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

ENTRY ON REHEARING

The Commission finds:

(1) The applicant, Columbia Gas of Ohio, Inc., (Columbia) filed an application in this proceeding to recover certain riser-related costs and to assume responsibility for service lines and riders, seeking recovery of all associated costs through an automatic adjustment mechanism.

(2) On April 9, 2008, the Commission issued its Opinion and Order (opinion and order) in this proceeding. In the opinion and order, the Commission approved, with certain modifications, an amended stipulation (stipulation) filed by some of the parties in the cases (signatory parties), including Columbia, staff of the Commission (staff), the office of the Ohio Consumers' Counsel (OCC), and Ohio Partners for Affordable Energy (OPAE). The stipulation was opposed by Utility Service Partners, Inc. (USP); Interstate Gas Supply, Inc. (IGS); and ABC Gas Repair, Inc. (ABC).

(3) On April 23, 2008, USP filed a motion for stay of implementation of the opinion and order and for stay of an entry approving new tariffs until after the second monthly billing cycle following the Commission's issuance of any entry or order on rehearing. In response, Columbia filed a memorandum contra the motion for stay, on April 28, 2008.

(4) Section 4903.10, Revised Code, states that any party to a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the order upon the Commission's journal.

(5) On May 9, 2008, USP and Columbia filed applications for rehearing, asserting fourteen and one grounds for rehearing, respectively. We

will first discuss the applications for rehearing and will then address the motion for stay.

(6) In its first ground for rehearing, USP asserts that the Commission lacks statutory authority to create a monopoly over the repair and replacement of prone-to-failure risers. Pointing out that the Commission may only exercise power specifically conferred upon it by statute, USP argues that the Commission has no authority to regulate plumbers, contractors, or pipefitters and that the Ohio General Assembly did not empower the Commission to create a monopoly over repair and replacement of customer-owned service lines. By forbidding pipeline repairs by anyone other than Columbia, argues USP, the stipulation approved by the Commission does just that. USP also contends that the stipulation actually decreases public safety by prohibiting property owners from replacing their own prone-to-failure risers. (USP application for rehearing at 4-8.)

Columbia counters that the Commission clearly has the authority to order Columbia to repair and replace prone-to-failure risers. This authority is derived, Columbia contends, from the Commission's power to examine activities relating to safety of the public and to prescribe any order necessary for the public's protection. Section 4905.06, Revised Code. Columbia also points out that USP's counsel specifically asserted that USP did not object to Columbia's repair of prone-to-fail risers. Columbia also notes that the Commission did not prohibit customers from repairing their own prone-to-failure risers. (Columbia memorandum contra at 2-3.)

We would first note that USP, on page 9 of its application for rehearing, itself notes that the Commission "properly moved to direct the replacement of . . . prone-to-failure risers." In addition, we do not, of course, disagree with USP's statement that the Commission, being a creature of statute, only has that power given to it. Under the provisions of Section 4905.06, Revised Code, the Commission is specifically empowered and charged with the responsibility to supervise public utilities under its jurisdiction, such as Columbia, in order to assure the safety and security of the public. The limitation that USP would have us place on our supervisory authority is nowhere to be found in the statute. Moreover, we would point out that our opinion and order gave no effect to the provisions in the stipulation to which USP objects. Thus, contrary to USP's allegation, our opinion and order does not

prevent homeowners from arranging for more expeditious repair or replacement of their own prone-to-failure risers. To the contrary, we stated, on page 23, that "[a]ny customer who does not wish to wait for Columbia to replace a prone-to-failure riser, or a prone-to-failure riser and associated service line that has a hazardous leak, may arrange for the replacement or repair through a DOT OQ plumber and be assured of reimbursement . . .." USP's first assignment of error is denied.

(7) USP's second ground for rehearing states that the Commission failed to establish that a safety issue exists as to non-utility customer service lines without prone-to-failure risers and that it lacks the authority to establish a monopoly as to the repair of such pipelines. USP claims that there has been no showing that a current problem exists with regard to customer service lines that are not associated with prone-to-failure risers. USP states that the Commission, in reaching the conclusion that there are safety hazards stemming from such lines, failed to weigh the evidence and recognize the differences between the prone-to-failure riser situation and the customer service lines. It points out that the Commission conducted no investigation of customer service lines and that no evidence compared the safety records in states where operators own such lines with the safety records in states, like Ohio, where they do not. USP suggests that the Commission also failed to recognize evidence of slow decay in service lines and of the success of the warranty company system of repairs. USP also maintains that the Commission did not expressly find deficiencies and the need for improvement in the current system. Because the Commission does not distinguish the prone-to-failure riser situation from the service lines, USP calls for rehearing on this issue. Even if the Commission had conducted a proper investigation and had concluded that such service lines do constitute a safety hazard, USP still believes that the institution of a monopoly would be *ultra vires* for the same reasons as discussed under the first assignment of error. (USP application for rehearing at 8-10.)

