BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

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 Approval of Certain Accounting Treatment	)))))))	**Case No. 07-478-GA-UNC**

REPLY BRIEF OF UTILITY SERVICE PARTNERS, INC.

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I. INTRODUCTION

More than a year ago, the Commission in responding to a death and several other "incidents" concerning Design-A risers, ordered an investigation, retained certain consultants, and had an objective analysis produced. In the Staff Report, Case No. 05-463, the Staff recommended that certain steps be taken with respect to Design-A risers. The Staff Report did not discuss any similar danger posed by conventional one piece steel customer service lines. Neither USP nor any other party to this proceeding objects to a swift plan to change out the Design-A risers.

On September 12, 2007, this Commission issued an Entry on Rehearing which permitted Columbia to repair or replace the Design-A risers and associated customer service lines determined by Columbia to have a hazardous leak. Columbia was also directed, to the extent it was not already doing so, to "inform customers who are found to have risers prone to failure that they may have such a riser." The Commission went on to state that any customer with a riser prone to failure, who replaces the riser or repairs or replaces both the riser and an associated service line that has a hazardous leak, would be reimbursed by Columbia, as set forth and subject to the limits described in the July Entry, even if the repairs or replacement are effected after the date of the July Entry. Finally, the September 12, 2007 Entry on Rehearing does not extend the right of Columbia to repair or own customer service lines that are not associated with the prone to failure Design-A risers.

In the matter at bar, Columbia and the Signatory Parties to the Stipulations seek to leverage the Design-A safety issue into obtaining an order from the Commission granting Columbia a franchised monopoly to repair customer service lines, as well as the nullification of existing repair service agreements without compensation. The most striking feature of the evidentiary hearing in this matter was that the weight of the evidence indicated that the

compulsory repair plan advocated by Columbia compromised public safety in order to achieve the ulterior goal of granting the monopoly.

Under the Amended Stipulation, a customer with a hazardous Design-A riser cannot seek the peace of mind of having his Design-A riser replaced immediately; instead he or she will have to wait up to three years to when Columbia gets around to repairing it. Although Columbia now knows the location of every Design-A riser, neither Stipulation assures that there will be an effective plan to immediately notify the customers at risk. It is in the public interest that people at risk be promptly notified and given a chance to remove the danger literally at their doorstep. In fact, the record in this case does not reflect whether Columbia complied with the Commission's notification directive contained in the September 12, 2007 Entry on Rehearing to notify people who are at risk. The only reason to cut off the self-repair and reimbursement provision of the September 12, 2007 Entry on Rehearing -- as called for beginning in March, 2008 under the Stipulations -- is to ensure that Columbia gets a monopoly on repair.

Property owners served by Design-A risers are not the only ones who will have their safety compromised if the September 12, 2007 Entry on Rehearing is replaced by the Stipulation. Today, all repairs to customer service lines are inspected by Columbia. The Amended Stipulation proposes to water down this protection and would allow the installing plumber to inspect his or her own work. Self-inspection may lower Columbia's costs but it cannot be called an improvement to pipeline safety.

In sum, the Amended Stipulation violates public policy because it revokes the current September 12, 2007 Entry on Rehearing which allows people at risk by the Design-A riser to make themselves safe at once by contracting for the immediate replacement instead of having to wait up to three years for Columbia to make the repair. The Amended Stipulation violates

statutory and constitutional law because it nullifies existing contracts to repair steel customer service lines without a showing of an immediate public danger or compensation for the property taken. In fact, by removing the third party inspection of steel customer service line repairs that takes place today and replacing it with self-inspection, the Amended Stipulation actually dilutes quality control and thus safety. Finally, the Commission simply lacks the authority to grant Columbia a monopoly to repair non-utility owned property. The fact that Columbia would charge utility customers for repairing non-utility property does not make it a utility service; it simply compounds the legal deformity by violating the regulatory principle of linking cost with cost causation.

II. ARGUMENT

A. There is no basis for transferring ownership of customer service lines.

Contrary to Columbia's argument at pages 9-19 of its Initial Brief, there is no basis for transferring ownership of customer service owner lines from customers to Columbia. First, Mr. Ramsey testified that according to the 2006 DOT annual report, Columbia has 1,333,900 customer service lines in its system.[1] Columbia estimates that it will be replacing approximately 4,400 customer service lines annually.[2] If Columbia were to replace approximately 4,400 service lines annually out of 1,333,900 service lines, it would take approximately 300 years for Columbia to replace and assume ownership of all customer service lines.[3] How can there be a pressing safety issue associated with customer service lines when Columbia admits that only 0.33 percent of all service lines require replacement every year?[4]

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[1] Tr. I, 29-30.

[2] Tr. I, 30.

[3] Tr. I, 30-31.

