**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. 14-1615-GA-AAM |

**REPLY COMMENTS**

**BY**

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

# I. INTRODUCTION

On September 9, 2014, Columbia Gas of Ohio, Inc., (“Columbia” or “the Utility”) filed an Application seeking approval from the Public Utilities Commission of Ohio (“PUCO”) to modify its accounting procedures. Specifically the Utility asked for authority to defer the expenses of its Pipeline Safety Program (“PSP”). Such accounting is a prelude to rate increases to customers.

Parties were required to file Motions to Intervene and Initial Comments by November 17, 2014, and Reply Comments by December 2, 2014. Initial Comments were timely filed by the PUCO Staff (“Staff”), the Office of the Ohio Consumers’ Counsel (“OCC”), and the Ohio Partners for Affordable Energy (“OPAE”).

The OCC appreciates the opportunity to file these Reply Comments on behalf of the 1.3 million residential customers provided natural gas service by Columbia. These comments demonstrate that Columbia’s request for deferral authority should be denied.

# ii. reply to comments of the puco staff

## A. The Staff Comments failed to consider whether Columbia’s Application meets any of the PUCO standards for deferral authority.

The OCC’s initial comments explained that when a utility makes a request for deferral authority, granting the request is: (1) a discretionary matter within the PUCO’s authority; and (2) only allowed if the utility has met several criteria.[[1]](#footnote-1) The established principle is that a utility requesting deferral authority must demonstrate that both exigent circumstances and good cause or reason exist for why the expenses should be treated differently from ordinary utility expenses.[[2]](#footnote-2) Furthermore, the OCC explained that the costs in question must be reviewed before they are incorporated into rates. This is to ensure that the costs are reasonable, appropriately incurred, and clearly and directly related to the exigent circumstances for which they were authorized.[[3]](#footnote-3) As stated in OCC’s initial comments, these requirements have been recognized and confirmed by the Ohio Supreme Court.[[4]](#footnote-4)

In addition to these two requirements, the PUCO has also ruled that deferral accounting is only appropriate for expenses that are not already included in the utility’s base rates.[[5]](#footnote-5) And, the PUCO has insisted that the utility demonstrate that the expenses are: reasonable, appropriately incurred, and clearly and directly related to necessary infrastructure improvements and reliability needs of the utility.[[6]](#footnote-6)

The Staff, however, ignores these well-established principles and makes contradictory recommendations in its comments. For example, the Staff recommends that the PUCO adopt Columbia’s proposal to hold regular meetings, *i.e.,* two per year, between Staff and the Utility to review and discuss the progress of the PSP.[[7]](#footnote-7) In its comments, the Staff justifies its recommendation, in part, by stating that:

[t]he Company recognizes that significant portions of the PSP involve future investigations and that the results of those investigations are unknown. Similarly, as Columbia measures the effectiveness of various projects and programs undertaken under the proposed safety initiatives, it may determine that some projects or programs are inefficient or ineffective. As a result, the Company may need to modify its plans and projects or reallocate resources to respond to the results of future investigations or changing conditions.[[8]](#footnote-8)

The Staff’s reasoning only further points out why Columbia’s request for deferral authority should not be approved. First, Staff’s reasoning attests to the fact that Columbia’s application fails to demonstrate, or even confirm, the existence of the requisite “exigent circumstances.” And exigent circumstances are one of the factors that must be present to justify the extraordinary regulatory relief provided by deferral accounting.

“Exigent circumstances” are inconsistent with a regular review process such as that recommended by the PUCO Staff. Black’s Law Dictionary defines “exigent circumstance” as “[a] situation that demands unusual or **immediate action** and that may allow people to circumvent usual procedures, as when a neighbor breaks through a window of a burning house to save someone inside.”[[9]](#footnote-9) Also, Black’s Law Dictionary defines “exigency” as “[a] state of urgency; a situation requiring immediate action.”[[10]](#footnote-10)

What is required, in part, for deferral authority is a situation that was, presumably, unexpected and requires the expenses to be immediately incurred to remedy an impending problem. Here, no such situation exists. In fact, Staff’s comments acknowledge that “[Columbia] recognizes that **significant portions** of the PSP involve **future** investigations and that the results of those investigations are **unknown**.”[[11]](#footnote-11) Thus, Columbia does not know and cannot claim with any assurance that a significant or dangerous problem exists, much less one that requires immediate and urgent action. Therefore, in this proceeding, exigent circumstances do not exist and deferral authority should not be granted.

