**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Joint Motion to Modify the December 2, 2009 Opinion and Order and the September 7, 2011 Second Opinion and Order in Case No. 08-1344-GA-EXM | )  )  )  ) | Case No. 12-2637-GA-EXM |

**BRIEF**

**BY**

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**BRIEF BY OCC**

# I. INTRODUCTION

The 1.2 million residential consumers in the service territory of Columbia Gas of Ohio, Inc. (“Columbia” or “Utility”) have had the opportunity to save a lot of money on their purchases of natural gas through Columbia’s standard rate. When residential and non-residential customers chose competitors’ rates instead of the standard rate, those customers lost $885 million since 1997, according to Columbia’s “shadow-billing.”[[1]](#footnote-2)

In a settlement (“Amended Stipulation”) filed on November 27, 2012, the Office of the Ohio Consumers’ Counsel (“OCC”), Columbia, the Staff of the Public Utilities Commission of Ohio (“PUCO” or “Commission”) and marketers[[2]](#footnote-3) achieved a compromise that leaves for another day and another case the PUCO’s consideration of whether to continue Columbia’s standard rate for Ohio’s residential consumers. Under the settlement, the consumer protections include:

* The soonest Columbia could apply to end its residential standard rate is February 1, 2016;
* Columbia is not required to ever apply to end its residential standard rate;
* Columbia is the only party allowed to apply to end its residential standard rate, meaning for example that marketers cannot apply;
* If Columbia applies to end the residential standard rate, the PUCO is not required to grant the application;
* If Columbia applies to end the residential standard rate, the PUCO is required to hold a hearing for expert testimony and is required to hold at least six local hearings for testimony from Ohio consumers;
* Columbia is required to continue its shadow-billing program that has documented customer losses using a competitor’s rate compared to using the standard rate;
* OCC reserves its right to recommend continuation of the residential standard rate in any future case, and to oppose withdrawal of the standard rate offer;
* The security deposit for SCO standard rate suppliers is reduced from the $0.10 per Mcf in the first settlement to $0.06 per Mcf in the Amended Stipulation, and OCC did not join the settlement term and disagreed with the rationale regarding the security charge to standard-rate suppliers
* Columbia must share more money with consumers from Columbia’s off-system sales;[[3]](#footnote-4)
* Consumers cannot be billed twice for certain expenses related to balance service fee.
* OCC did not join the Amended Stipulation with regard to provisions addressing any elimination of the standard rate for non-residential customers.

This Amended Stipulation, of November 27, 2012, superseded a settlement signed by the same parties—without OCC—that was filed on October 4, 2012. The improvements for consumers that were achieved in the newer settlement can be seen in a comparison document that is BMH-Attachment 1 to the testimony of OCC witness Bruce Hayes (OCC Hearing Ex. No. 1). OCC appreciates the cooperative process involving the Amended Stipulation.

In the October 4, 2012 settlement, Columbia was *required* to apply to end the standard rate if certain conditions were met (settlement page 8). (This end to the standard rate is called, in the parlance of the industry, an “exit from Columbia’s merchant function.”) And, in the October 4 settlement, the PUCO was required to end the residential standard- rate if Columbia applied and certain conditions were met (settlement page 5). Those terms are gone from the November 27 settlement, making the Amended Stipulation a compromise that is much more protective of Ohio consumers.

As background, since 2010 the standard rate has been the Standard Choice Offer (“SCO”) that is determined through a market-based competitive auction. The SCO competitive auction is a descending clock auction conducted annually to establish the price of natural gas for SCO customers. The SCO is an option available to customers for the purchase of the commodity of natural gas, delivered through Columbia’s monopoly of pipes. Other options exist including the independent rate offers from Columbia’s competitors (marketers). The resulting SCO auction price is based on the New York Mercantile Exchange (“NYMEX”) market price and an Adder that is set by the auction. The SCO option has been extremely beneficial for consumers, saving those who use it lots of money.

The issue in an exit from the merchant function or “Exit” proceeding involves whether the PUCO will continue to require a natural gas utility to provide customers with their historic default option to purchase natural gas through the utility -- in this instance through the auction-based SCO. The Ohio Gas Marketers Group (“OGMG”),[[4]](#footnote-5) Retail Energy Supply Association (“RESA”),[[5]](#footnote-6) and Dominion Retail Inc. (“Dominion Retail”)[[6]](#footnote-7) were focused on achieving a full Exit (implicating non-residential and residential customers). In exchange for the certainty that the October 4 Stipulation provided the Marketers with regard to an Exit,[[7]](#footnote-8) the Marketers agreed with the Utility on certain issues of financial interest to the Utility – issues that directly impacted residential customers and not Marketers.[[8]](#footnote-9)

Following the filing of the October 4 Stipulation, the Utility, PUCO Staff and the Marketers continued to meet with the Office of the Ohio Consumers’ Counsel (“OCC”) to discuss the issues raised in that Stipulation. After approximately seven weeks of additional negotiations, OCC, the Utility, PUCO Staff and the Marketers were able to reach agreement on consumer-related revisions to the October 4 Stipulation.[[9]](#footnote-10) Through its participation in the Amended Stipulation filed on November 27, 2012, OCC sought to protect Ohio consumers’ option to purchase natural gas through Columbia at a standard rate that is set through a competitive auction—and hopefully to protect opportunities for consumers to save lots of money.

