an application for an increase in rates in its service area (Case No. 94-987-GA-AIR). In addition, a joint stipulation and recommendation was submitted by most of the parties to Columbia's prior rate case to authorize Columbia to increase rates and to implement a comprehensive package of new services. The stipulation was supported by Columbia, the staff of the Commission, the Ohio Consumers' Counsel (OCC), Industrial Energy Consumers (IEC), Honda of America Mfg., Inc. (Honda), Enron Energy Services (Enron), the city of Toledo (Toledo), the city of Columbus (Columbus), the Bay Area Council of Governments, the Greater Cleveland Schools Council of Governments, the Lake Erie Regional Council of Governments (the Schools), the Ohio Farm Bureau Federation (Farm Bureau), and Industrial End Users-Ohio (IEU) [collectively the Collaborative]. The Commission adopted the 1994 stipulation by opinion and order issued November 29, 1994.

(2) On October 28, 1996, members of the Collaborative filed a proposed amendment to the 1994 stipulation. The 1996

stipulation amendment was the result of the reiteration of the collaborative process contemplated by the 1994 stipulation. Among other things, the 1996 amendment provided that, prior to March 1, 1998, Columbia would not file a notice of intent to file an application to increase rates, or request modification of accounting practices for additional cost deferrals. The 1996 amendment also provided that, prior to January 1, 1999, there would be no upward base rate adjustments or additional accounting deferrals for transportation or sales customers, except as necessary to effectuate Columbia's Customer Choice program, or as a result of generic proceedings with industry-wide application. The 1996 amendment also permitted Columbia to retain, from 1996 through 1998, revenues from historic off-system sales and as a result of continuation of the Federal Energy Regulatory Commission (FERC) Order 636 transition cost surcharge. By entry issued December 12, 1996, the Commission approved the 1996 amendments to the stipulation.

(3) On October 17, 1996, Columbia filed an application (Case No. 96-1113-GA-ATA) to establish its Customer Choice program for residential, small commercial, and human needs customers. By order issued January 9, 1997, the Commission approved Columbia's Customer Choice program subject to the incorporation of certain recommendations of the staff and other modifications specified by the Commission. The first phase of the program was implemented beginning April 1, 1997 in the Toledo/Lucas County area.

(4) On November 28, 1997, the Collaborative filed a second amendment to the stipulation to address the issue of transition capacity costs associated with continuation of the Customer Choice program. The second amendment also contained certain other modifications including an extension of the earliest date for filing a base rate increase application (March 1, 1999); request for approval of a funding mechanism, and the establishment of a transition cost recovery pool, to accommodate expansion of the Customer Choice program throughout Columbia's service territory; the treatment of off-system sales and capacity release revenues; a partial true-up mechanism for under/over-recovery of transition capacity costs; and reporting requirements regarding the status of the Customer Choice program. By entry issued January 7, 1998, the Commission approved the second amendment to the stipulation.

(5) The Collaborative discussed Columbia's statewide expansion of the Customer Choice program in early 1998 and, on March 31, 1998, Columbia filed an application seeking expansion of the program. On June 18, 1998, the Commission issued an order that authorized Columbia to expand the Customer Choice program throughout its service area for a four-year period.

(6) On October 25, 1999, signatory parties of the Collaborative submitted a third amendment to the stipulation in Case No. 94-987-GA-AIR and an amendment to the stipulation in Case No. 96-1113-GA-ATA (1999 Stipulation)[1]. These amendments are proposed as a result of additional discussions undertaken by the Collaborative to address the status of the transition capacity cost recovery pool and continuation of the program beyond the four years approved in 1998. The 1999 Stipulation also proposes certain amendments to a stipulation filed on June 8, 1999 in Columbia's 1998 GCR case (98-222-GA-GCR). The 1999 Stipulation indicates that the Customer Choice program should continue throughout Columbia's service territory through October 31, 2004, consistent with the Commission's ongoing review of Columbia's program. The parties also request that the revised funding mechanism, and the associated accounting, be approved by the Commission. Set forth below is a description of the terms of the 1999 Stipulation.