[4] Note also, in its February 1, 2008 Notice of Intent in Case No. 08-72-GA-AIR, Columbia proposes an Accelerated Mains Replacement Program (AMRP) under which it seeks to replace "an estimated

In fact, the record is completely devoid of any safety problem associated with non-Design-A customer service lines. Columbia witness Ramsey could not specifically recall any instances of a catastrophic failure of a steel customer service line.[5] Ms. Henry agreed that the potential problems associated with certain riser designs do not warrant changing the current system of customer ownership of customer service lines.[6] No one testified that customer service lines are deteriorating at a more rapid rate than in the past and the Staff Report in Case No. 05-463 details no problems with customer service lines apart from the Design-A risers. The Staff never stated that Columbia's employees or practices are superior to those used by the plumbers currently doing the work.[7] Of course, Messrs. Ramsey, Funk, and Phipps are all correct when they agree that having natural gas flow through plastic or bare steel lines could constitute a potential danger. But as Mr. Phipps explained, once the natural gas is turned off at the curb, there are no issues as to natural gas and safety that relate to the operating equipment used in the repair and ensuring the area is secured to prevent any injury to bystanders.[8] Turning off the leaking service is the current protocol. The Stipulation does not change the current protocol of turning off leaking customer service lines. The Stipulation mandates who repairs the customer service lines. Safety is not promoted by simply substituting a Columbia contractor for a USP contractor to fix a damaged or leaking customer service line as proposed by Columbia in its application.[9]

350,000 to 360,000 steel service lines (company-owned and customer-owned) over a period of approximately 25 years."

[5] Tr. I, 49.

[6] Tr. IV, 282.

[7] Tr. IV, 285.

[8] USP Ex. 3, p. 4.

[9] USP Ex. 4, p. 5.

Columbia attempts to shift the focus away from safety by attacking USP's interest as purely economic and by questioning USP and ABC's ability to speak to customer concerns. While USP has intervened to defend its economic interest, it must be remembered that a subsidiary of Columbia sold the customer service line warranty business to USP in 2003[10] and its sister affiliate is now trying to take it back without compensation via a regulatory order under the guise of safety. The Commission should not be swayed by Columbia's attempt to shift the focus from the fact that the only real safety issue facing the Commission in the matter at bar is the prone to fail Design-A risers.

Columbia also has no basis for claiming that the Application will help Columbia implement the federal pipeline safety regulations. At page 13 of its Initial Brief, Columbia cites the record testimony of Mr. Steele[11] and makes a reference outside the record to Battelle Laboratories for the point that Columbia is unable to test removed failed risers or customer service lines because the property is owned by the customer. Columbia goes on to state "[b]ecause Columbia does not own customer service lines, it has no detailed customer service line records." The evidence fails to disclose <u>any</u> specific examples where repair or replacement of customer service lines or risers was delayed due to the fact that Columbia had no detailed service records. Indeed, Mr. Ramsey has seen more complaints coming back through the Commission about the timeliness of Columbia personnel than about OQ certified plumbers.[12] Staff witness Steele only stated that it is "an issue in the state;" he offered no specific details or examples.[13] Further, the lack of records is Columbia's own doing; none of the signatory parties

[10] USP Ex. 2, p. 6.
[11] Tr. II, 99.
[12] Tr. II, 39.
[13] Tr. II, 99.

offered evidence tending to show that it was impossible for a large Ohio local distribution company such as Columbia or Dominion East Ohio to keep records of customer owned service lines. Today, Columbia has the ability to keep records of what sort of risers have work done on them and what work was done on customer service lines because of the mobile data terminal (MDT), a computer that is used in the field.[14] Mr. Ramsey testified that Columbia could keep any records it desires to keep.[15]

Similarly, at page 16 of its Initial Brief, Columbia argues that currently it does not have managerial or contractual control over plumbers who are doing the repair or replacement work. As a result, Columbia argues that it is not able to maintain heightened oversight, structure or control over these repairs and replacements. These statements are in direct contradiction to the testimony of Columbia witness Ramsey. Mr. Ramsey agreed that Columbia maintains certain controls on the quality and workmanship that takes place in the course of a repair of a customer service line.[16] He agreed that Columbia has control of the materials that go into the ground on the approved materials list.[17] Mr. Ramsey agreed that Columbia today has the unfettered ability to reject work done by a non-certified plumber.[18] Columbia also has controls through visual inspection of the work done, checking the joints in particular, and performing a pressure test.[19] Columbia witness Ramsey agreed that Columbia today has a variety of different ways that it can control the process without doing the work itself and without interfering with the rights of

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[14] Tr. I, 69-71.
[15] Tr. II, 50.
[16] Tr. I, 67-68.
[17] Tr. I, 68.
[18] Id.
[19] Tr. I, 68-69.

contract or the rights of property.[20] And significantly, Columbia can simply revoke the operator qualified status of a contractor who violates procedures or requires additional training. Contrary to Columbia's claim, it has all the necessary controls to enhance its adherence to federal pipeline safety regulations without having to assume ownership and control over customer service lines.