# II. CASE HISTORY

The broad history of this case began (before this case was opened) with the PUCO’s adoption of a wholesale auction, or Standard Service Offer, for most of Columbia’s customers who had not chosen a Choice Supplier for providing their natural gas commodity needs in April 2010. The auction was immediately successful for customers purchasing their natural gas through Columbia, resulting in significantly lower prices and saving lots of money for customers using that standard rate.[[10]](#footnote-11)

On October 4, 2012, Columbia, the Marketers, and the PUCO Staff jointly filed a Motion requesting the Commission Modify its Orders Granting Exemption.[[11]](#footnote-12) This Motion meant that Columbia, the Marketers and the PUCO Staff sought to implement a process to initially remove the standard-rate option for commercial (non-residential) customers to purchase their natural gas through the Utility. The October 4, 2012 Settlement could have ended the standard-rate option for residential customers, potentially as soon as twelve months after a non-residential exit. And, the settlement did not prohibit Columbia from requesting an elimination of the standard-rate prior to that time.

Numerous parties filed Motions to Intervene: OCC (October 5, 2012), Hess Corporation (“Hess”) (October 9, 2012), Ohio Partners for Affordable Energy (October 12, 2012), Stand Energy, Inc. (“Stand”) (October 22, 2012), Northeast Ohio Public Energy Council (“NOPEC”) and the Ohio Schools Council (October 25, 2012), Volunteer Energy (November 1, 2012). Direct Energy, LLC (“Direct”) (November 12, 2012), and Interstate Gas Supply, Inc. (“IGS”) (November 5, 2012). On October 18, 2012, the Attorney Examiner issued an Entry that established a procedural schedule, with Comment and Reply Comment periods[[12]](#footnote-13), deadlines for filing testimony and the date for the evidentiary hearing.[[13]](#footnote-14) The Attorney Examiner Entry also granted the interventions of OCC, OPAE and Hess.[[14]](#footnote-15)

In accordance with the Attorney Examiner’s Entry, on November 5, 2012, OCC and OPAE filed Comments.[[15]](#footnote-16) On November 13, 2012, Reply Comments were filed by Columbia and OGMG/RESA.[[16]](#footnote-17) On November 13, 2012, Columbia filed Prepared Direct Testimony.[[17]](#footnote-18) Additional Joint Movant testimony was also filed by Marketers on November 13, 2012.[[18]](#footnote-19)

An Amended Joint Motion and Amended Stipulation were filed on November 27, 2012. The Amended Joint Motion was signed by Columbia, the PUCO Staff, and various marketers or marketer groups (but not signed by OCC that signed only the Amended Stipulation).[[19]](#footnote-20) The Amended Joint Motion specifically noted that:

“[w]hile OCC supports approval of the Amended Stipulation, the Joint Movants would make clear that the legal positions set forth in this Motion and the attached Memorandum in Support are theirs only. Joint Movants do not represent that OCC holds these legal positions or that OCC should be bound by them in any future proceeding.”[[20]](#footnote-21)

Columbia, OCC and the Marketers filed Supplemental Testimony in support of the Amended Stipulation.[[21]](#footnote-22) On November 30, 2012, Intervenor Testimony was filed by OPAE[[22]](#footnote-23) and Hess.[[23]](#footnote-24)

The evidentiary hearing commenced on December 3, 2012, with a call and continue, and the evidentiary hearing reconvened on December 5, 2012, and concluded on December 6, 2012. The public was invited to testify at the hearing in Columbus on December 3rd,[[24]](#footnote-25) but there was no public notice specifically inviting them to do so. At the conclusion of the evidentiary hearing, the Attorney Examiner ruled that Initial Post-Hearing Briefs are due by noon, November 11, 2012,[[25]](#footnote-26) and in accordance with the Attorney Examiner’s October 18, 2012 Entry, there will be no reply briefs.[[26]](#footnote-27)

# III. THE AMENDED STIPULATION SUPERSEDES THE OCTOBER 4TH STIPULATION, WITH A NUMBER OF KEY PROTECTIONS FOR RESIDENTIAL CONSUMERS.

Attached hereto is the comparison document,[[27]](#footnote-28) from the testimony of OCC witness Hayes, that shows how the October 4th Stipulation was modified and improved by including certain benefits for residential customers.[[28]](#footnote-29) One such modification removed a provision in the October 4 Stipulation that **required** Columbia to file an application to exit the merchant function for its CHOICE-eligible residential customers if Columbia had already exited the merchant function for its CHOICE-eligible non-residential customers and at least 70% of CHOICE-eligible residential customers had participated in CHOICE for at least three consecutive months.[[29]](#footnote-30)

As Columbia witness Brown testified, “Columbia is **permitted** to file an application to exit the merchant function for its residential customers if those conditions are met, **but is not obligated to do so**.”[[30]](#footnote-31) This modification—that Columbia is not required to seek an end to the standard rate—is an important benefit for consumers.