(a) Under the agreement, Columbia would not file a notice of intent to file an application to increase base rates prior to February 1, 2004 and, prior to October 31, 2004, there would be no upward base rate adjustment, by rider or otherwise, requested by Columbia upon its transportation or sales customers except in accordance with the limited circumstances set forth in the agreement. The agreement provides that Columbia would not be prohibited from filing an alternative regulation application under House Bill 476, subject to the base rate prohibitions stated above. In the event of subsequent actions in

1 The Collaborative members that signed the 1999 Stipulation are Columbia, OCC, Columbus, Toledo, the Schools, Honda, the Farm Bureau, and Enron. On November 8, 1999, IEU filed a letter encouraging the Commission to adopt the stipulation. On November 17, 1999, IEC filed a similar letter asking that the stipulation be approved.

generic dockets affecting Ohio LDCs, or due to tax changes, any Collaborative member may request that the Collaborative be reconvened to discuss the appropriate treatment of such issues.

(b) The signatory parties indicate in the agreement that Columbia has contracted for pipeline and storage capacity in quantity and quality sufficient to ensure its sales customers have adequate gas supplies. The stipulation states that these transition capacity costs have historically been recovered through the Gas Cost Recovery rate (GCR) but, as sales customers migrate to transportation service under the Customer Choice program, sales customers should no longer pay for all these costs. The agreement provides that the transition capacity costs resulting from Columbia's Customer Choice program shall be identified and removed from Columbia's GCR on a monthly basis and placed into a separate account referenced as the "Transition Capacity Cost Recovery Pool." According to the 1999 Stipulation, the transition capacity costs placed into the cost recovery pool will be calculated by multiplying the monthly consumption of Customer Choice customers by Columbia's then effective expected gas cost demand rate, assuming no contract cost reduction arrangements. Through October 31, 2004, customers would continue to be billed GCR rates based upon Columbia's contracted capacity requirements as of April 1, 1997, plus any additional capacity requirements contracted for subsequent to that date, subject to standard GCR prudence review.

(c) The funding mechanism under which Columbia will recover the transition capacity costs in the Transition Capacity Cost Recovery Pool is set forth in the stipulation. The agreement provides that Columbia can retain revenues associated with Voluntary Capacity Assignments, Choice Balancing Service revenues, Stranded Costs Recovery Rider revenues, Pipeline Refunds, Transition Cost Surcharge revenues, Off-

System Sales revenues, and Capacity Release revenues. The revenues from these sources would be recognized on Columbia's books only to the extent that transition capacity costs are incurred as a result of the Customer Choice program. If these revenues exceed transition capacity costs during any accounting period through 2004, Columbia would defer such revenues on its books. The agreement further provides that there will be no true-up of the amounts booked to the Transition Capacity Cost Recovery Pool and the revenues credited to the Pool. The specific terms of these revenue sources are as follows:

(i) Voluntary Capacity Assignment
The Transition Capacity Cost Recovery Pool will be credited with the revenues received as a result of marketers electing to take capacity as part of the Customer Choice program.

(ii) Choice Balancing Service Revenue
Prior to April 1, 2002, all marketers and brokers arranging for the commodity sale of gas to customers, who do not elect assignment of a pro rata share of FSS storage capacity, must utilize the Statewide Optional Balancing Service. After April 1, 2002, marketers and brokers must choose one of two Choice Balancing Services. The first option is Non-Temperature Balancing ($0.2547/Mcf) for marketers that elect assignment of a pro rata share of FSS storage capacity. The other option is Full Balancing Service ($0.4680/Mcf) for marketers that do not elect assignment of a pro rata share of FSS storage capacity.

