

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 of Tariffs to Recover)
Through an Automatic Adjustment Clause Costs)
Associated with the Establishment of an)
Infrastructure Replacement Program and for Ap-)
proval of Certain Accounting Treatment)

Case No. 07-478-GA-UNC

**MEMORANDUM CONTRA
OF COLUMBIA GAS OF OHIO, INC.
THE MOTION FOR CONTINUANCE
AND MOTION FOR PREHEARING RULES
AND REQUEST FOR EXPEDITED RULING OF
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL AND
THE MEMORANDUM IN SUPPORT THEREOF ON BEHALF OF
UTILITY SERVICE PARTNERS, INC.
AND INTERSTATE GAS SUPPLY, INC.**

I. INTRODUCTION

On September 27, 2007, the Office of the Ohio Consumers' Counsel ("OCC") filed a Motion for Continuance, Motion for Prehearing Rules and Request for Expedited Ruling on the September 13, 2007 Entry ("Entry"). On September 28, 2007 and October 2, 2007 respectively, Utility Service Partners, Inc. ("USP") and Interstate Gas Supply, Inc. ("IGS") filed a Memorandum in Support of Motion for Continuance, Motion for Clarification and Request for Expedited Ruling by the Office of the Ohio Consumers' Counsel. For the reasons explained below, Columbia Gas of Ohio, Inc. ("Columbia") submits that the Public Utilities Commission of Ohio ("Commission") should deny the Motions and Request of the OCC, IGS and USP and reaffirm

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its Entry without delay to provide assurance to Columbia and its customers that this safety concern will be addressed in the most expeditious manner possible.

II. DISCUSSION

A. **The OCC, IGS and USP Have Failed to Show Good Cause for a Continuance as Periods for Discovery Have Provided Parties with Ample Time to Thoroughly and Adequately Prepare.**

A Motion for Continuance may be granted when a showing of good cause is made under Ohio Adm. Code 4901-1-13(A). The OCC contends a hearing on October 17, 2007 will create a “limited opportunity for discovery and preparation.” (OCC at 3, September 27, 2007.) The OCC further contends a continuance is necessary to “facilitate thorough and adequate preparation for participation in commission proceedings”, as referenced under Ohio Adm. Code 4901-1-16(A). This rationale does not demonstrate a showing of good cause for numerous reasons.

Ohio Adm. Code 4901-1-17 states that “discovery may begin immediately after a proceeding is commenced and should be completed as expeditiously as possible.” Columbia filed its Application in the present docket over five months ago on April 25, 2007. The OCC, IGS, USP and all other parties have had more than ample time to begin discovery and the Commission should not punish Columbia and its customers alike for the other parties’ failure to conduct discovery at any time within the previous 110 business days.

Further, the OCC and IGS misstate the purpose of discovery as enunciated under Ohio Adm. Code 4901-1-16(A), which directs that: “[t]he purpose of rule 4901-1-16 and 4901-1-24 of the Administrative Code is to encourage the *prompt and expeditious* use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings.” A continuance in this proceeding does not encourage prompt and expeditious use of pre-

hearing discovery when all parties have already been given ample opportunity to thoroughly and adequately prepare for the impending proceeding. In fact, the Commission has already addressed in its Entry guidelines to ensure discovery is prompt and expeditious for the remaining time prior to the hearing. Specifically, the Commission has mandated in its Entry a shortened response time to all motions and discovery requests and service of pleadings via hand delivery or electronic means.

IGS also asserts “a continuance is needed in order to insure that the legal rights of IGS and its customers ... are exercisable, including the right to conduct pre-hearing discovery, the right to present testimony, and the right to cross-examine witnesses called to support the Application”. (IGS at 2, October 2, 2007.) Of course, Columbia agrees that all parties to this proceeding are guaranteed due process under the Fourteenth Amendment of the United States Constitution and Section 16, Article 1 of the Ohio Constitution regardless if the Commission grants a continuance to its October 17, 2007 hearing. Certainly the Intervenors will not be stripped of such fundamental rights should the hearing be held on October 17, 2007. All parties will have an equal opportunity to exercise their legal rights in this proceeding regardless of the date, which includes conducting pre-hearing discovery, presenting testimony and cross-examining all witnesses as outlined by the Commission’s Entry.