Columbia also argues, at page 17 of its Initial Brief, that its proposal is necessary because warranty companies are not regulated by the state or local governments. This statement ignores several facts which were developed in the record. First, Columbia will be using independent plumbers just like warranty companies. In fact, Columbia anticipates using independent contractors for over 80% to 90% of all Design-A riser repairs, the same independent contractors covered by the OQ certification process and utilized by warranty companies.[21] And regardless, warranty companies like USP are subject to control as customers can file complaints against USP at the Attorney General's office and at the Better Business Bureau.[22] More importantly, warranty companies are disciplined by the market place and by the public utilities they work with. As Mr. Riley testified, USP relies extensively on delivering superior customer service to retain existing customers as well as to obtain new ones. It maintains a customer call center 24 hours a day. Currently, USP enjoys a 96% customer satisfaction rating. Customer satisfaction is very important in the competitive customer service line industry. If USP cannot consistently satisfy its customers, it wouldn't be long before it wouldn't have any customers. The customers' choice of purchasing and maintaining a warranty service is largely dependent on the value they are receiving which, in turn, is largely determined with how well USP can satisfy them.[23] Further,

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[20] Tr. I, 69-70.
[21] Columbia Ex. 1, p. 13.
[22] Tr. II, 144-145.
[23] USP Ex. 2, p. 6.

while not directly regulated by this Commission, USP's contractors are subject to several controls imposed by Columbia Gas of Ohio when it inspects repairs.[24]

There is no safety problem with the current system of customers owning customer services lines and the record establishes that under the IRP or the Amended Stipulation and Recommendation, safety will be diminished when it comes to repairing and replacing customer owned service lines.[25] The Commission should focus on solving the Design-A riser issue and should require Columbia to replace Design-A riser in a time frame within three years.

B. Customers will not benefit either under the Application or the Amended Stipulation and Recommendation.

At pages 11-12 of its Initial Brief, the Staff relied on the testimony of Mr. Steele in listing several "alleged benefits" if Columbia were to assume responsibility for future maintenance and repair of hazardous customer owned service lines. When one studies the record and compares the "status quo" today with either the proposed Application or the Amended Stipulation and Recommendation, one must conclude that customers will not benefit and in fact will lose protection if the current system is changed.

1) The Staff alleges that "Columbia will have better control over the quality of the work being performed on riser and service line installation."

This statement is simply untrue. First, Columbia will not have control over installation of either risers or customer service lines under new construction.[26] Columbia already has control over the repair process by having an approved materials list and an approved list of DOT certified plumbers which customers can use.[27] Finally, Columbia performs an independent

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[24] Tr. I, 67-70.
[25] USP Ex. 4, p. 4.
[26] Tr. I, 28-29 and IV, 265.
[27] Tr. I, 67-70.

inspection of all work done by independent plumbers and will not perform independent inspections of all work done under the new system. Neither Columbia nor the Staff provided a single specific instance of how Columbia would have better control under the new system than under the current system. This "alleged benefit" is non-existent.

2) The Staff also argues that allowing Columbia to assume responsibility for future maintenance and repair of hazardous customer owned service lines ensures proper installation of risers which is critical to proper performance.

This claim by Staff has no bearing on Columbia's proposal to assume control and ownership of customer service lines. As to Columbia's responsibility for risers, neither the IRP nor the Amended Stipulation applies to installation of risers during new construction.[28] There is no evidence that Columbia itself has the ability to properly install risers. The Staff did not state that Columbia's employers or practices are more superior than the plumbers currently doing the work.[29] Further, the record reveals that Columbia plans on contracting out 80% to 90% of the Design-A riser repairs – a clear indication that at present it lacks the in-house capability to make repairs.[30]

3) The Staff also argues that the Application and the Amended Stipulation and Recommendation "provides better documentation of what is being installed and will allow for better record keeping and availability of the service line for testing after failures."

While Columbia did not apparently keep records of customer service lines, Mr. Ramsey testified that Columbia could keep any records it desires to keep.[31] There is no reason why

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[28] Tr. I, 28-29 and IV, 265.
[29] Tr. IV, 285.
[30] Tr. I, 42; Columbia Ex. 1, p. 13.
[31] Tr. I, 50.

Columbia could not keep records on customer service lines repair today with its mobile data terminals as it inspects all repairs or replacements.[32]

4) The Staff also believes that the proposed IRP and Amended Stipulation and Recommendation "provide more efficient repair and replacement of hazardous customer service lines and risers."

Again, USP does not object to Columbia assuming responsibility for the repair and replacement of Design-A risers because it was Columbia who approved the use of Design-A risers in the first place. Neither the IRP nor the Amended Stipulation will bring about more efficient repair and replacement of hazardous customer service lines.[33] The record reflects that USP's average cost of repairing or replacing a customer service line is approximately $910 while Columbia is at approximately $1,000.[34] Columbia's proposal forces all customers to pay for the repair and replacement of hazardous customer service lines and denies choice to customers and landowners who wish to purchase a warranty service or wish to have an independent contractor of their choice repair or replace customer service lines.

5) The Staff also believes that under the IRP and the Amended Stipulation and Recommendation, the company will not have to make an additional trip to the site for follow-up leak testing since it or its contractors would already be there making the repairs.

Columbia and the Staff are sacrificing safety for convenience. USP witnesses Funk and Phipps testified as to the importance of having an independent party review the work done by independent plumbers.[35] Mr. Ramsey agreed that there is value in having an independent third

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[32] Tr. I, 70-71.
[33] USP Ex. 2, p. 10.
[34] Tr. II, 158 and 181.
[35] USP Ex. 4, pp. 4-5; USP Ex. 6, pp. 1-2; Tr. IV, 106 and 114-116.

party review one's work.[36] The IRP and the Amended Stipulation places a higher priority on the convenience of Columbia not having to make an additional trip over the safety resulting from having an independent third party review. This is not in the public interest.