Another key improvement is that the settlement no longer requires that Columbia (will exit) for residential customers if certain thresholds are met, per the removal of a sentence on page 5 of the October 4 Stipulation. The following is a summary of the changes between the Amended Stipulation and the Stipulation it superseded:

(1) **Potential Exit from the Merchant Function:** The Amended Stipulation addresses the pre-conditions that are used as a basis for Columbia to determine whether or not it will exit the merchant function for non-residential customers.[[31]](#footnote-32) The Amended Stipulation also modifies several of the provisions relating to Columbia’s potential exit from the merchant function for its commercial, industrial, and/or residential customers. These modifications are discussed below:

(a) Under the October 4 Stipulation, Columbia would exit from the merchant function for its non-residential customers if at least 70% of CHOICE eligible non-residential customers participated in CHOICE for at least three consecutive months. Columbia was required to formally determine whether the consecutive three-month 70% customer participation threshold had been met each June 1 during the term of the Amended Stipulation. Under the Amended Stipulation, Columbia would make that formal determination each August 1 (and OCC can challenge it).[[32]](#footnote-33)

(b) As discussed previously, The Amended Stipulation contains a provision that does not require Columbia to ever file an application to end the standard rate (to seek an exit) for residential customers.[[33]](#footnote-34) Another key improvement is that the settlement no longer requires that Columbia (will exit) for residential customers if certain thresholds are met, per the removal of a sentence on page 5 of the October 4 Stipulation.

(c) The Amended Stipulation further includes clarification that only Columbia may file an application to exit the merchant function for Columbia’s residential customers.[[34]](#footnote-35)

(d) The October 4 Stipulation required Columbia to wait at least 12 months after exiting the merchant function for its non-residential customers before filing an application to exit the merchant function for its residential customers. Under the Amended Stipulation, Columbia must wait at least twenty-two months (with two heating seasons) before filing an application to exit for its residential customers.[[35]](#footnote-36) This additional time frame guarantees consumers will have the option to purchase their natural gas through Columbia at a standard rate until at least April 2017.

(e) The Amended Stipulation includes a provision that the Commission will hold at least six local public hearings on any such application to exit the merchant function for residential customers.[[36]](#footnote-37) This protection enables residential consumers to testify on the issue prior to the PUCO making a decision about how to proceed.

(f) In the Amended Stipulation, OCC has reserved the right to oppose any Columbia application to eliminate the standard rate for residential customers.[[37]](#footnote-38) This enables OCC to effectively advocate on consumers’ behalf if Columbia were to apply to eliminate the residential standard rate.

(g) The October 4 Stipulation required Columbia to send monthly updates to Columbia’s stakeholders regarding CHOICE participation rates starting on April 1, 2013. The Amended Stipulation includes a provision that requires Columbia to distribute the monthly Choice participation reports throughout the term of the Amended Stipulation.[[38]](#footnote-39)

(h) The Amended Stipulation provides OCC the opportunity to challenge the reported CHOICE participation levels.[[39]](#footnote-40) This means that OCC, if it believes that Columbia is misreporting the figures that are a condition to Columbia’s consideration of this issue, can petition for relief.

(2) **Study of a Non-Residential Exit (if there is a Non-Residential Exit)**: If Columbia exits the merchant function for its non-residential customers, the Amended Stipulation requires Columbia to study the exit’s impact on those customers and share that information with its stakeholders. The Amended Stipulation recommends that the Commission direct Columbia and its stakeholders to discuss and determine the parameters of this study.[[40]](#footnote-41)

(3) **Monthly Variable Rate (“MVR”):** the Amended Stipulation provides a clarification in a provision that addresses Columbia’s proposed MVR program that assures the MVR program shall not apply to any customer class unless and until Columbia has exited the merchant function for that customer class.[[41]](#footnote-42) The clarification included in the Amended Stipulation will help prevent customer confusion prior to the elimination of the standard rate for a particular customer class, and will not contribute to increasing Choice participation levels as was experienced in Dominion’s service territory with the MVR implementation.[[42]](#footnote-43)

(4) **Shadow-Billing**: Additionally, the Amended Stipulation requires that Columbia’s shadow-billing program will continue.[[43]](#footnote-44) Shadow-billing provides important information about whether consumers save money or lose money compared to the standard rate that is available when the utility is providing the merchant function for supplying natural gas. The Amended Stipulation requires Columbia to continue its CHOICE Program Shadow- Billing for at least the term of the Amended Stipulation (through 2018) and make such shadow-billing information available to OCC upon request.[[44]](#footnote-45) The Amended Stipulation specifically instructs that, if Columbia exits the merchant function with regard to its non-residential customers, the Shadow-Billing for those customers will thereafter compare the non-residential CHOICE customers’ monthly billed gas costs to the residential monthly SCO auction price.[[45]](#footnote-46)