(iii) Stranded Costs Recovery Rider Revenue
The Transition Capacity Cost Recovery Pool will be credited with the

revenues received pursuant to Part 69 First Revised Sheet No. 85 of Columbia's tariff.

(iv) Pipeline Refunds
Revenues of $20,604,000 that are received as a result of pipeline refunds in various FERC proceedings shall be credited to the Transition Capacity Cost Recovery Pool. All other pipeline refunds received by Columbia will be credited to the GCR.

(v) Transition Cost Surcharge Revenues
According to the stipulation, revenues accumulated by Columbia as a result of the FERC Order 636 Transition Cost Surcharge will exceed the total transition costs allocated to Columbia's transportation customers. The agreement provides that Columbia shall use any balance in Account 191 attributable to this surcharge for the purpose of crediting the Transition Capacity Cost Recovery Pool.

(vi) Off-System Sales Revenues
The Transition Capacity Cost Recovery Pool will be credited with off-system sales revenues generated prior to January 1, 1999 and allocated to the Transition Capacity Cost Recovery Pool or Columbia pursuant to paragraphs 16 and 17 of the 1997 Stipulation. The Transition Capacity Cost Recovery Pool shall also be credited with off-system sales revenues generated between January 1, 1999 and October 31, 2004. The Transition Capacity Cost Recovery Pool will not be credited with any off-system sales revenue passed through to GCR customers prior to December 23, 1999.

(vii) Capacity Release Revenues
The Transition Capacity Cost Recovery Pool will be credited with capacity release revenues generated prior to January 1, 1999 and allocated to the Transition Capacity Cost Recovery Pool or Columbia pursuant to paragraph 18 of the 1997 Stipulation. The Transition Capacity Cost Recovery Pool shall also be credited with capacity release revenues generated between January 1, 1999 and October 31, 2004. The Transition Capacity Cost Recovery Pool will not be credited with any capacity release revenue passed through to GCR customers prior to December 23, 1999.

(viii) Columbia Revenues
The 1999 Stipulation provides that, beginning in 1999, Columbia will contribute $159,700,000 of its revenue to the Transition Capacity Cost Recovery Pool. $23,808,000 will be contributed in 1999 and 2000 and $28,021,000 will be contributed in the years 2001 through 2004. In addition, beginning in 2000 Columbia will contribute the first $5 million of annual Contract Cost Reduction Arrangements revenue as additional funding to the Transition Capacity Cost Recovery Pool.

(d) The 1999 Stipulation also provides that all off-system sales and capacity release arrangements agreed to before October 31, 2004 should not be subject to review in Columbia's GCR cases. Rather, according to the agreement, the primary purpose of the management/performance audits in the Columbia GCR cases will be to examine Columbia's gas supply capacity assets and firm gas supply portfolio to ensure that such assets and gas supply portfolio are reasonable and sufficient to meet the estimated design peak day consumption of Columbia's GCR customers. In addition, the Collaborative recommends that certain revisions be made to the stipulation filed on June 8, 1999 in Case No. 98-222-GA-GCR given the comprehensive nature of the 1999 Stipulation being addressed herein.

(e) The 1999 Stipulation also recommends that Columbia be authorized to revise its depreciation accrual rates for the period January 1, 1999 through December 31, 2004. Columbia will advise the Collaborative of the need to readjust its depreciation rates after that date but, in no event, would Columbia be able to recover more than its investment in property, plant, and equipment.

(f) The Collaborative parties also agree that Columbia should be permitted to implement a gross receipts tax rider for gas costs. Columbia's base rates would be reduced to remove the gross receipts tax on gas costs and, thus, all sales rates would be subject to the gross receipts tax rider.

(g) With respect to reporting requirements, Columbia would be required to provide reports detailing the status of the Customer Choice program by May 1 and November 1 of each year through November 1, 2004. These reports would include information required by the Commission, a description of amounts removed from the GCR to the Transition Capacity Cost Recovery Pool, revenues credited to the Pool, and any other information deemed necessary.