6. The Staff also believes that under the proposed IRP and Amended Stipulation and Recommendation there will be the "provision of verification of materials and replacement of risers in service lines by Columbia personnel."

This is untrue. Under the current system, Columbia personnel do have the opportunity to verify the materials used in replacement of risers and customer service lines.[37] That is the very feature that Mr. Phipps testified was so important as a check and balance.[38] Under the new proposed system, Columbia will use independent contractors for the replacement of the risers and likely will do the same for customer service lines.[39] It is also likely that under the newly proposed system, the person who does the work repairing the customer service line will be the same person who does the inspection.[40] Thus, under the IRP and the Amended Stipulation, the prospect of verification will be diminished to the detriment of the public.

7) The Staff also lists the elimination of the need for a customer to take action or make a decision about which riser type, and who to hire to install.

USP does not object to Columbia taking responsibility over the replacement of Design-A risers. As well, Staff ignores the undisputed fact that Columbia today advises customers on "what they need to do to effectuate the repairs" upon "discovery of leakage or other dangerous

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[36] Tr. I, 24 and 50.
[37] Tr. I, 47-48.
[38] Tr. IV, 106 and 114-116.
[39] Columbia Ex. 1, p. 13; Tr. I, 48; USP Ex. 8, p. 7.
[40] Id.

condition involving customer-owned equipment."[41] Regardless, today, if a customer does not wish to make a decision about the installation of a customer service line or which contractor to call, that customer can avail himself of a warranty service provider such as USP. But that customer does not have to enroll in any warranty service program and does not have to pay for the repair or replacement of anyone else's customer service lines. Under the natural gas policy of this state, the customer should be able to choose to enroll in a warranty service program and that choice is being denied under the IRP and the Amended Stipulation and Recommendation.

8) The Staff also lists as a benefit of the IRP and the Amended Stipulation and Recommendation the allowance for a "clear uniform line of demarcation between Columbia's responsibility for operations and maintenance and the customer's obligation regarding gas service to the home."

This is no benefit. There is already a clear uniform line of demarcation. As Mr. Riley testified, it is very clear that the customer owns and is responsible for the customer service line and all of the house lines on the customer's property.[42] There is no customer confusion caused by the current line of demarcation and no documented evidence in the record supporting the existence of customer confusion. If, however, the IRP or the Amended Stipulation and Recommendation is approved, there will be customer confusion. Columbia will only take ownership over those portions of customer service lines that it repairs or replaces.[43] Columbia will not take responsibility for house lines or ancillary lines to gas grills on the other side of the

[41] Tr. IV, 147, Application, p. 3.
[42] USP Ex. 8, p. 9.
[43] Tr. I, 27-28.

meter.[44] Thus, the current system provides for a clear uniform line of demarcation; the proposed system will create a patchwork both in Ohio and within Columbia's system.

9) The Staff also states that the IRP and the Stipulation and Recommendation will give Columbia complete responsibility (repair and replacement) for all pipelines regulated by the federal pipeline safety regulations and allows them to uniformly correct all safety issues and required by the pipeline safety regulations.

Columbia already has that responsibility today under 49 CFR § 192, a regulatory scheme that permits and recognizes the existence of customer-owned service lines.[45] Changing ownership of customer service lines does not increase LDC oversight nor make clearer the lines of responsibility for pipeline safety compliance.[46] Further, the current system allows Columbia to maintain an approved materials list and a list of approved qualified DOT certified plumbers. No additional benefits will be provided in this area if the IRP or the Amended Stipulation and Recommendation is approved.

On the other hand, customers will lose benefits under the IRP and the Amended Stipulation and Recommendation.[47] Landowners will lose the choice of: enrolling in a warranty service provider program, selecting an independent plumber to come onto their property to perform the work, and determining the location of their own customer service line. Under the IRP and Amended Stipulation and Recommendation, property owners will have to pay for the

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[44] Tr. I, 178.

[45] 49 CFR § 192 is entitled: "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards". As an operator who is engaged in the transportation of gas, Columbia must follow these detailed requirements including but not limited to Subpart B – Materials; Subpart H – Customer Meters, Service Regulators, and Service Lines; Subpart L – Operations; Subpart M – Maintenance; and Subpart N – Qualification of Pipeline Personnel.

[46] USP Ex. 8, p. 7.

[47] USP Ex. 8, pp. 2-4.

cost caused by others, not just themselves.[48] They will have no choice in the matter. Further, property owners who have had new plastic lines installed will have to pay the repair and replacement of older bare steel service lines.[49] The independent review by Columbia of all work done by independent plumbers will be lost under the IRP and the Amended Stipulation and Recommendation.[50] Further, there will be a financial incentive for property owners with non-hazardous leaks to allow them to deteriorate until they become hazardous so that Columbia's customers can pay for the repair or replacement of such a customer service line.[51] The evidence in this case demonstrates that customers will not benefit by the approval of the IRP or the Amended Stipulation and Recommendation which transfers ownership of customer service lines from customers to Columbia.