Columbia believes that the record in this proceeding sets forth clear evidence that customer service lines with hazardous leaks present public safety issues and that public safety is enhanced by Columbia assuming responsibility for the maintenance and repair of customer service lines. Columbia points out that the record shows that it has responsibility, under federal pipeline safety laws, to conduct

inspections and tests of service lines but that, if it finds a hazardous leak, it can only shut off service and ask that a customer pay for unexpected repairs. The change ordered by our adoption of the stipulation would allow Columbia, it argues, to maintain complete records and would encourage customers to contact Columbia for repairs without concern for unanticipated repair bills. It also points to the testimony of four witnesses who offered support for the contention that leaking customer service lines can present safety hazards. Columbia underlines the testimony of the Commission's chief of gas pipeline safety to the effect that the stipulation will improve quality control and documentation, will streamline repairs, will eliminate decisions by customers unfamiliar with natural gas infrastructure, and will provide verification of materials and consistency in repairs. Columbia also stressed testimony that admitted some plumbers' lack of motivation to do a quality and thorough job. Columbia concludes that the Commission reasonably and lawfully found that public safety would be improved by assigning maintenance responsibility to Columbia. (Columbia memorandum contra at 3-5.)

We discussed the issue of the impact of customer service lines on public safety and the impact of the stipulation on those safety issues fully in our opinion and order. USP raises no new arguments. Our analysis of the safety issues related to customer service lines and, thus, the basis for our conclusions are well summarized by Columbia in its memorandum contra USP's application for rehearing. An enhanced and uniform system of supervision and control, by Columbia, over the repair of hazardous leaks that is different from the inspection system that is currently in place will improve public safety. We would also point out that Section 4905.06, Revised Code, does not require us to conduct a safety investigation of all service lines prior to issuing an order that finds certain changes to be necessary for the protection of the public safety. Neither does the fact that we did conduct an investigation relating to risers require us to do so in connection with customer service lines. USP's second ground for rehearing is denied.

(8) USP asserts, in its third assignment of error, that the Commission unreasonably and unlawfully found that the stipulation will not be an unconstitutional, substantial impairment of contracts. In support of this assignment, USP explains that the Commission, in analyzing the issue, misapplied the test in *Energy Reserves Group,*

Inc. v. Kansas Power and Light Co., 459 U.S. 400, 411-412 (1983) on several levels. We will discuss each of those allegations independently.

(a) First, USP simply asserts that *Energy Reserves* involved state legislation. It continues by stating that this is not legislation, but an *ultra vires* Commission action. (USP application for rehearing at 11.) In response, Columbia restates its prior argument that this Commission action was not *ultra vires* but, rather, was wholly within the powers of the Commission. (Columbia memorandum contra at 5.) For the reasons discussed above with regard to the first two assignments of error, we agree with Columbia. This ground for rehearing is denied.

(b) USP then moves to the Commission's discussion of the portion of the *Energy Reserves* test that required us to consider whether the industry that the complaining party has entered has been regulated in the past. USP asserts that the industry entered by the pipeline warrantors is not regulated but, rather, that the Commission and staff are attempting to extend their jurisdiction to an unregulated industry. It insists that, "[w]hile USP, ABC and IGS are required to use qualified USDOT certified plumbers and materials from a Columbia approved materials list, none of the three have [*sic*] been subject to direct state regulation in this area." (USP application for rehearing at 11.) We disagree with USP's contention that the line warrantors were not operating in a regulated industry. That is true, of course, only if the industry in question is the warranty industry. On the other hand, the substantive area in which the warrantors operate is the gas distribution industry. This area is, as the warrantors were fully aware, highly dangerous and deeply regulated. Therefore, we do not accept the arguments made by USP with regard to our application of the substantial impairment test in *Energy Reserves*.