(5) **Off-system sales and capacity release revenue sharing mechanism:** The Amended Stipulation modifies the off-system sales and capacity release sharing mechanism to provide a greater share of the revenues from such sales to Columbia’s customers. Under the revised mechanism, half of all off-system sales revenues up to $1 million and half of all revenues between $2 million and $27 million will be credited to Columbia’s CHOICE/SCO Reconciliation Rider (“CSRR”).[[46]](#footnote-47) Columbia will retain all off system sales revenues between $1 million and $2 million.[[47]](#footnote-48) The Amended Stipulation also reduces the cumulative cap from $60 million to $55 million which could potentially provide an additional $5 million benefit to consumers. These modifications to the Amended Stipulation provide benefits for customers which will reduce the rate customers pay through the Choice/SSO/SCO Reconciliation Rider (“CSSR”).[[48]](#footnote-49) These savings to consumers may total up to $7.5 million.

(6) **Balancing service fee:** The October 4 Stipulation would reduce Columbia’s Balancing Fee from $0.32/Mcf to $0.27/Mcf and would make Columbia responsible for levying that charge directly to customers, rather than suppliers levying that charge. The proposed change regarding the responsibility for levying the balancing fee charge is to begin on April 1, 2013. The Amended Stipulation maintains those provisions, but adds a new provision prohibiting any CHOICE Supplier from charging a rate that was designed or intended to provide compensation for the prior $0.32/Mcf balancing fee after April 1, 2013.[[49]](#footnote-50) Consumers are protected by avoiding the potential for Choice customers to be charged twice for the balancing service fee which could have cost a typical customer approximately $27.00 per year.[[50]](#footnote-51)

(7) **SCO Supplier Security Deposit:** The Amended Stipulation reduces the security deposit that Columbia and the marketers would have imposed on SCO Suppliers. The reduction is 40%, from ten cents per Mcf to six cents per Mcf.[[51]](#footnote-52) This reduction of the security deposit charged to Standard Choice Customers could potentially save a typical residential customer $3.40 per year.[[52]](#footnote-53) This reduction could save all Columbia residential SCO customers a total of $16 million over 5 years.

(8) **Billing Enhancements:** (a)the October 4 Stipulation listed several enhancements to Columbia’s billing system that the Utility proposed to implement for the benefit of Choice Marketers and their customers. The Amended Stipulation provides a tentative timeline and cost estimates for the listed billing enhancements.[[53]](#footnote-54) Additionally, the Amended Stipulation preserves OCC’s right to challenge the reasonableness and prudence of Columbia’s costs for those billing enhancements.[[54]](#footnote-55) If an independent audit of those costs is conducted, the Amended Stipulation clarifies that any costs associated with such audit will be recovered through the CSRR.[[55]](#footnote-56) (b) The October 4 Stipulation would allow Choice Marketers to pay Columbia a competitively neutral fee in order for the Marketers’ logos to be enlarged and more prominently repositioned on Columbia’s consolidated bill statements provided to CHOICE customers. The Amended Stipulation retains this modification, but requires Columbia to credit any net revenues from this service to the CSRR.[[56]](#footnote-57)

# IV. RECOMMENDATIONS

## A. The Amended Stipulation Should Be Approved By the PUCO.

OCC is a Signatory Party to the Stipulation, and therefore, encourages the Commission to approve the Stipulation. The standard of review for consideration of a stipulation has been discussed in a number of Commission cases and by the Ohio Supreme Court. As the Ohio Supreme Court stated in *Duff*:

A stipulation entered into by the parties present at a commission hearing is merely a recommendation made to the commission and is in no sense legally binding upon the commission. The commission may take the stipulation into consideration, but must determine what is just and reasonable from the evidence presented at the hearing.[[57]](#footnote-58)

The Court in *Consumers’ Counsel* considered whether a just and reasonable result was achieved with reference to criteria adopted by the Commission in evaluating settlements:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties? And is there diversity among signatories?[[58]](#footnote-59)

2. Does the settlement, as a package, benefit customers and the public interest?

3. Does the settlement package violate any important regulatory principle or practice?[[59]](#footnote-60)

The Court in *Consumers’ Counsel* decided*: “*We endorse the commission’s effort utilizing these criteria to resolve its cases in a method economical to ratepayers and public utilities”[[60]](#footnote-61) The Commission should find that the three-part criteria for evaluating Stipulations can be met in this case.

### 1. The settlement was a product of serious bargaining among capable, knowledgeable parties. And there is diversity among the participants.