C. The Amended Stipulation and Recommendation does not meet the three-pronged test.

The October 26, 2007 Stipulation and Recommendation was marked and admitted into evidence as Columbia Exhibit 11. The December 28, 2007 Amended Stipulation and Recommendation is now a part of this record as per the February 4, 2008 Agreement and the February 5, 2008 Entry.

In its Initial Brief, Columbia says little about the Stipulation and Recommendation or the Amended Stipulation. It states that it represents a "just and reasonable resolution of all issues in this proceeding; violates no regulatory principle or precedent; and is the product of lengthy, serious bargaining among knowledgeable and capable parties in a cooperative process undertaken by the parties to settle the case." See Columbia's Initial Brief, p. 23. Columbia

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[48] USP Ex. 8, pp. 5-6.
[49] USP Ex. 8, p. 5.
[50] USP Ex. 5, pp. 2-3; USP Ex. 8, pp. 2 and 5.
[51] Tr. IV, 141 and 145-146.

argues that while the Stipulation is not binding on the Commission, it is entitled to careful consideration where it is sponsored by parties representing a wide range of interests such as the Staff, Columbia, the OCC and the OPAE. Of course, it must be remembered that of the five parties submitting initial briefs in this case, three oppose the Amended Stipulation and Recommendation. Neither the October 26, 2007 Stipulation and Recommendation nor the Amended Stipulation should be accorded substantial weight.

In its Initial Brief, the Staff neither endorses the Application nor the October 26, 2007 Stipulation and Recommendation (Columbia Ex. 11). Instead, the Staff recommends that the December 28, 2007 Amended Stipulation and Recommendation should be adopted by the Commission.

USP submits that, like the October 26, 2007 Stipulation and Recommendation, the December 28, 2007 Amended Stipulation and Recommendation does not meet the three criteria for the very same reasons that are expressed in Section III.B. at pages 16-30 of the USP Initial Brief. However, there are a few additional statements contained in the Staff's Initial Brief which warrant a reply.

At pages 7-8 of its Initial Brief, the Staff argues that the signatories of the Amended Stipulation "represent the principal interests in this case" and that this suggests that "the Amended Stipulation is the result of serious bargaining." This statement cannot be accepted by the Commission. The parties with the most at risk in this case are the property owners and the warranty service providers and Operator Qualified plumbers who work directly with property owners in repairing and replacing customer service lines.[52] Further, the OCC does not represent

[52] USP Ex. 8, p. 5; USP Initial Brief, p. 19.

landlords who are not residential consumers.[53] The business and livelihood of USP, ABC Gas Repair, and Interstate Gas Supply, Inc. in Ohio is at stake in this case and their interests were ignored. There was no serious bargaining. See also Section II. E. of this Reply Brief.

With respect to the Staff's arguments that the settlement benefits rate payers and the public interest, see Section II.B. of this Reply Brief.

With respect to the third criterion involving the violation of significant regulatory principles or practices, the Staff Initial Brief contains several inaccurate statements. At page 16 of its Initial Brief, the Staff states that Utility Service Partners "dresses-up its arguments as 'regulatory principles'." USP submits that Section 4929.02, Revised Code (expressing the state policy as to natural gas services and goods), cost causation principles, avoidance of cross-subsidies, limiting Commission jurisdiction to public utilities and railroads and not extending it to landlords, not allowing the ultra vires creation of new monopolies, and preventing the evaporation of property rights of private citizens are hardly "dressed-up regulatory principles".

At page 16 of its Initial Brief, the Staff argues that "residential landowners do not contest the Amended Stipulation." The Staff is mistaken. OCC and the Ohio Partners for Affordable Energy may have signed an Amended Stipulation and Recommendation which was filed after the record was closed, but OCC has only statutory authority to represent residential consumers or municipal corporations.[54] Residential landlords who are not residential consumers of Columbia are not represented by OCC in this case. Although it is not clear, we believe that the OPAE is more likely to represent tenants than landlords.

The Staff goes on to state at page 16 of its Initial Brief that "[n]o residential landowner has appeared to contest Columbia's Application, this Stipulation, or the Amended Stipulation."

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[53] Id.

[54] Section 4911.15, Revised Code.

It is difficult to fathom how an Amended Stipulation and Recommendation, filed at 5:14 p.m. on Friday, December 28, 2007 and served on parties of record on the morning of December 31, 2007, could be contested by residential landowners at a hearing that closed on December 3, 2007. Further, the Staff seems to place the burden of proof on the interveners. The burden of proof in this case is on Columbia, not the interveners. No residential consumers appeared to support Columbia's Application or the October 26, 2007 Stipulation and Recommendation. In fact, no residential or commercial consumer ever testified that the current system of customer ownership of customer service lines was problematic or caused safety issues.

