**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| **In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Increase the Rates and Charges for Gas Services and Related Matters.** | **)****)****)****)** | **Case No. 21-637-GA-AIR** |
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| **In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation.** | **))****)** | **Case No. 21-638-GA-ALT** |
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| **In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a Demand Side Management Program for Its Residential and Commercial Customers.** | **)))****)****)** | **Case No. 21-639-GA-UNC** |
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| **In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Change Accounting Methods.** | **)****)****)** | **Case No. 21-640-GA-AAM** |

**MEMORANDUM CONTRA**

**OF**

**INTERSTATE GAS SUPPLY, INC. TO**

**COLUMBIA GAS OF OHIO, INC.’S MOTION TO STRIKE OBJECTIONS**

1. **Introduction**

In this case, Columbia of Ohio, Inc. (“Columbia”) seeks to increase and modify its distribution rates, adjust accounting requirements, and amend its alternative rate plan. Application (June 30, 2021). As set out in the Application and the resulting Staff Report of Investigation, Columbia continues to provide default service to commercial and industrial customers through the Standard Choice Offer and apply switching fees to any customer that switches to a competitive supplier and proposed rates are set on that basis. See, e.g., Application*,* Direct Testimony of Melissa Thompson at 8, and Schedule E; Staff Reportat 18 and Schedule B-6. Columbia elected to leave a switching fee applied to only those customers taking gas supply from a competitive supplier unchanged, and the Staff Report does not address the charge.

Through Objections 4 and 5 to the Application and Staff Report, Interstate Gas Supply, Inc. (“IGS”) has placed in issue the failure of Columbia and the Staff of the Public Utilities Commission of Ohio to properly address supplier rates and the on-going failure of Columbia and the Staff to advance competition as required by Ohio law. In a motion to strike, Columbia seeks to isolate this case from the steps that should be taken to address supplier charges and Columbia’s migration of commercial and industrial customers. Columbia Gas of Ohio, Inc.’s Motion to Strike Objections of Interstate Gas Supply, Inc. and Retail Energy Supply Association (May 16, 2022) (“Columbia Motion to Dismiss”). Because that attempt is not supported by Ohio law, the Commission should deny Columbia’s motion to strike IGS Objections 4 and 5.

1. **The purpose of objections is to provide timely and specific notice of the claims a party seeks to advance at hearing; these objections must demonstrate a sufficient nexus to the application and Staff Report**

 R.C. 4909.19 and Rules 4901-1-28[[1]](#footnote-1) govern this motion. R.C 4909.19 allows the filing of objections by interested persons. Rule 4901-1-28 further clarifies the procedure, stating that objections must be filed within thirty days of the issuance of the Staff Report. It continues that the "objections may relate to the findings, conclusions, or recommendations contained in the report, *or to the failure of the report to address one more specific items.* All objections must be specific, and objections which fail to meet this requirement may be stricken." (Emphasis added.) As the Commission explained its rules regarding rate cases, “Thus, the *only* requirements as to objections are that they must relate to findings, conclusions, or recommendation in a staff report, or must relate to the failure of the staff report to address as items, and must be specific.” *In the Matter of the Application of Water and Sewer LLC for an Increase in its Rates and Charges*,Case No. 08-227-WS-AIR, Opinion ¶ 5 (Apr. 14, 2009) (emphasis added).

The purpose of objections is to place the applicant, the Staff, and other parties on notice as to the issues that will be litigated. *In the Matter of the Application of The Dayton Power and Light Company for Authority to Modify and Increase its Rates for Gas Service to All Jurisdictional Customers*, Case No. 88-777-GA-AIR, 1984 Ohio PUC LEXIS 26 Opinion and Order, at \*11-12 (Aug. 7, 1984). This function of providing notice is not limited to the narrow view of Columbia that its application somehow dictates what parties may address in objections. Columbia Motion to Strike at 3-4. As previously noted, the Commission rule governing objections in rate cases provides that objections may raise issues that the Staff Report failed to address. To this end, the Commission has permitted parties to go forward if their objections show a “sufficient nexus” between issues not addressed in the application and those that are expressly put in issue. *In the Matter of the Application of The Toledo Company for Authority to Amend and Increase Certain of Its Rates and Charges for Electric Service*, Case No. 95-299-EL-AIR, 1996 Ohio PUC LEXIS 180, \*215 (Apr. 11-1996).

