**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In The Matter Of The Application Of Columbia Gas of Ohio, Inc. For Approval To Change Accounting Methods. | )  )  ) | Case No. 20-1104-GA-AAM |

**COMMENTS REGARDING THE APPLICATION OF COLUMBIA GAS FOR APPROVAL TO CHANGE ACCOUNTING METHODS AFFECTING CONSUMERS**

**BY**

**THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

Columbia Gas of Ohio (“Columbia”), which will resume disconnections of consumers on July 29, 2020, seeks to defer expenses and foregone revenue related to its coronavirus Emergency Plan, for collection from consumers in the future. Columbia’s application should be denied.

In these difficult times when Columbia’s consumers in 61 counties throughout Ohio are facing unprecedented health, safety, and financial worries, the PUCO should be especially vigilant to ensure that consumers will not overpay for gas utility service. And the PUCO should be cautious in responding to utility requests to insulate their finances, at consumer expense, from the economic pain that consumers and businesses in Ohio are suffering. In this regard, the PUCO should be skeptical about utility proposals for government to “cushion the pandemic’s impact”[[1]](#footnote-2) or to allow utilities to “reap a windfall” at consumers’ expense (as a former President of the National Association of Regulatory Utility Commissioners recently warned).[[2]](#footnote-3)

Columbia’s proposal fails to satisfy the PUCO’s deferral standards including requirements set forth in the PUCO’s May 20, 2020 Order in Case No. 20-637-GA-UNC (“Emergency Plan Order”) in which the PUCO approved Columbia’s Emergency Plan. Additionally, Columbia’s request to defer “foregone revenue” should be denied because consumers should not become guarantors of revenues and earnings for utilities.

If the PUCO allows for the deferrals (and it should not), then it should implement protections for consumers including requiring the foregone revenues to be offset with revenue increases experienced during the emergency. And before approving the deferrals for collection from consumers, the PUCO should examine Columbia’s earnings during the period to assess whether charging consumers for foregone revenue recovery is just and reasonable. The Office of the Ohio Consumers’ Counsel (“OCC”), the state advocate for the consumers of Columbia Gas, comments as follows.

1. **HISTORY**

On March 9, 2020, Governor DeWine declared a state of emergency to protect the health and safety of Ohioans from the dangerous effect of the coronavirus pandemic.[[3]](#footnote-4) As part of the state-declared emergency, the Governor directed state agencies to develop and implement procedures, including suspending or adopting temporary rules, to prevent or alleviate the public health threat caused by the coronavirus.[[4]](#footnote-5)

On March 12, 2020, the PUCO opened Case No. 20-591-AU-UNC. In that case, the PUCO directed public utilities to review their service disconnection policies, practices, and tariffs to promptly seek approval to suspend requirements that may “impose a service continuity hardship on residential and non-residential customers” or “create unnecessary COVID-19 risks associated with social contact.”[[5]](#footnote-6) The PUCO also extended the winter reconnection order through May 1, 2020 and ordered public utilities to “ensure that utility service to consumers is maintained during the state of emergency.”[[6]](#footnote-7)

On March 18, 2020, Columbia filed its coronavirus emergency plan by filing its Motion to Suspend in Case No. 20-0637-GA-UNC (“Emergency Plan”). Columbia’s Emergency Plan sought the suspension of the following regulations during this emergency:

**Enumerated Rules for Suspension**

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| **Rule** | **Rule Name** | **Service Continuity or Social Contact** |
| 4901:1-13-04(D) | Meter Test at Customer’s Request | Social Contact |
| 4901:1-13-04(G) | Meter Reading | Social Contact |
| 4901:1-13-05(A) | New Service Requests | Social Contact |
| 4901:1-13-05(B) | Telephone Response | Service Continuity |
| 4901:1-13-05(C) | Scheduled Appointments with Customers | Social Contact |
| 4901:1-13-05(D) | Repairs of Service Lines Leaks | Social Contact |
| 4901:1-13-08(E) | Reconnection of Small Commercial Customers | Social Contact |
| 4901:1-16-04(I) | Remediation of Leaks | Social Contact |
| 4901:1-18-07(A) | Reconnection of Service | Social Contact |
| 4901:1-18-07(B) | Reconnection of Service | Social Contact |
| 4901:1-18-07(C) | Reconnection of Service | Service Continuity |
| 4901:1-18-12(C) | PIPP Eligibility | Service Continuity |
| 4901:1-18-12(D) | PIPP Reverification of Eligibility | Service Continuity |
| 4901:1-18-16(D) | Graduate PIPP Plus Enrollment | Service Continuity |
| 4901:1-18-17(A) | PIPP and Graduate PIPP Termination | Service Continuity |
| 4901:1-18-17(B) | PIPP and Graduate PIPP Termination | Service Continuity[[7]](#footnote-8) |

The PUCO approved Columbia’s Emergency Plan in part, thereby temporarily suspending the identified rules. The Emergency Plan Order also specified “[i]n the event that Columbia subsequently elects to seek deferral authority or to request recovery of expenses, Columbia is directed to track the costs associated with this emergency in a separate Federal Energy Regulatory Commission account, as well as track any costs the Company avoids due to the emergency.”[[8]](#footnote-9)

Later, Columbia filed a “transition” plan to resume pre-emergency operations. Columbia proposed, among other things, to resume disconnecting consumers for nonpayment on July 29, 2020. On June 17, 2020, the PUCO issued an order on Columbia’s transition plan, and allowed Columbia to resume disconnections.[[9]](#footnote-10)

On May 29, 2020, Columbia filed its Application in this case for authority to establish a regulatory asset. Columbia proposes to accrue expenses and lost revenues for recovery of any incremental operational costs, including the loss of miscellaneous revenues as a result of the coronavirus and implementation of the Emergency Plan.

1. **COLUMBIA’S APPLICATION FAILS TO COMPLY WITH THE PUCO’S STANDARDS FOR APPROVING DEFERRALS.**

The PUCO generally employs a six-part test (“Test”) to determine whether it should permit a public utility to defer expenses for later collection from consumers and accrue expenses for later recovery as a regulatory asset.[[10]](#footnote-11) Columbia’s Application does not even acknowledge that the Test exists, let alone attempt to demonstrate the Test is satisfied, so right there Columbia’s Application should be denied.

The PUCO Staff filed its Staff Report on June 10, 2020. The Staff notes that Columbia’s Application; (1) fails to request a specific mechanism through which to recover foregone revenues; and (2) fails to address requirements of the Test. The Staff nonetheless attempts to analyze Columbia’s proposal against the Test. The Staff concludes that it is currently unclear whether Columbia meets the provisions of the Test. For example, the Staff states in its Report that it is unclear whether Columbia can show: (1) if the costs requested to be deferred are material in nature; and (2) if the costs would result in financial harm to Columbia.

Despite the Staff’s reservations about Columbia’s failure to show it meets the PUCO’s standards (which involve consumer protection), the PUCO Staff recommends approval of Columbia’s application.

Columbia bears the burden of proof to demonstrate that it fully satisfies the Test before it should be permitted to defer the expenses (and foregone revenue) and seek later collection of the expenses from consumers. In this case, Columbia made no effort to meet that burden. And, not surprisingly, the Staff was unable to conclude that Columbia has actually met that burden. Because Columbia did not show that its deferral request complies with the PUCO standards, its request should be denied. Columbia does not deserve a pass on the standards involving consumer protection, as the PUCO Staff gives it. The deferral standards must be met. They are not met here.