At page 17 of the Staff Initial Brief, the Staff cites Mr. Riley's testimony in opposition to the Stipulation that "the cost causer (the landowner with the customer service line that has a hazardous leak) does not have to pay for the cost imposed."[55] The Staff accurately quoted Mr. Riley's testimony. The Staff goes on to state that "[t]his claim assumes that the landowner with the customer service line is the only one benefited by the elimination of the risk created by a hazardous leak." The Staff did not cite any record support for this statement because there is none. Neither Mr. Riley, nor Mr. Funk, nor Mr. Phipps, nor Mr. Morbitzer ever made that assumption nor suggested that this assumption was true. What Mr. Riley did suggest is that those who rent property and rely on their landlords to keep safe the customer service lines on the property will now have to share in the costs for their landlord's repair and replacement of customer-owned service lines.

The second example the Staff cited in this area was Mr. Riley's testimony that "purported convenience is emphasized over safety."[56] See Staff Initial Brief, p. 17. Again, the Staff

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[55] USP Ex. 8, p. 6. Mr. Riley went on in his testimony to explain that under the Stipulation and Recommendation, customers who do not impose costs are required to pay.

[56] USP Ex. 8, p. 6.

accurately quoted Mr. Riley's testimony but completely misunderstood his point. Under the current system, Columbia must dispatch employees out to a repaired or replaced customer service line to inspect before turning on the gas. This independent verification is important because it assures that someone different than those who did the actual work will inspect the work before turning the gas back on. This promotes safety. This independent inspection will be lost under both the Application and the Amended Stipulation and Recommendation. USP believes it is important to have an independent third party review the work even though that may be inconvenient to Columbia.

The Staff goes on at page 18 of its Initial Brief to cite the testimony of USP witness Phipps regarding the percentage of contractors who may do "shoddy work" or take "shortcuts". USP urges the Commission to look at the entire transcript of Mr. Phipps' testimony. While Mr. Phipps was aware that there are some "bad eggs" who may take shortcuts, he was not one of them.[57] The point of Mr. Phipps' testimony was that without Columbia's independent inspection, there is a potential that a contractor may take a shortcut.[58] As Mr. Phipps stated in his testimony, "Columbia's independent oversight helps prevent these types of shortcuts."[59]

In summary, the evidence clearly indicates that none of the three criteria were met. The Commission must reject both Stipulations and Recommendations.

D. Columbia's Initial Brief contains numerous mistakes and mischaracterizations of the record and must be corrected.

At page 8 of its Initial Brief, Columbia argues that "no party in this proceeding has opposed Columbia's proposal to assume financial responsibility of risers prone to failure." It also references its "assumption of financial responsibility of repair and replacement of all leaks

[57] Tr. IV, 106.
[58] Tr. IV, 103.
[59] USP Ex. 6, p. 2.

on customer-owned service lines" in the context of its Application at page 24 of its Initial Brief. The premise contained in these statements is completely inaccurate. Columbia's shareholders are not assuming financial responsibility -- Columbia's customers are. Columbia witness Ramsey indicated that Columbia shareholders are not going to pay for the maintenance, repair and inspection of customer-owned service lines as they are replaced or repaired by Columbia; rather, under the IRP proposal, all customers will pay for maintenance, repair and inspection of customer-owned service lines as they are replaced or repaired by Columbia.[60]

At page 11 of its Initial Brief, Columbia states that "it would cost USP approximately $12,500,000 to replace its customers' risers prone to failure." Apparently, Columbia is assuming that the USP pro rata share of the estimated $160,000,000 to replace Design-A risers will be approximately $12,500,000. This assumption is not supported by the record. USP witness Riley testified that because Design-A risers are relatively new, USP does not expect many of its over 100,000 warranty customers to have Design-A risers. Older steel customer service lines typically do not use Design-A risers.[61] Thus, Columbia's argument that USP will save substantial amounts of money by having Columbia replace the Design-A risers is simply untrue.

Columbia goes on to state at page 11 of its Initial Brief that "(S)uch expenditures would certainly dampen USP's $2,500,000 profits from existing warranties in Columbia's service territory." Again, Columbia is wrong on the facts. The $2.5 million referenced by Mr. Riley is the gross margin on the products sold, not profits.[62] The $2.5 million in gross margin on the products sold does not reflect deductions for administrative or back office calls such as the call

[60] Tr. I, 32-33.
[61] USP Ex. 2, p. 4.
[62] Tr. II, 162-163.

center, claim service manager, IT systems, claim systems, etc.[63] On the contrary, it is Columbia who will benefit under the IRP program because it may avoid law suits from land owners who allege that Columbia negligently approved the installation of Design-A risers in the first place while Columbia recovers the costs of correcting its mistake from its customers.

At pages 14-15 of its Initial Brief, Columbia states that in 2006, it had 1,652 corrosion leaks on bare steel services lines of which 149 or approximately 9% were Grade 1 hazardous leaks. Columbia then argues that 9% of customer-owned service lines could be classified as Grade 1 hazardous leaks. The record does not support this assumption. The 9% factor came from Mr. Ramsey's testimony regarding company service lines.[64] We do not know if these company service lines were coated or cathodically protected. We also have no frame of reference as to what percentage of customer-owned services lines are coated or cathodically protected. Thus, Columbia's attempt to extrapolate and apply the 9% hazardous leak factor for company service lines to customer-owned service lines is simply not supported by the record.