As testified by OCC witness Hayes, the Amended Stipulation is a product of serious bargaining.[[61]](#footnote-62) The changes negotiated into the Amended Stipulation are numerous, and as discussed above, address a number of important issues for Columbia’s natural gas customers, the Utility and the natural gas suppliers that service to customers. The changes incorporated into the Amended Stipulation are a result of serious bargaining. In this regard, the PUCO has a standard of diversity of participants, for this first prong of the standards for adopting a settlement.

The addition of OCC as a stipulating party in the Amended Stipulation provides the diversity that was lacking in the superseded October 4th Stipulation.[[62]](#footnote-63) That diversity comes from the addition of the statewide consumer advocate (OCC) on the settlement.

Regarding the other element of the first prong, Mr. Hayes noted that each of the signatory parties has a history of active participation in PUCO proceedings and is knowledgeable and capable on natural gas utility issues.[[63]](#footnote-64)

### 2. The settlement, as a package, benefits customers and the public interest.

OCC witness Hayes explained in his testimony that the Amended Stipulation benefits Customers and is in the public interest in many important ways. The Amended Stipulation provides additional time (22 months instead of 12 months) between a non-residential exit and the potential application for a residential exit.[[64]](#footnote-65)

It is forColumbia to decide whether to file for a residential exit to end the standard rate. Columbia is not required to make such a filing. And Columbia cannot file unless the preconditions are met. The Amended Stipulation would require a full evidentiary hearing. And the settlement provides for six local public hearings to allow consumers an opportunity to provide the PUCO with testimony on this important consumer issue.[[65]](#footnote-66) The Amended Stipulation also reserves the right of OCC and others to challenge Columbia’s Application to Exit for residential customers, if Columbia were to file such an Application.[[66]](#footnote-67)

The Amended Stipulation also requires Columbia to continue to calculate shadow-billing information and to provide the same to OCC,. The shadow-billing information is an important tool in the analysis of bill impacts of an exit from the merchant function on non-residential customers if an Exit for those customers were to occur.[[67]](#footnote-68)

As discussed previously, the Amended Stipulation proposes a change in the manner that balancing services are charged to customers.[[68]](#footnote-69) The Amended Stipulation provides a modification intended to protect consumers from potentially being billed twice for balancing service, once from Marketers as part of an existing bi-lateral Choice contract or through a governmental aggregation contract charged by the Marketer, and then again, by Columbia under the new billing arrangement. Without this modification, the possibility existed that a typical customer could be billed for the balancing service twice; the duplicate charge could cost a typical customer approximately $27.00 per year.[[69]](#footnote-70)

The Amended Stipulation includes an important consumer protection with regards to avoiding the potential double billing for the balancing service fee. However, the Signatory Parties agree that a mechanism for assuring Choice and Governmental Aggregation Suppliers are in compliance with this provision of the Amended Stipulation has not been proposed.[[70]](#footnote-71) Therefore, the PUCO should assure that any Opinion and Order approving the Amended Stipulation includes a process whereby the PUCO and its Staff, as well as OCC and other interested parties, have the ability to verify that the Choice and Governmental Aggregation Suppliers are in compliance, and that no customers are double-billed. The balancing fee billing change is slated to begin April 1, 2013,[[71]](#footnote-72) so it will be important for the PUCO to establish the mechanism, or ask the Columbia Stakeholder Group to provide a proposal to the Commission early in 2013, and require Commission approval of such proposal.

In addition, the Amended Stipulation modified the provision that requires SCO Marketers to post an additional cash security deposit based upon the tranches won through the SCO auction. OCC has not signed the Amended Stipulation with regard to this provision (see Amended Stipulation footnote 1), and disagrees with the rationale supporting the fee. But OCC has agreed not to litigate the issue based upon the totality of the settlement package that, *inter alia,* includes this fee being a security deposit and reduced from $0.10 to $0.06 per Mcf. The reduction in the SCO Supplier security deposit amount can save the average residential SCO customer approximately $3.40 per year, and could save all SCO customers $3.2 million dollars per year in retail price adder costs.[[72]](#footnote-73)

The SCO Supplier Security Deposit Fee is collected from SCO Suppliers. However, if the SCO Supplier does not default during the SCO term, the Amended Stipulation states: “Any funds remaining at the end of each Program Year will be transferred to customers through the Choice/SSO/SCO Reconciliation Rider (“CSRR”) commencing June 2014, for the 2013 Program Year.” This charge is in the Amended Stipulation as a security deposit fee and not as any other sort of fee or cost for recovery from customers.