1. **IF THE PUCO PERMITS COLUMBIA TO DEFER EXPENSES FOR LATER COLLECTION FROM CONSUMERS (WHICH IT SHOULD NOT), IT SHOULD REDUCE THE POTENTIAL CHARGES FROM THE DEFERRALS WITH OFFSETTING ADJUSTMENTS FOR CONSUMER PROTECTION AND ORDER OTHER CONSUMER PROTECTIONS.**

Columbia requests to defer “foregone revenue” from late payment charges, for later collection from consumers. This request should be denied outright. Under Ohio law revenues are not guaranteed to utilities. Ratemaking is not supposed to be a dollar for dollar recovery of costs from consumers. Utilities are afforded an opportunity to earn a fair and reasonable rate of return on their investment. In return they are obligated to provide safe and reliable service to consumers. Absent express statutory authority, otherwise, that is the regulatory compact under which utilities operate in Ohio. Notably, Columbia does not make the case that there is express authority for it to collect lost revenues related to foregone revenue from late payments. That’s because there is no such authority.

In this regard, on June 28, 2020, the Indiana Commission denied requests by all electric utilities to create a regulatory asset for lost revenues similar to what Columbia is requesting in this application.[[11]](#footnote-12) The Indiana Commission found that recovery of lost revenues is asking consumers to go beyond their obligation to pay for service they did not receive and that such charges are not in the public interest absent a financial emergency to the utility that impacts its ability to provide safe and reliable service.[[12]](#footnote-13) That is a good ruling for ratemaking balance and consumer protection.

In the event that the PUCO determines to allow Columbia to defer foregone revenues for late payment charges that were waived during the emergency, the PUCO should put guardrails on the deferrals to protect consumers from potentially paying too much money to Columbia.

The consumer protections should include that Columbia will track not only the costs avoided during the emergency but also the revenues it collects from consumers during the emergency. Such revenues could potentially offset the claimed foregone revenue from late payment fees.

For example, the PUCO’s moratorium on consumer disconnections and extension of the winter reconnection provisions means that there are almost certainly more residential consumers on Columbia’s distribution system than might otherwise be. Columbia garners revenue from these consumers that it would not collect if the consumers were otherwise disconnected. When considering collection of the deferrals from consumers, the PUCO should consider offsetting revenues as well. This approach is consistent with the PUCO’s ruling that expenses avoided during the emergency should be tracked and used to offset increased expenses.[[13]](#footnote-14)

In addition, the PUCO should make sure that Columbia has reduced discretionary expenses to minimize cost impacts to consumers. Columbia should not charge consumers for coronavirus costs if it has taken a “business as usual” approach to managing its costs. For example, Columbia should be required to demonstrate that it has: refinanced outstanding debt (to take advantage of lower interest rates); considered using of short-term debt to cover any extraordinary expenses or revenue losses; reduced allocation of costs from shared services or parent organizations due to cost reductions experienced at those entities; reduced O&M travel; reduced office expenses including power, office supplies, etc.; and reduced incentive pay or employee bonuses to reflect current economic circumstances.

The PUCO should also examine the earnings of Columbia during the emergency period. It would not be just and reasonable to require consumers to guarantee foregone revenues during a period where the utility’s earnings are sound and not impacting the utility’s ability to provide safe and reliable service. Consumers and shareholders alike should share the costs of the pandemic.

Finally, Columbia should be required to file cost tracking reports quarterly with the PUCO that have clear and concise cost categories that are clearly defined, and in direct response to the coronavirus pandemic. Further, carrying charges, if permitted at all (and they should not be), should be limited to the short-term debt costs applied to the deferred regulatory asset.