On page 15 of its Initial Brief, Columbia argues that it will conduct a formal audit program to inspect work performed by its employees and contractors and that such audit program will cover one-third of the operating locations in Ohio on an annual basis, including field inspection of employee's work. This statement sounds good but the record is very clear that this audit program is not comprehensive. Columbia does not intend to send an auditor out in every instance where Columbia replaces or repairs a riser or customer-owned service line.[65] Rather, audits will be done on a random basis[66] and will be conducted over a third of Columbia's

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[63] Tr. II, 181.
[64] Columbia Ex. 5, p. 2.
[65] Tr. I, 114.
[66] Id.

operating territory on an annual basis, over a two-or-three week period.[67] Columbia will only be riding on-site with the field people for a very small percentage of the time.[68] This is a poor replacement for the existing program of 100% inspection of all service line repairs. The same can be said for Columbia's claim in its Initial Brief at page 15 that contractor work will be monitored on a "daily" basis – a statement without reference to the record and contrary to Columbia's own testimony that monitoring will only occur on a "regular basis."[69]

Another mischaracterization appears at page 15 of Columbia's Initial Brief. Columbia argues that independent plumbers have a lack of motivation to do a quality and thorough job, citing Mr. Phipps' testimony. Likewise, at page 12-13 of the Staff Initial Brief, the Staff cites Mr. Phipps' testimony for the proposition that as many as one-third of contractors hired to perform work on service lines or risers may take shortcuts that could lead to leaks. USP urges the Commission to review the entire testimony based on direct, cross, re-direct, and re-cross of Mr. Phipps' testimony.[70] If one reads the entire transcript of Mr. Phipps' testimony, the Commission will conclude that independent contractors, like everyone else in this world, make mistakes. Some independent contractors may take shortcuts and those shortcuts are potentially significant. No one knows what percentage of contractors take shortcuts but the fact that Columbia independently inspects the work of independent plumbers is appropriate because Columbia personnel are trained to do a thorough job in reviewing the work of independent contractors before turning the gas back on. Under the IRP and the Amended Stipulation and

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[67] Id.
[68] Id.
[69] Tr. IV, 56.
[70] Tr. IV, 97-119.

Recommendation, there will no longer be in place the checks and balances feature of having an independent inspection of the work done so that these shortcuts can be prevented.[71]

At pages 17-18 of its Initial Brief, Columbia makes the following argument, citing the November 24, 2006 Staff Report of Investigation in Case No. 05-463:

> This is also the reason risers have become a tremendous state-wide safety concern—because some independent plumbers in some instances fail to apply the correct amount of torque to risers during the installation. This resulted in imperfect installations although the incorrect installations cannot be identified through inspection. Management control of those individuals who performed repairs and replacements of Columbia's Distribution System will enhance its oversight, structure and control... (footnote references and footnotes omitted)

There are at least three mischaracterizations in the above quoted portion of Columbia's brief. First, nowhere in the Staff Report in Case No. 05-463 at pages 10-12 is there any allegation that independent plumbers are the ones who failed to apply the correct amount of torque. Because Columbia did not keep records before 2002-2003, we do not know who installed these Design-A risers.[72] Further, the Staff Report, at page 12, states "In summary, the consultants found that failures were more likely to occur in risers that had been exposed early in their service to 100ft-1bs. of tightening torque during installation, severe cold weather, (15°F), and between 200-to-500 lbs tensile pull, caused by conditions such as frozen ground on the supply pipe."[73] There is nothing in the Staff Report or in the record in Case No. 07-478 which supports the premise that any independent contractors failed to apply the proper amount of torque. Columbia is wrong when it blames independent plumbers for its shortcomings. More significantly, Columbia's statement that management control of those "individuals" will somehow enhance its oversight, structure and control with respect to this issue is in error. The

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[71] USP Ex. 4, pp. 4-5; USP Ex. 8, p. 2.

[72] Tr. I, 45-46. But we do know that Columbia approved the Design-A riser since it was on its material list. Tr. IV, 266.

[73] Staff Report, p. 12.

IRP and the Amended Stipulation and Recommendation do not apply to installation during new construction.[74] Here again, Columbia has mischaracterized the evidence.

E. Columbia has ignored the Commission's rules and process throughout this case."

Throughout this proceeding and even after the proceeding, Columbia has ignored the Commission's rules in order to cause disadvantage to the non-signatory parties in this case. The October 26, 2007 Stipulation and Recommendation was filed on the Friday afternoon before the first hearing started, but was not served until October 29, the day of the first hearing. No one at the December 3 hearing stated that the October 26, 2007 Stipulation and Recommendation was subject to "ongoing settlement discussions." Of course, the December 28, 2007 Amended Stipulation was filed after the evidence was submitted on the record. The Commission, by taking administrative notice of the letter filed by counsel for the Ohio Partners for Affordable Energy, will recognize that counsel for OPAE signed the original Stipulation as of December 19, 2007 and mentioned nothing about the Amended Stipulation and Recommendation filed on December 28, 2007, the Friday before the initial brief was due. Contrary to Commission rules, it was not served upon parties of record until December 31, 2007, the day the initial briefs were due.