(h) The signatory parties agree to meet no later than January 2001 to discuss issues related to implementation of the 1999 Stipulation including the status of the Customer Choice program and any other necessary tariff changes. The parties further agree to continue to participate in the Collaborative with respect to continuation of the Customer Choice program after 2004, participating in semi-annual progress briefings, and discussion of significant regulatory issues.

(i) The 1999 Stipulation provides that, with respect to the "obligation to serve" issue, the signatory parties will participate in Collaborative discussions to explore issues related to serving firm transportation customers in open access transportation programs. The agreement indicates that Columbia plans to file an application with the Commission, with a target date of April 1, 2000, in which the company will propose methods of dealing with issues related to its obligation to serve, its merchant function, and its role as provider of last resort.

(j) Other matters addressed by the 1999 Stipulation include the non-severability of the terms of the agreement, the reservation to parties of Section 4905.26, Revised Code, complaint rights, and the attachment of proposed accounting procedures for the matters set forth in the stipulation.

(7) On November 17, 1999, the staff of the Commission filed a response to the 1999 Stipulation. Based on its evaluation of the stipulation and supporting documents provided by Columbia, the staff concluded that the agreement provides revenues significantly in excess of those required, even if migration rates (of customers to the Customer Choice program) are higher than anticipated. The staff expressed concern that the stipulation unreasonably constrains the Commission's ability to protect GCR customers. According to the staff, adoption of the stipulation (assuming 45 percent residential and 60 percent commercial customer participation) will result in Columbia recovering an estimated $198 million in excess of its projected actual/incurred transition costs through June 2002. Through October 2004, the staff estimates that Columbia will have recovered an estimated $301.7 million in excess of its projected actual/incurred transition costs. The staff states that, even if Columbia had received base rate increases to which it likely would have been entitled in 2002 and 2004, the proposed stipulation would result in a net surplus of $166.1, million in 2002 and $220.7 million in 2004. The staff claims that there is adequate time remaining during the 2 1/2 years of the existing agreement for the Commission, Columbia, and Collaborative members to establish mechanisms and policies to address Columbia's

circumstances upon the expiration of the current agreement. The staff suggests that the Commission address generically the transition issues facing Columbia and other major gas companies with respect to the issues addressed in the stipulation. The staff believes that, if Columbia receives funding through the proposed agreement, it will have less of an incentive to assist the Commission in addressing the broader transition issues.

(8) On November 23, 1999, Columbia submitted a reply to the staff's response. Columbia argues that the staff has inappropriately focused on selected, individual pieces of a comprehensive consensus agreement, while failing to consider the broader benefits of the stipulation. Columbia claims that the agreement: assures the continuation of the nation's leading voluntary choice program, while preserving the opportunity for customers to continue to receive significant savings through the optional capacity assignment feature of the program; relieves customers of the obligation to fund over $111 million in transition capacity costs; and places on Columbia the total responsibility for transition capacity costs, without caps or safety nets. Columbia contends that its successful Customer Choice program is scheduled to expire in June 2002 and that, without the extension provided for in the 1999 Stipulation, customers will remain liable for hundreds of millions of dollars of transition capacity costs already incurred, along with any prospective liability for such costs. According to Columbia, the 1999 Stipulation provides the following benefits:

(a) Maintains a robust Choice program with defined exposure and balanced risk elements, and extends the program through October 2004, while positioning the program to continue indefinitely beyond 2004;

(b) Holds all customers harmless and places upon Columbia total responsibility for the Transition Capacity Cost Recovery Pool through the remaining term of Columbia's pipeline capacity contracts (over $700 million in total transition capacity costs);

(c) Freezes Columbia's base rates through October 31, 2004; and

(d) Establishes a process to address merchant function, obligation to serve, and provider of last resort roles and responsibilities.