 Staff also admits that the Utility’s pipeline safety program is not directly related to safety improvements, another factor that must be met for deferral accounting authority. Staff comments that “as Columbia measures the effectiveness of various projects and programs undertaken under the proposed safety initiatives, it may determine that some projects or programs are inefficient or ineffective.”[[12]](#footnote-12) These comments show Staff does not believe that Columbia’s PSP is “clearly and directly related to specific and necessary infrastructure improvements and reliability needs of the utility.”[[13]](#footnote-13)

 Because the PUCO Staff failed to consider the principles that underlie deferral accounting, its comments should not form the basis for PUCO action on the Utility’s application. Instead, the PUCO should be guided by those principles. It should base its decision on whether the application meets the deferral standards discussed in OCC’s comments.

## B. The Staff Comments did not address whether each of the four initiatives in Columbia’s Pipeline Safety Program meets any of the PUCO’s standards for deferral authority.

The Staff Comments did not address Columbia’s failure to show that its program is necessary. Columbia cited only one past safety incident and admitted that it needs to “identify” and then “investigate” its system to determine if “potentially dangerous” situations exist.[[14]](#footnote-14) Neither has Columbia shown that conditions exist creating “a situation requiring immediate action.” It is not sound ratemaking to charge customers expenses that are not ordinary and necessary to provide them utility service.

As the OCC stated in its initial comments, what the Utility does show is that there are three root causes for potential system risk: (1) excavator error; (2) poor records; (3) and locate error. These are all situations in which either Columbia or a third-party excavator was in err.[[15]](#footnote-15) It is not sound ratemaking practices to charge customers for the error of the utility or a third party.

Columbia did not prove the effectiveness (or lack of effectiveness) of its current procedures that are producing system risk. This bears upon whether the expenditures are reasonable and appropriately incurred.

The Staff’s Comments also fail to explain why it supports Columbia’s Advanced Workforce Training Initiative, contradicting its prior positions. Staff in prior proceedings rejected such requests because the expenses are general costs that should be reviewed and addressed in a general distribution rate base case.[[16]](#footnote-16) Here, the Utility thus has not shown good cause for the extraordinary treatment it requests.

Finally, the Staff’s Comments fail to address how sponsoring more public service announcements will remedy the problems claimed by the Utility. Both Columbia and the Staff fail to address why Columbia’s current practice of spending $343,000 annually on such announcements is failing to produce better results.[[17]](#footnote-17) Neither, do they explain how spending more money on the same practice will now produce different results. In other words, the Utility, again, has failed to show that the costs are reasonable and appropriately incurred.

## C. If, in the alternative, the PUCO decides to accept Columbia’s Application, contrary to OCC’s recommendation otherwise, the PUCO should direct Staff and the Utility to implement several modifications.

If, in the alternative, the PUCO decides to accept Columbia’s request for authority to deferral PSP related expenditures, the OCC agrees with several of the Staff recommendations.