When one compares the Amended Stipulation and Recommendation with the October 26, 2007 Stipulation and Recommendation, it is quite obvious what Columbia and the Staff were attempting to do. Columbia and the Staff were simply trying to bolster their litigation position by obtaining additional signatories. Adding signatories for litigation purposes does not make the Amended Stipulation in the public interest. USP and other interveners in this case, as well as the

[74] Tr. I, 30; Tr. IV, 265.

Commission's Legal Department, have incurred additional expenses because of the fact that the Amended Stipulation was filed after the record was closed.

This conclusion is reinforced by the lack of any additional benefits offered by the Amended Stipulation. For example, the creation and submission of a Riser Materials Plan[75] ("RMP") to the Staff, the OCC and the OPAE included in the Amended Stipulation is not really an additional benefit as Columbia has unilateral authority to develop the RMP under 49 CFR Part 192. Moreover, if Columbia were serious about safety, it should have begun work on the Riser Materials Plan a year ago when the Commission's Report was made public. Columbia should have submitted the Riser Materials Plan to independent plumbers who work daily in the natural gas industry as the danger to the public could be removed as soon as practical. The plumbers have more experience than the Staff, the OCC and the OPAE in understanding risers and their replacements.

Likewise, the alleged benefits contained in the Amended Stipulation such as the sunset provision, the right of customers who apply for reimbursement to be reimbursed by check only, the provision by Columbia as a part of the annual IRP filings of audited accounting billing records in detail, and the commitment of Columbia to work with OCC and the Staff to develop customer communication and educational materials related to the IRP program all could be provided without the Amended Stipulation. None of these items require Commission approval. In fact, it should be noted that the RMP circulated this month does not require Commission approval, is not part of the record in this case, and neither Columbia nor the Staff are asking that approval of the RMP be part of the Order issued in this proceeding. In sum, the negotiated benefits are not part of the subject matter of the hearing, but were merely added on to the original

[75] USP received an RMP from Columbia on February 15, 2008.

Stipulation in an effort to obtain additional signatures. The Amended Stipulation violates the regulatory principles or practices for all reasons discussed in USP's initial brief and in the testimony of Messrs. Funk, Phipps, Morbitzer and Riley. The Commission should reject the Amended Stipulation and Recommendation.

F. Columbia does not need to seek or receive Commission approval of the Riser Material Plan.

On February 15, 2008 Columbia filed its Riser Material Plan ("RMP") as an attachment to its response to objections filed by USP. The RMP was a document referenced in paragraph 21 of the December 28, 2007 Amended Stipulation. The RMP was filed as an attachment and served but never introduced into evidence or sponsored by any witness subject to cross examination.

Even though the Commission cannot legally approve the RMP because it is not part of the record, the Commission has no need to do so. As an operator as defined under the Federal Gas Pipeline Safety Rules, Columbia already has the responsibility to select materials, design, service line installation parameters, valve requirements, rotation of valves, etc., in compliance with the Federal Gas Pipeline Safety Standards. See 49 CFR § 192. This Commission has already adopted 49 CFR Part 192 as of March 5, 2007. See Rule 4901:1-16-03(A) of the Ohio Administrative Code. The Commission does not need to and should not approve the RMP.

G. Columbia and the Staff have not addressed legal questions dealing with impairment of contract, improper taking of contract rights, improper taking of service lines, and Commission regulation of non-rate payers.

In their initial briefs, neither Columbia nor the Staff addressed the legal questions raised by USP at pages 51-57 of its Initial Brief. Recognizing that the Commission does not have authority to decide constitutional questions, USP asks that the Commission recognize that the path that Columbia and the Staff are trying to lead it down is fraught with "legal mine fields."

The Commission should not expand the authority it gave to Columbia beyond what it already set forth in its September 12, 2007 Entry on Rehearing.

III. CONCLUSION

Wherefore, for the foregoing reasons, Utility Service Partners, Inc. respectfully requests that the Commission reject the original and Amended Stipulation and Recommendation save for the reimbursement rider and the pledge to complete the repair of all Design-A risers not repaired by property owners within three years. In addition, Columbia should be ordered to:

A. Notify directly, to the extent Columbia has not already done so, all customers known to have Design-A risers that they are in danger and that they may either repair the Design-A riser themselves using a DOT certificated plumber or wait until Columbia fixes the riser. Columbia should give each property owner at least two weeks notice that they are coming to repair the Design-A riser;

B. Keep in place the current program whereby a customer can effectuate the Design-A riser repair and apply for reimbursement for cost capped up to $500;

C. Pledge to complete the Design-A riser repairs as soon as practical with a goal of 18 months but no more than three years; and

D. Refrain from directing or controlling repairs to customer service lines other than the Design-A riser and any hazardous condition found in a service line to which Columbia is conducting a Design-A riser repair.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Reply Brief of Utility Service Partners, Inc. was served upon the following persons by electronic mail and by first class U.S. mail, postage prepaid this 19th day of February, 2008:

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Summary: Brief Utility Service Partners, Inc. Reply Brief electronically filed by Stephen M Howard on behalf of Utility Service Partners, Inc.