Because the purpose of objections is to place parties on notice of issues that will be raised concerning the application and Staff Report, the objections cannot be properly struck on substantive grounds. In a case involving a request to increase rates by a water company, for example, the Commission rejected an attempt by the applicant to strike objections on the ground that the issue had been addressed in another case. *In the Matter of the Application of Water and Sewer LLC for an Increase in its Rates and Charges*, supra, Opinion ¶ 7. Other grounds for deciding a matter are left to the hearing and briefing.

1. **IGS’s Objection 4 concerning the failure of the application and the Staff Report to address Columbia’s exit from the merchant function for commercial and industrial customers is properly before the Commission**

In Objection 4, IGS objects to the failure of the application and the Staff Report to recommend that Columbia exit the merchant function for commercial and industrial customers. In its motion to strike, Columbia argues that the exit the merchant function is not an issue raised in its application and that “IGS may not use this rate proceeding to reopen previously settled matters” addressed in a stipulation to which IGS was a party. Columbia Motion to Strike at 5. The Commission should reject both arguments.

The first argument that Columbia did not raise its efforts to exit the merchant function in its application ignores Ohio law. The Commission’s rules, in fact, direct that issues not raised by the Staff Report may be raised through objections.[[2]](#footnote-2)

Moreover, both the Application and the Staff Report note extensively the interrelation between Columbia’s Standard Choice Offer and distribution rates. This continuing role as default supplier carries with it rate and market effects that affect Columbia, its customers, and competitive suppliers that are addressed in the application and flow into the Staff Report. Application, Direct Testimony of Melissa Thompson at 8 and Schedule E; Staff Report at 18 and Schedule B-6. Thus, there is sufficient nexus between the application and the Staff Report to warrant the Commission to proceed on IGS’s Objection 4.

The exit the merchant function has been an integral piece of gas rate cases in the past. Exit the merchant function is a vital part of Vectren's recent rate case stipulation which created a working group to further explore the topic. *See, In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval of an Increase in Rates*, Case No. 18-298-GA-AIR, et al. Opinion and Order (August 28, 2019).

Additionally, Objection 4 notifies the parties that an issue sufficiently related to the application and the Commission investigation but not properly addressed by the Staff Report will be placed at issue. IGS’s testimony then lays out in detail the reasons for addressing this problem even though the application and Staff Report do not. See Direct Testimony of Paul Leanza (May 13, 2022) and Direct Testimony of Matthew White (May 13, 2022). Thus, there is no surprise.

Columbia’s second argument that rests on the enforcement of the Stipulation is similarly without merit. Columbia’s assertion that IGS may not use this proceeding to address Columbia’s merchant function is based a substantive claim that a stipulation prevents the Commission from addressing Columbia’s merchant function as default supplier. The role of a stipulation, like the effect of a prior rate decision on a current application, however, is not a proper basis to support a motion to strike*. In the Matter of the Application of Water and Sewer LLC for an Increase in its Rates and Charges*, supra, Opinion ¶ 7 (denying a motion to strike an objection based on a claim of res judicata). If Columbia’s concerns have any merit, it will have ample opportunity to raise them in its testimony and briefs, but avoiding that debate by granting a motion to strike is not proper.

Additionally, it is the state policy of Ohio to promote unbundled and comparable natural gas services across the state and to ensure an “expeditious transition to the provision of natural gas services in a manner that achieves effective competition.” R.C. 4902.02(A)(2) and (7). This application and the investigation it triggered directly and indirectly should serve to advance those policies. Although the Staff report took the opportunity to examine several charges and programs that would have a direct tie to the overarching state policy, it failed to exam Columbia’s ability to completely exit the merchant function concerning those customers in the best position to shop, commercial and industrial customers. [[3]](#footnote-3)

Because the Staff Report failed to take the issue to its logical conclusion of proposing Columbia create a plan to fully exit the merchant function for commercial customers in accordance with state policy, IGS properly filed an objection to bring this issue to this hearing. Rule 4901-1-28(B). For these reasons, Columbia’s motion to strike IGS’s Objection 4 should be denied.