1. **COLUMBIA’S APPLICATION ALSO DOES NOT COMPLY WITH THE PUCO’S EMERGENCY PLAN ORDER REGARDING POTENTIAL CHARGES TO CONSUMERS.**

Columbia’s Application also fails to acknowledge the Emergency Plan Order, which does question whether the current level of operating expenses, included in Columbia’s last rate case, will actually prove insufficient to allow Columbia a reasonable rate of return during the crisis period.[[14]](#footnote-15) The PUCO should also require, before it authorizes the deferral of expenses, that Columbia meet the pre-conditions the PUCO established in the Emergency Plan Order. Specifically, the Emergency Plan Order stated that “[i]n the event that Columbia subsequently elects to seek deferral authority or to request recovery of expenses, Columbia is directed to track the costs associated with this emergency in a separate Federal Energy Regulatory Commission account, as well as track any costs the Company avoids due to the emergency.”[[15]](#footnote-16)

But Columbia did not provide financial information in the Application, and thus, there is no way to compare and offset: (1) expenses caused due to the emergency; and (2) costs avoided due to the emergency. Furthermore, both the Staff and intervening parties should be permitted to later challenge: (1) what line items Columbia is seeking to recover; (2) how Columbia is tracking this information; (3) line items in which Columbia may seek double recovery; (4) Columbia’s claims of losses due to the emergency; and (5) items Columbia isn’t tracking, but should. In sum, prior to its collecting deferred expenses from consumers, it is incumbent upon Columbia to recognize well-established regulatory standards, demonstrate that it has met those standards, and then properly account for any increased expense or foregone revenues.

1. **CONCLUSION**

In these times of difficulty and suffering for many Ohio utility consumers, the PUCO should not be expecting those consumers to also make their utilities financially whole from the consequences of the crisis and economic downturn. Therefore, for the protection of Columbia’s 1.3 million residential consumers, the PUCO should deny Columbia’s Application for deferral authority.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 9th day of July 2020.

*/s/ Angela D. O’Brien*

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The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. *See* Kowalski, “Ohio policies cushion the pandemic’s impact on electric utilities,” Energy News Midwest (May 15, 2020), <https://energynews.us/2020/05/15/midwest/ohio-policies-cushion-the-pandemics-impact-on-electric-utilities/>. [↑](#footnote-ref-2)
2. *See* Kavulla, “Will regulators allow utilities to reap a windfall because of COVID-19?,” Utility Dive (June 23, 2020), <https://www.utilitydive.com/news/will-regulators-allow-utilities-to-reap-a-windfall-because-of-covid-19/580279/>. [↑](#footnote-ref-3)
3. Executive Order 2020-01D. [↑](#footnote-ref-4)
4. *Id.* at 3. [↑](#footnote-ref-5)
5. Case No. 20-591-AU-UNC, Entry (March 12, 2020)at¶ 7(b). [↑](#footnote-ref-6)
6. Case No. 20-591-AU-UNC, Entry (March 13, 2020)at *¶* 6(c). [↑](#footnote-ref-7)
7. Columbia’s Plan also sought suspension of the 75% underperforming customer participation threshold for its energy efficiency programs that involved work in consumers’ homes. [↑](#footnote-ref-8)
8. Emergency Plan Order, at ¶44. [↑](#footnote-ref-9)
9. Case No. 20-637-GA-UNC, Supplemental Finding and Order (On June 17, 2020). [↑](#footnote-ref-10)
10. *See* Staff Review and Recommendation (June 10, 2020) (“Staff Report”), at 2. [↑](#footnote-ref-11)
11. *Petition of Indiana Office of Utility Consumer Counselor for Generic Investigation into COVID-19 Impacts to be Conducted over Two Phases; Emergency Relief Pursuant to IND. Code § 8-1-2-1133 to Relieve Indiana Ratepayers of the Threat of Utility Service Disconnection and Payment Arrearages During Global Health and Economic Crisis*, IURC Cause No. 45380, Phase 1 and Interim Emergency Order of the Commission at 8-9 (June 29, 2020). [↑](#footnote-ref-12)
12. *Id.* [↑](#footnote-ref-13)
13. Emergency Plan Order, at ¶44. [↑](#footnote-ref-14)
14. *See* Emergency Plan Order, at ¶44. [↑](#footnote-ref-15)
15. Emergency Plan Order, at ¶44. [↑](#footnote-ref-16)