The Amended Stipulation also modifies the Off-System Sales (“OSS”) and Capacity Release (“CR”) Revenues sharing mechanism from the October 4 Stipulation in ways that provide benefits to customers and is in the public interest. Columbia’s retained revenue from OSS and CR transactions, as modified by the Amended Stipulation, will now be capped annually at $14 million with the cumulative 5-year cap being reduced from $60 million to $55 million, to the benefit of customers. The modification included in the Amended Stipulation also provides customers with an additional $2.5 million in revenues over 5 years that Columbia otherwise would have retained for the first million collected.[[73]](#footnote-74)

### 3 The settlement package does not violate any important regulatory principle or practice.

OCC witness Hayes testified to a key provision in state policy, which is the requirement that Columbia’s customers be provided reasonably priced natural gas service under Ohio Revised Code 4929.02(A)(1).[[74]](#footnote-75) Having an auction-based standard rate (the SCO) can serve that regulatory principle. And the Amended Stipulation helps in that regard by establishing a very deliberate process, with safeguards for consumers, for any consideration of eliminating the standard choice offer (through an exit of Columbia’s merchant function). The standard rate has been very successful in saving money for Ohio consumers.[[75]](#footnote-76)

In addition, Mr. Hayes testified that another key component of state policy is the promotion of diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers, under Ohio Revised Code 4929.02(A)(3).[[76]](#footnote-77) The standard rate has provided diversity of natural gas supplies. The Amended Stipulation serves this regulatory principle by ensuring the availability of this standard offer for a period of time (until at least April 1, 2017), and by establishing due process for any future consideration of whether to continue the standard rate option.[[77]](#footnote-78)

# V. CONCLUSION

One of the best energy rates for Ohio consumers has been the standard rate. Its availability has saved consumers lots of money. Any proposal to consider whether to continue the standard rate for consumers is therefore a key issue in natural gas regulation.

Approximately 1.2 million Ohio residential consumers in Columbia’s service area have been offered the opportunity to save lots of money for their purchases of natural gas, through the use of a competitive auction to set prices. The result of those auctions is the standard rate. Many consumers have availed themselves of that option to save money on the natural gas they need for heating their homes and for their cooking and other essential activities of daily life in Ohio. In the Amended Stipulation filed on November 27, 2012, OCC is sought to protect this important option for Columbia’s residential customers.

The Commission should adopt the Settlement as filed in this case.

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this *Brief* has been served on the persons stated below via electronic service this 11th day of December 2012.