1. **IGS’s Objection 5 concerning unreasonable and unduly discriminatory switching fees is properly before the Commission**

 In Objection 5, IGS objects to the failure of the Staff Report to recommend that the switching fee assessed only on service changes to competitive suppliers be set to zero is unreasonable and discriminatory. Columbia moves to strike this objection because “Columbia’s application does not seek to change any portion of Section VII [of its tariff] that relates to switching fees.” Columbia Motion to Dismiss at 6. For familiar reasons, the Commission should reject this argument.

 Simply put, Columbia’s election to leave the switching fees as they are does not prevent IGS or any other party from complaining that they are unjust and unduly discriminatory through an objection. *Industrial Energy Consumers v. Pub. Utils. Comm’n of Ohio*, 63 Ohio St. 3d at 553-55. Moreover, the tariff provisions are included in the Columbia application, see Application E Schedules, and the hearing will likely demonstrate that the fees are included as revenue for purposes of calculating the revenue requirement. Because Objection 5 has a “sufficient nexus” to the application and Staff Report, the ground for Columbia’s objection should be rejected.

1. **Conclusion**

 Because Columbia does not provide a reasoned basis to strike Objection 4 and 5, the Commission should deny Columbia’s motion.

**Certificate of Service**

I hereby certify that a true copy of the foregoing *Memorandum Contra of Interstate Gas Supply, Inc.* was filed electronically through the Docketing Information System of the Public Utilities Commission of Ohio on May 23, 2022. The Commission’s e-filing system will electronically serve notice of the filing of this document upon the following parties listed below.

*/s/ Stacie Cathcart*

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1. Columbia incorrectly invokes Division (F) of Rule 4901:1-19-07 in its motion. While objections under that rule must “[s]pecifically designate those portions of the staff report and/or the application that are considered to be objectionable and explain the objection,” Columbia has also filed a general rate case that is governed by the broader requirements of R.C. 4909.19 and Rule 4901-1-28. Columbia elects to ignore those broader requirements in its motion to strike. Nonetheless, Columbia relies on cases that interpret the Commission’s authority to strike objections in general rate cases, but Columbia’s “pick and choose” approach suffers another problem: the case relied upon in footnote 3 of Columbia’s memorandum in support of the Commission’s discretion to run its own proceedings was reversed in the case cited in footnote 4 of its memorandum, which adopts a broader approach governing objections in rate cases*. See In the Matter of the Application of Ohio Edison Company for Authority to Change Certain of its Filed Schedules Fixing Rates and Charges for Electric Service*, Case No. 89-1001-EL-AIR, 1990 Ohio PUC LEXIS 912, Opinion and Order at \*9 (Aug. 16, 1990) (granting motion to strike), reversed and remanded, *Industrial Energy Consumers v. Pub. Utils. Comm’n of Ohio*, 63 Ohio St. 3d 551, 553-54 (1992). In another questionable reference, Columbia cites a case addressing a motion to strike comments, not objections, regarding a matter that was being considered in a separate proceeding See Columbia Motion to Dismiss at 4 n.4, citing. *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Adjust Rider AU for 2016 Grid Modernization Costs*, Case No. 17-690-GA-RDR, Entry (Sept. 14, 2017). This motion did not present any issues related to the application of R.C. 4909.19 or Commission rules. [↑](#footnote-ref-1)
2. Under Rule 4901-1-28(B), an objection must be timely, demonstrate a sufficient nexus, and be specific. The arguments raised by Columbia concerning the go directly or indirectly to the second requirement. [↑](#footnote-ref-2)
3. This failure stands in sharp contrast to the Staff’s recent efforts in a settlement involving Duke in which it supported several recommendations addressing EXM issues wholly unrelated to the application. *See* *In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates*, Case No. 14-0375-GA-RDR; *et* *al*. Stipulation and Recommendation (Aug. 8, 2021). [↑](#footnote-ref-3)