Columbia also contends that the staff's risk/reward analysis of the agreement is short-sighted because it fails to consider the entire progression of the regulatory agreements leading up to the 1999 Stipulation, and fails to consider the customer benefits flowing from the agreement. Columbia argues further that, contrary to the staff's contention, there is not adequate time during the remainder of the existing agreement to renegotiate the issues addressed in the 1999 Stipulation. Columbia claims that delaying resolution of the issues addressed in the stipulation would result in the diminished availability of funding sources and would make it more likely that a customer surcharge would have to be imposed for funding the Transition Capacity Cost Recovery Pool. Columbia states that the 1999 Stipulation does not adversely impact GCR customers because the value of any commodity utilized in time-differentiated exchange transactions will be removed from the GCR calculation until the exchange gas is returned to the supply mix, at which time it will then be recognized dollar for dollar at an amount equal to the amount removed from the GCR. Columbia concludes that the staff's response is skewed because it looks only at selected issues and fails to consider the broader implications of the agreement and the customer benefits associated with continuation of the Customer Choice program.

(9) Also on November 23, 1999, the Commission conducted a public discussion session of the issues raised by the 1999 Stipulation and the staff's response. At the discussion session, representatives from Columbia and the staff presented arguments and responded to questions from Commissioners. After reviewing the terms of the agreement submitted by the Collaborative, as well as the written and oral comments offered by Columbia and the staff, we are prepared to render a decision regarding the 1999 Stipulation.

(10) Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of a stipulation are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St. 3d 123, at 125,

citing Akron v. Pub. Util. Comm. (1978), 55 Ohio St. 2d 155. In a number of cases, the Commission has commended the parties to a negotiated agreement for simplifying the consideration of contested issues and for reducing the hearing time that may otherwise have been required. *See, e.g., Ohio Edison Co.*, Case No. 82-1025-EL-AIR (September 14, 1983); *Cincinnati Gas & Electric Co.*, Case No. 83-1528-EL-AIR, et al. (November 20, 1984). In reviewing a settlement agreement, however, our primary concern is that the stipulation is in the public interest. The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994 *Order on Remand*); *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (August 19, 1993); *Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR (January 31, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). In reviewing the stipulation, the ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a settlement, the Commission has used the following criteria:

(a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(b) Does the settlement, as a package, benefit ratepayers and the public interest?

(c) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve cases in a method economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St. 3d 547 (1994), *citing Consumers' Counsel, supra*, at 126. In that case, the court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Id.*

For the reasons set forth below, we find that the stipulation submitted by the Collaborative satisfies the three-prong test that has been used in a number of prior proceedings to evaluate such agreements. The first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is clearly met. Counsel for the signatory parties have been involved in many cases before the Commission, and the most recent stipulation evidences a considerable level of detail with respect to the most recent efforts of the Collaborative to resolve the complex issues associated with Columbia's Customer Choice program.

The settlement agreement also meets the second criterion. The 1999 Stipulation benefits ratepayers and the public interest by providing a mechanism to help facilitate continuation of Columbia's Customer Choice program, through October 31, 2004, without increasing existing rates to cover transition costs associated with migration of customers to the Choice program. As the Collaborative points out, the Choice program is scheduled to expire in June 2002 and, under the prior agreement, customers would remain liable for over $100 million in transition capacity costs associated with implementation of the program. Under the 1999 Stipulation, customers will be held harmless for these costs and Columbia will bear responsibility for the Transition Capacity Cost Recovery Pool through the remaining term of Columbia's pipeline capacity contracts. In addition, customers' base rates will be frozen through at least October 31, 2004, thereby providing additional rate stability for consumers. All of these factors support the conclusion that the most recent amendment to the prior stipulation benefits ratepayers and the public interest by ensuring continuation of Columbia's successful Customer Choice program.