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1. OCC Hearing Ex. No. 2 (Attachment A to OCC’s Comments, being Columbia’s shadow-billing data per OCC Request to Produce No. 65). [↑](#footnote-ref-2)
2. Ohio Gas Marketers Group (“OGMG”), Retail Energy Supply Association (“RESA”) and Dominion Retail, Inc. [↑](#footnote-ref-3)
3. Joint Hearing Ex. No. 1, Amended Stipulation at 18 (November 27, 2012). [↑](#footnote-ref-4)
4. The Ohio Gas Marketers Group for purposes of this proceeding includes Constellation NewEnergy, Inc., Direct Energy Services, LLC, Direct Energy Business, LLC, Interstate Gas Supply, Inc., Integrys Energy, Inc., Just Energy Group, Inc. and SouthStar Energy LLC. [↑](#footnote-ref-5)
5. RESA’s members include Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. [↑](#footnote-ref-6)
6. OGMG, RESA and Dominion Retail are collectively referred to as “the Marketers.” [↑](#footnote-ref-7)
7. Joint Hearing Ex. No. 3, October 4 Stipulation at 5 (October 4, 2012) “The Parties agree that Columbia will exit the merchant function if participation in Columbia’s CHOICE program meets specified thresholds.” [↑](#footnote-ref-8)
8. Joint Hearing Ex. No. 3, October 4 Stipulation at 4, (October 4, 2012) See Off-System Sales and Capacity Release, See also Capacity Allocation Process. [↑](#footnote-ref-9)
9. Columbia Hearing Ex. 7, Supplemental Testimony of Thomas J. Brown, Jr. at 4 (November 27, 2012). [↑](#footnote-ref-10)
10. *In re Columbia SSO Case,* Case No. 08-1344-GA-EXM, Post-Auction Report at 2 (February 23, 2010);see also Staff Report at 2 (February 8, 2011); see also. Staff Report at 2-3 (February 14, 2012). [↑](#footnote-ref-11)
11. Joint Hearing Ex. No. 4, Joint Motion to Modify Orders at 1 (October 4, 2012) [“In Case No. 08-1344-GA-EXM (“the Exemption Proceeding”) on December 2, 2009 (“First Opinion and Order”), the Commission, pursuant to R.C. 4929.04, granted an exemption authorizing to eliminate its gas cost recovery mechanism and replace it with an auction process. On September 7, 2011, the Commission issued a Second Opinion and Order in Case No. 08-1344-GA-EXM, further ruling upon issues associated with the First Opinion and Order (the two orders will be referred to collectively as the “Exemption Orders.”] [↑](#footnote-ref-12)
12. The Comments and Reply Comments were admitted into the record of this proceeding. [↑](#footnote-ref-13)
13. Entry at 4 (October 18, 2012). [↑](#footnote-ref-14)
14. Entry at 6 (October 18, 2012). [↑](#footnote-ref-15)
15. OCC Hearing Ex. No. 2, OCC Comments (November 5, 2012); and OPAE Hearing Ex. No. 1, OPAE Comments (November 5, 2012). [↑](#footnote-ref-16)
16. Columbia Hearing Ex. No. 8, Columbia Reply Comments; (November 8, 2012) and OGMG/RESA Hearing Ex. No. 2, OGMG/RESA Reply Comments (November 12, 2012). [↑](#footnote-ref-17)
17. Columbia Hearing Ex. No. 6, Prepared Direct Testimony of Thomas Brown, Jr.(November 13, 2012); Columbia Hearing Ex. No. 4, Prepared Direct Testimony of Michael Anderson (November 13, 2012); Columbia Hearing Ex. No. 5, Prepared Direct Testimony of Michelle Caddell (November 13, 2012. [↑](#footnote-ref-18)
18. OGMG/RESA Hearing Ex. No. 3, Direct Prepared Testimony of Vince Parisi; OGMG/RESA Hearing Ex. No. 5 (November 13, 2012), Direct Prepared Testimony of Teresa Ringenbach; IGS Hearing Ex. No. 1 (November 13, 2012), Direct Testimony of Lawrence Friedeman; and Direct Hearing Ex. No. 1 (November 13, 2012); and Direct Prepared Testimony of Cory Byzewski (November 13, 2012). [↑](#footnote-ref-19)
19. The Amended Joint Motion requested issuance of a final Order on **all** issues in the case by December 31, 2012. The Commission should not consider bifurcating issues in this case, because the Amended Stipulation does not contemplate such resolution of this case. [↑](#footnote-ref-20)
20. Joint Hearing Ex. No. 2, Amended Joint Motion at 2 (November 27, 2012). [↑](#footnote-ref-21)
21. Columbia Hearing Ex. No. 7, Supplemental Testimony of Thomas Brown, Jr. (November 27, 2012). (In Mr. Brown’s Supplemental Testimony he specifically notes that the question and answer on page 23 lines 9-23 of his Direct Prepared Testimony are withdrawn.) OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes (November 27, 2012), OGMA/RESA Hearing Ex. 4, Supplemental Testimony of Vince Parisi (November 27, 2012). [↑](#footnote-ref-22)
22. OPAE Hearing Ex. No. 2. Direct Testimony of Stacia Harper (November 30, 2012); OPAE Hearing Ex. No. 2A Errata pages. [↑](#footnote-ref-23)
23. Hess Hearing Ex. No. 1, Direct Testimony of Randy Magnani (November 30, 2012). [↑](#footnote-ref-24)
24. Entry at 2 (November 26, 2012). [↑](#footnote-ref-25)
25. Tr. Vol. II at 321 (Pirik) (December 6, 2012). [↑](#footnote-ref-26)
26. Entry at 4 (October 18, 2012). (No Reply Briefs are permitted.). [↑](#footnote-ref-27)
27. OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes at Attachment BMH-1 (November 27, 2012), Attachment BMH-1 is Attached hereto as Attachment. [↑](#footnote-ref-28)
28. Tr. Vol. I at 102 (Hayes (December 5, 2012). [↑](#footnote-ref-29)
29. Joint Hearing Ex. No. 3, October 4 Stipulation at 8 (October 4, 2012). [↑](#footnote-ref-30)
30. Columbia Hearing Ex. No. 7, Prepared Supplemental Testimony of Thomas J. Brown at 6 (November 27, 2012) (emphasis added). See also Exhibit 1 at ¶32, see also OCC Hearing Ex. No. 1, Direct Testimony of Bruce Hayes at 10 (November 27, 2012). [↑](#footnote-ref-31)
31. The Amended Stipulation contains a process for whether or not Columbia will exit the merchant function for non-residential customers. OCC is not a Signatory Party for purposes of any provision in the Amended Stipulation regarding a non-residential exit. [↑](#footnote-ref-32)