* First, the OCC agrees with Staff that the PUCO should direct Columbia to identify and implement efficiencies and cost saving measures to reduce PSP deferrals and the ultimate amount that would be recovered from customers.
* Second, the Commission should direct Columbia to use a risk-based approach, developed through specific, well-researched criteria, for determining the potential sewer mains and lateral cross bores that need to be investigated via camera.
* Third, the OCC agrees that the PUCO should direct Columbia to develop specific performance measures for each of its proposed safety initiatives and establish baseline performance measurements for each measure so that risk reduction resulting from the PSP can be tracked.
* Fourth, the OCC agrees that as the PSP initiatives are completed or continue to progress and risks are reduced and eliminated on Columbia’s system, Staff and Columbia should recommend a threshold expense level for discontinuing the PSP deferrals.
* Fifth, the OCC agrees with Staff’s recommendation that the PUCO direct Columbia to file an annual report that includes expenses, the auditor’s findings, the PSP’s progress towards reducing risks to Columbia’s system, the results of the ongoing and future investigations, mid-term adjustments to PSP projects or programs, and efforts towards identifying and implementing cost saving measures.

Finally, the OCC agrees that Staff should be directed to file a report to the PUCO regarding the Utility’s proposed PSP deferrals within 90 days of the Utility’s Annual Report.

# III. CONCLUSION

The Commission should reject Columbia’s Application in this case. As Staff’s comments show, the expenses sought to be deferred are not necessary. Moreover, there are no exigent circumstances or good reasons to allow the extraordinary deferral treatment.

If the deferrals are approved, the Utility’s next step will be to seek to collect these costs from customers. The PUCO should act now to prevent a future request for unnecessary and unreasonable expenses to be collected from customers.

If the PUCO does decide to accept the Utility’s request for deferral authority, contrary to OCC’s recommendations otherwise, the PUCO should direct the Utility to comply with certain requirements, as described above, that will help to ensure customers pay no more than is reasonably necessary to provide safe and reliable utility service.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

 I hereby certify that a copy of these *Comments* have been served on the persons stated below *via* electronic transmission, this 2nd day of December 2014.

 */s/ Kevin F. Moore*

 Kevin F. Moore

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**SERVICE LIST**

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1. *In the Matter of the Joint Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Electric Company for Approval of a Generation Charge Adjustment Rider*, Case No. 05-704-EL-AAM, Opinion and Order at 8 (January 4, 2006). (“FirstEnergy Deferral Case”). [↑](#footnote-ref-1)
2. *Id.* at 8-9. [↑](#footnote-ref-2)
3. *Id.*  [↑](#footnote-ref-3)
4. *Elyria Foundry Co. v. Public Utility Comm. of Ohio* (2007), 114 Ohio St.3d at 310-312, 2007-Ohio-4164. [↑](#footnote-ref-4)
5. *FirstEnergy Deferral Case* at 9. [↑](#footnote-ref-5)
6. *FirstEnergy Deferral Case* at 9. [↑](#footnote-ref-6)
7. Staff Comments at 8. [↑](#footnote-ref-7)
8. *Id*. [↑](#footnote-ref-8)
9. *Black’s Law Dictionary* 296 (10th ed. 2014) (emphasis added). [↑](#footnote-ref-9)
10. *Black’s Law Dictionary* 695 (10th ed. 2014). [↑](#footnote-ref-10)
11. Staff Comments at 8 (emphasis added). [↑](#footnote-ref-11)
12. Staff Comments at 8. [↑](#footnote-ref-12)
13. *FirstEnergy Deferral Case* at 9. [↑](#footnote-ref-13)
14. Columbia Application at 7-9. [↑](#footnote-ref-14)
15. Columbia Application at 10. [↑](#footnote-ref-15)
16. OCC Comments at 12-13 (citing *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan,* Case No. 13-2385-EL-SSO, Prefiled Testimony of Wm. Ross Willis, at 3-4, (May 20, 2014); *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval of an Alternative Rate Plan for a Distribution Replacement Rider to Recover the Costs of a Program for the Accelerated Replacement of Cast Iron Mains and Bare Steel Mains and Service Lines, a Sales Reconciliation Rider to Collect Differences between Actual and Approved Revenues, and Inclusion in Operating Expense of the Costs of Certain System Reliability Programs*, Case No. 07-1081-GA-ALT, Staff Report at 10 (June 16, 2008)). [↑](#footnote-ref-16)
17. Columbia Application at 15. [↑](#footnote-ref-17)