Finally, the stipulation meets the third criterion because it does not violate any important regulatory principles or policies. Indeed, as stated above, the agreement enhances the regulatory principle of rate stability by extending the period of time during which Columbia will be precluded from seeking a increase in its base rates. The stipulation also continues the movement towards competition in the industry by extending the term of the Customer Choice program for an additional two years. Columbia's customers will receive the benefit of maintaining and continuing the regulatory policy of choice of gas providers. In addition, the 1999 Stipulation establishes a process to address important regulatory policies associated with merchant function, obligation to serve, and provider of last resort roles and responsibilities. For all of these reasons, we find that the stipulation is in the public interest and represents a reasonable disposition of the issues negotiated by the Collaborative with respect to Columbia's Customer Choice program. We will, therefore, approve the stipulation submitted by the Columbia Collaborative.

(11) We also believe that the GCR Audits portion of the stipulation (Paragraph 21) meets the criteria discussed above. The revisions to the June 8, 1999 stipulation in Columbia's 1998 GCR case (Case No. 98-222-GA-GCR)[2] are reasonable and consistent with the more recent 1999 Stipulation that is being approved herein. Therefore, as requested by the Collaborative, Paragraphs 3, 5, and 6 shall be deleted and the revised Paragraph 4 shall be adopted as part of the GCR stipulation. As requested in the 1999 Stipulation, the primary purpose of the management/performance audits in subsequent Columbia GCR cases (covering audit periods through October 31, 2004) will be to examine Columbia's gas supply capacity assets and firm gas supply portfolio to ensure that such assets and firm gas supply portfolio are reasonable and sufficient to meet the estimated design peak day consumption of Columbia's GCR customers. Therefore, the June 8, 1999 stipulation in Case Nos. 98-222-GA-GCR and 97-122-GA-FOR shall be approved, subject to the modifications discussed above.

(12) As noted above in our discussion of the terms of the 1999 Stipulation, the agreement provides (Paragraph 31) that the signatory parties reserve their rights under Section 4905.26, Revised Code, to file a complaint with respect to, among other things, Columbia's annual earnings. We wish to make clear that, consistent with this agreement of the parties, the Commission reserves its right to examine allegations raised by signatory parties or the staff regarding excess earnings for Columbia. One other point requires clarification. The stipulation provides (Paragraph 27) for a "target date" of April 1, 2000 for Columbia to submit an application dealing with issues related to merchant function, obligation to serve, and provider of last resort. Because of the importance of resolving these critical issues, we will require that Columbia submit an application regarding these issues by no later than April 1, 2000 rather than leaving that date as simply a tentative target date.

2 The June 8, 1999 stipulation was submitted in a joint proceeding dealing with Columbia's 1998 GCR case and its 1997 long-term forecast case (97-122-GA-FOR).

(13) As part of the 1999 Stipulation, the signatory parties have submitted proposed tariffs and accounting treatments consistent with the stipulation. The Commission finds that the tariffs and accounting treatments conform to the stipulation and they shall, therefore, be approved. The new tariffs shall be effective with the date of issuance of this entry on a service rendered basis.

It is, therefore,

ORDERED, That the 1999 Stipulation with the proposed tariff changes and accounting treatments be approved and adopted, subject to the above-stated clarifications. It is, further,

ORDERED, That the June 8, 1999 stipulation filed in Columbia's 1998 GCR case (98-222-GA-GCR) and 1997 long-term forecast case (97-122-GA-FOR) be approved, as modified in accordance with the overall 1999 Stipulation approved herein and as described above. It is, further,

ORDERED, That Columbia is authorized to cancel and withdraw its present tariffs affected by the stipulation and to file, in final form, four complete printed copies of its revised tariffs which are hereby approved. The tariffs will become effective with the issuance of this entry on a service rendered basis. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Ronda Hartman Fergus