The Infrastructure Replacement Program and all of the associated issues are undoubtedly time-sensitive and must continue to be dealt with in the most expedited fashion possible. Continuing the hearing date beyond October 17, 2007 will extend the date for a Commission Order and, in turn, create greater confusion among Columbia’s customers while needlessly delaying Columbia’s proposed riser replacement program – a public safety concern. Columbia has complied with all discovery requests in a timely manner and will use its best efforts to continue to do

so. The OCC, IGS and USP have found themselves behind the eight-ball because they failed to conduct discovery during the past several months. No party has demonstrated good cause for continuance. Accordingly, Columbia respectfully requests the Commission deny all Motions for Continuance.

B. Direct Testimony Should be Filed Concurrently on October 10, 2007.

Columbia agrees with the OCC that the deadline for filing Columbia's direct testimony should be set for October 10, 2007. Columbia contends all other parties shall file prepared direct testimony by the same date. USP argues that Intervenors must "anticipate the details of the implementation of the proposal and the reasons that the Applicant's witnesses will present to meet their burden of proof". (USP at 2, September 28, 2007.) The OCC argues that staggered testimony filing dates present "more of an opportunity to review [Columbia's] position, conduct some discovery on that testimony and prepare responsive testimony". (OCC at 4.) However, Columbia's position and the details of its proposal are widely known as they are detailed in its Application filed on April 25, 2007. Regardless, all parties will have an opportunity to submit rebuttal testimony and cross-examine all witnesses at the hearing. Such procedural rights undoubtedly alleviate concern that any party will be prejudiced by concurrent filing of direct testimony or that any party will not have ample opportunity to review, respond to, question and re-question Columbia's direct testimony.

Further, extending the date for which the OCC and USP must file direct testimony only serves to extend the procedural timeline in this proceeding. As previously noted, customer safety and confusion are paramount concerns that cannot afford to be set aside for a greater length of

time, especially when no party has claimed or will experience prejudice through the current procedural timeline.

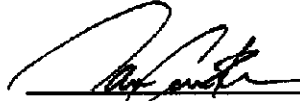
III. CONCLUSION

Columbia must re-emphasize the necessity of continuing down the most expeditious path possible to resolution. All parties have had more than a sufficient amount of time to conduct discovery and the failure of any party to do so earlier in this proceeding must not prejudice the safety and understanding of Columbia's customers or the Commission's objective, as stated in the Entry, to undertake the review of Columbia's application as efficiently as possible. Moreover, Columbia's position and the details of its implementation proposal are discussed in detail in its Application and subsequent Entries and Orders by the Commission. Staggered testimony filing dates will only serve as a mechanism to needlessly extend the procedural timeline, cause prejudice to Columbia, its customers and the Commission's objectives, and allow parties an unwarranted second opportunity to conduct discovery that could have been served much earlier in this proceeding.

For the reasons discussed herein, the Motion for Continuance and Motion for Prehearing Rules and Request for Expedited Ruling of the OCC and the Memorandum in Support Thereof on behalf of USP and IGS should be denied.

Respectfully submitted,

COLUMBIA GAS OF OHIO, INC.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra of Columbia Gas of Ohio, Inc. the Motion for Continuance and Motion for Prehearing Rules and Request for Expedited Ruling of the Office of Consumers' Counsel and the Memorandum in Support Thereof On Behalf of Utility Service Partners, Inc. and Interstate Gas Supply, Inc. was served upon all parties of record by electronic mail this 3rd day of October 2007.



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