32. Joint Hearing Ex. No. 1, Amended Stipulation at ¶28 (November 27, 2012). [↑](#footnote-ref-33)
33. Id. at ¶32. [↑](#footnote-ref-34)
34. Id. at ¶31. [↑](#footnote-ref-35)
35. Id. at ¶31. [↑](#footnote-ref-36)
36. Id. at ¶32. [↑](#footnote-ref-37)
37. Id. at ¶32. [↑](#footnote-ref-38)
38. Id. at ¶23. [↑](#footnote-ref-39)
39. Id. at ¶23. [↑](#footnote-ref-40)
40. Id. at ¶29. [↑](#footnote-ref-41)
41. Id. at ¶37. [↑](#footnote-ref-42)
42. *In the Matter of the Application of Dominion East Ohio for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services,* Opinion and Order at 14 (June 18, 2008). [↑](#footnote-ref-43)
43. Id. at ¶36. [↑](#footnote-ref-44)
44. The Amended Stipulation explains that Columbia will not be obligated to continue its CHOICE Program Shadow Bill after it exits the merchant function for its residential customers. The Amended Stipulation preserves OCC’s right to seek a Commission order requiring Columbia to continue its CHOICE Program Shadow Bill after the term of the Amended Stipulation and/or after Columbia exits the merchant function for its residential customers. [↑](#footnote-ref-45)
45. Joint Hearing Ex. No. 1, Amended Stipulation at ¶36 (November 27, 2012). [↑](#footnote-ref-46)
46. Id. at ¶18. [↑](#footnote-ref-47)
47. Id. at ¶18. [↑](#footnote-ref-48)
48. Id. at ¶18. [↑](#footnote-ref-49)
49. Joint Hearing Ex. No. 1, Amended Stipulation at ¶10 (November 27, 2012). [↑](#footnote-ref-50)
50. OCC Hearing Ex. No. 1, Amended Stipulation at¶10 (November 27, 2012); Direct Testimony of Bruce M. Hayes at 11-12 (November 27, 2012). [↑](#footnote-ref-51)
51. Joint Hearing Ex. No. 1, Amended Stipulation at ¶9 (November 27, 2012). [↑](#footnote-ref-52)
52. OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes at 12 (November 27, 2012). (“OCC joins only those provisions of the Amended Stipulation that relate to residential customers (so, for example, OCC is not joining this Amended Stipulation regarding a non-residential exit of the merchant function). **Additionally, OCC does not join the provisions of this Amended Stipulation that relate to SCO Supplier Security Requirements (e.g. the $0.06/Mcf SCO Supplier security deposit fee). As noted in the first page of the settlement, OCC disagrees with the rationale supporting the security deposit fee, but will not litigate this issue given the totality of this Amended Stipulation** . OCC’s decision not to litigate this issue will not be used as precedent against OCC in other cases. In addition, the Amended Stipulation does not limit OCC’s future advocacy with regard to the Monthly Variable Rate provision and/or the Billing Enhancements provision.”) (Emphasis added). [↑](#footnote-ref-53)
53. Joint Hearing Ex. No. 1, Amended Stipulation at ¶45 (November 27, 2012); see also Amended Stipulation at Amended Stipulation Attachment 1 (November 27, 2012). [↑](#footnote-ref-54)
54. Joint Hearing Ex. No. 1, Amended Stipulation at ¶47 (November 27, 2012). [↑](#footnote-ref-55)
55. Joint Hearing Ex. No. 1, Amended Stipulation at ¶47 (November 27, 2012). [↑](#footnote-ref-56)
56. Joint Hearing Ex. No. 1, Amended Stipulation at ¶43 (November 27, 2012). [↑](#footnote-ref-57)
57. *Duff v. Pub. Util. Comm*. (1978), 56 Ohio St.2d 367. [↑](#footnote-ref-58)
58. *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services,* Case No. 08-1344-GA-EXM, Opinion and Order at 13 (December 2, 2009). (“The Commission notes that the signatory parties represent a wide diversity of interests including the utility, residential consumers, marketers, industrial consumers, and the Staff.”) [↑](#footnote-ref-59)
59. *Consumers’ Counsel*, 64 Ohio St.3d at 123, 592 NE 2d at 1373. [↑](#footnote-ref-60)
60. Id at 126. [↑](#footnote-ref-61)
61. OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes at 9-10 (November 27, 2012). [↑](#footnote-ref-62)
62. OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes at 10 (November 27, 2012). [↑](#footnote-ref-63)
63. OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes at 10 (November 27, 2012). [↑](#footnote-ref-64)
64. Joint Hearing Ex. No. 1, Amended Stipulation at ¶ 31 (November 27, 2012). [↑](#footnote-ref-65)
65. OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes at 10 (November 27, 2012). [↑](#footnote-ref-66)
66. OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes at 10-11 (November 27, 2012). [↑](#footnote-ref-67)
67. OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes at 11 (November 27, 2012). [↑](#footnote-ref-68)
68. Joint Hearing Ex. No. 1, Amended Stipulation at ¶10 (November 27, 2012). [↑](#footnote-ref-69)
69. OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes at 11-12 (November 27, 2012). [↑](#footnote-ref-70)
70. Tr. Vol. I at 38-40, 55 (Brown) (December 5, 2012), Tr. Vol. II at 186-189 (Parisi), 239-241 (Ringenbach) (December 6, 2012). [↑](#footnote-ref-71)
71. Joint Hearing Ex. No. 1, Amended Stipulation at ¶10 (November 27, 2012). [↑](#footnote-ref-72)
72. OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes at 11-12 (November 27, 2012). [↑](#footnote-ref-73)
73. OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes at 11-12 (November 27, 2012). [↑](#footnote-ref-74)
74. OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes at 15 (November 27, 2012). [↑](#footnote-ref-75)
75. OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes at 15 (November 27, 2012). [↑](#footnote-ref-76)
76. OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes at 15-16 (November 27, 2012). [↑](#footnote-ref-77)
77. OCC Hearing Ex. No. 1, Direct Testimony of Bruce M. Hayes at 15-16 (November 27, 2012). [↑](#footnote-ref-78)