Craig A. Glazer — See Concurring Opinion Att

No. see dissent attached
Judith A. Jones

Donald L. Mason

DDN;geb

Entered in the Journal

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A True Copy

Gary E. Vigorito
Secretary

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CONCURRING OPINION OF COMMISSIONER CRAIG A. GLAZER

I concur in today's decision relative to the Gas Choice Program, Case Nos. 98-593-GA-COI et al. Over one year ago, in a prior gas choice Order, I raised the need for the Commission and the gas companies we regulate to tackle the issue of provider of last resort as well as reform of the GCR head-on. I challenged the gas companies to provide us with specific proposals to address these issues in innovative ways, rather than continue to create artificial "savings" or losses in their gas choice program due to the regulatory anomolies of the quarterly GCR calculation. In over one year's time, we received virtually no specific proposals from any of the gas companies. This is especially disappointing since the Commission acted quickly on a number of their requests, including the CNG/Dominion merger case and today the generic gas choice order in Case Nos. 94-987-GA-AIR et al.

I am heartened that the Commission has addressed the issue head-on in today's generic Gas Choice Order and provided some policy direction of where this issue should go. I hope that we follow-through with staff-initiated work groups and forums on the issue. I confess to a certain reluctance to leave this policy issue to the Columbia Collaborative. The Columbia Collaborative has done many good things and I have no problem with assigning to it the many technical reforms to the program embodied in the Order today. However, GCR reform is a creature of regulation and provider of last resort issues are uniquely policy issues which the Commission should drive. I hope that, to the extent the collaborative takes up these issues, it involves all of the Commissioners rather than continuing to provide us "take it or leave it" stipulations, such as the one before us today, where it is sometimes hard to discern the rationale and motivation of individual parties' agreement.

I am concurring with the adoption of the Columbia stranded cost stipulation in Case Nos. 94-987-GA-AIR et al. today IF it works to drive a final resolution of these bigger issues. I am concerned that the stipulation somewhat puts the cart before the horse - the Consumers Counsel and the City of Columbus have pledged millions of dollars of ratepayer money toward retirement of stranded costs before we've ascertained whether any of these costs are truly stranded. Under today's regime, and absent provider of last resort and GCR reform, Columbia needs to retain capacity, even if the choice customers leave, since they may come back and since Columbia alone remains the provider of last resort. On the other hand, if the larger issues are resolved quickly, then the stipulation can provide a means to eliminate the "overhang" of stranded cost liability, albeit at a less-than-optimal price. If the stipulation drives the consumers and the company to quickly resolve this bigger issue working cooperatively with the Commission, then its adoption would have had some incremental benefit. If it does not, or if the Collaborative does not fully consider the public interest, then adoption of the stipulation today would have been a sad and costly mistake. Although this has engendered some controversy and a number of my questions remain unanswered, I am willing to accept the stipulation to the extent it represents and drives a real commitment to resolve the bigger issues in a way which meaningfully involves the Commission in the decision-making process.

Finally, I wish to point out that we CAN reform the GCR on our own today as a first and measured step toward resolving the bigger issues of provider of last resort. The GCR is a creature of our own rules. I remain concerned that our GCR reviews (other than the recent Columbia Gas audit that, ironically, has been settled), have often just turned into a rote calculation of numbers and continual assignment of tasks to future auditors. The GCR audits are not performing a meaningful function and, as a result, I suggest that staff's efforts be redirected to put together its own proposal toward a more market-based or performance-based means to recover gas costs for customers who cannot or choose not to seek alternative suppliers. This task is solely within our own control and does not require company consent, alternative regulation filings or any stipulation from the Columbia collaborative.

I remain interested in working through these difficult issues with staff and the various companies and consumer parties.

Craig A. Glazer
Commissioner

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Gary E. Vigorito
Secretary

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DISSENTING OPINION OF COMMISSIONER JUDITH A. JONES

Having read the stipulation, the staff report, and the Columbia response, and having listened to the tape of the presentation to the Commission on Tuesday, November 21, 1999, I respectfully disagree with my colleagues.

I do want to reiterate my support for the Choice Program and to Columbia Gas of Ohio for its vision in starting and vigorously promoting Choice. It is the most successful program of its kind and a model for others in the country. Also, I support collaborative efforts and commend the Columbia Collaborative for its work and for many successful negotiated agreements during the past several years.

However, in my opinion, the stipulation before us today is not a balanced resolution of the problem of likely stranded costs that may exist for the company. In addition, there are some policy decisions made for the Commission with which I strongly disagree.

I agree with the staff's position that the stipulation should be rejected, and am concerned that the Commission's action today significantly erodes its ability to assure that gas cost recovery (GCR) customers are protected. On that count alone I believe that important regulatory principles are violated and, therefore, the Commission's own standard for approval of stipulations is not met. I believe that approval and adoption of the stipulation provides a blanket immunity to Columbia from any meaningful Commission oversight of its off-system sales activities. I am concerned that the company is now free to manage its resource portfolio so as to maximize its bottom line, rather than minimize costs to GCR customers. Rather than examining the harsh criticisms of the independent auditor in the most recent Columbia management/performance GCR audit, the Commission has condoned the company's practices in establishing an incentive structure that would reward Columbia at the expense of GCR customers.

I'm also troubled by the extent of overrecovery of "transition costs" that approval of the stipulation most likely assures. The Commission's approval today provides for the extension of a provision of the 1997 agreement, allowing transition costs to be calculated based on the company's contracted capacity requirements as they existed on April 1, 1997. As we now know, Columbia was subsequently able to decontract a significant portion of that capacity, thereby reducing the transition costs actually incurred. As such, Columbia is recovering more than actual transition costs -- $54.5 million more by the expiration of the 1997 agreement in 2002, according to the staff's unrefuted calculations. Approval of the collaborative's stipulation continues and actually accelerates that overrecovery to $198 million by 2002 and $301.7 million by 2004. These magnitudes compensate the company for its transition costs, its forgone rate increases, and more -- to levels that are beyond that necessary or reasonable for undertaking and nurturing a successful Choice program. My intention is not to revisit the existing stipulation, however, I do believe we should use these numbers to judge an extension of the stipulation.

Finally, I am dissenting from the order because the stipulation provides for the creation of an excise tax rider. The proposed rider would apply only to the GCR portion of the customers' bills and would replace the tax on the GCR portion of customers' bills that is currently included in base rates. Approval of the rider by the Commission will result in an increase in rates for Columbia's GCR customers. While nothing in the Revised Code prohibits an automatic adjustment mechanism of this type, the Commission cannot ignore other relevant statutes that come into play when a company wants to increase its customers' rates. The Revised Code requires that consumers be afforded due process whenever a public utility seeks to increase rates charged its customers. Because the proposed excise tax rider would result in a rate increase for Columbia's GCR customers, the Commission should require that Columbia file an application to increase rates, proper notice of the request to increase rates should be given to Columbia's customers, the Commission staff should be required to investigate the proposed increase and issue a report, and a public hearing should be scheduled during which Columbia should be required to show that the proposed increase is just and reasonable. In addition, public hearings should be scheduled to allow consumers to comment on the proposed increase.

I continue to commend Columbia for conducting the most successful such program in the country. I would have appreciated the opportunity to approve a stipulation addressing the transition cost shortfall as of 2002, resulting from the unanticipated growth in Choice customers since the program's inception. By approving a continuation of certain principles of the 1997 stipulation that, in retrospect, were overly generous to the company, and restricting future regulatory oversight to the detriment of GCR customers, the Commission is conceding much more than is warranted to assure the continuing success of the Choice program.

Judith A. Jones
Judith A. Jones
Commissioner

Entered in the Journal
DEC 2 1999
A True Copy
Gary E. Vigorito
Secretary

SERVICE NOTICE

CASE NUMBER	98-222-GA-GCR
CASE DESCRIPTION	COLUMBIA GAS OF OHIO, INC.
DOCUMENT SIGNED ON	December 2, 1999
DATE OF SERVICE	12-3-99

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