USP also suggests that the Commission refused to find impairment of contracts on the basis of its statement that we had not been provided with contracts to review. Going on with this logic, USP also declares that the

Commission unlawfully transferred the burden of proof as to the stipulation not violating any important regulatory principle or practice to USP by noting that the contracts had not been provided. (USP application for rehearing at 11-12.) Columbia, in response to this argument, points out that the unavailability of contracts for review was only one basis for the Commission's determination that there was not substantial impairment. Other bases pointed out by Columbia were terms of the contracts, their coverage, the fact that the industry's level of regulation was no surprise to USP, the ability of customers to cancel USP contracts at any time, the availability of other warranty contracts from USP, and the implication of state regulatory power into the contracts. (Columbia memorandum contra at 5-6.) We do not agree with USP's assertion that, by pointing out the unavailability of the contracts, we transferred the burden of proof to USP. Immediately prior to that comment, we had reviewed evidence in the record as to the terms of those contracts, which evidence demonstrated the terms of the contracts that we found relevant to our determination. We also do not agree with USP's assertion that, by "admitting" that our decision would impair contracts to some extent, we were inconsistent with our ultimate conclusion on the issue. When we noted that there was an impairment "to some extent," we were merely noting that, factually, our decision had some impact on the contracts. We were not stating that there was any level of unconstitutional impairment. We specifically found, on pages 17 to 18, that there was no substantial impairment of contracts.

Further, USP contends that the Commission inappropriately found that the warrantors would not be deprived entirely of potential business with their current customers, rather than looking for substantial impairment of contractual relationship. It also suggests that neither the term of the contracts nor their termination provisions are relevant to the question of impairment. (USP application for rehearing at 12-13.) Columbia points out that "deprivation entirely of potential business" is not the test that the Commission applied but was only one factor that the Commission

considered within the test for a substantial impairment. The same is true, according to Columbia, of our consideration of the term of existing contracts. (Columbia memorandum contra at 6.) Columbia is correct that, in our analysis of whether the stipulation caused a substantial impairment of contracts, we looked at a number of issues, including whether the stipulation would result in a total deprivation of potential business, the term of the contracts, and their termination provisions. We determined, as a result of the numerous factors discussed in the opinion and order, that a substantial impairment would not result. We find no reason to alter that conclusion today.

Finally, USP disagrees with the Commission's statement that the state's regulatory power relating to pipeline safety must be implied in any pipeline warranty contract. USP believes, rather, that the Commission's action has unlawfully expanded that regulatory power beyond utilities. (USP application for rehearing at 13.) USP makes a serious error in alleging that we have attempted to expand our regulatory power beyond utilities. The jurisdiction that we asserted in the opinion and order is over Columbia. We are not regulating the warrantors. That our order has an impact on warrantors is inescapable but only consequential. The warrantors' business was based on an assumption that the regulatory environment in the area in which they operated would remain unchanged. No constitutional provision protects the warrantors' business model. Private parties such as USP do not have the ability to prevent a governmental regulator from fulfilling its duty to the public. We are, in this proceeding, regulating the actions of Columbia.

(c) USP's third category of arguments in its third assignment of error is the Commission also improperly applied the *Energy Reserves* test for a significant and legitimate public purpose. USP asserts that, in order to apply this test properly, the Commission must find that there currently exists a broad and general social or economic problem. To support its accusation that the Commission did not find such a problem, USP says that the "Commission only looked at Columbia Gas customer service lines in

this case and conducted no review or analysis of customer-owned services [*sic*] lines in Ohio." (USP application for rehearing at 14.) On the basis of another Supreme Court decision, USP submits that the Commission was not addressing a broad, generalized economic or social problem, that the warranty business operates in an environment not previously subject to state regulation, that the Commission's action worked a permanent change in the contractual relationships in question, and that the Commission's action was not aimed at all warranty service providers in Ohio. *See Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978). (USP application for rehearing at 15-16.)

USP also argues that the Commission erred in its statements regarding the actual existence of safety hazards that amount to broad and general social economic problems, the impact of this change on maintenance of the lines and the ability of Columbia to train repair personnel, supervise repairs, and ensure uniformity. It also disagrees with our conclusion that customers may report gas odor more readily if Columbia is responsible for repairs, noting that warranty customers and renters would not be so affected. (USP application for rehearing at 16-18.)

With regard to USP's major argument on this issue, Columbia points out that the *Energy Reserves* test uses "the remedying of a broad and general social or economic problem" as an example of a significant and legitimate public purpose for the regulation, not as a requirement. Columbia also counters that, in the cited *Allied Structural* case, workers' pensions were not previously subject to state regulation, contrary to public utilities in the situation at bar. (Columbia memorandum contra at 6-7.)

We also note that, because we found no substantial impairment of contracts, we were not required to reach the question of whether there was a significant and legitimate public purpose behind the action. Nevertheless, we did continue in our analysis and will address USP's argument on this point. We agree with

Columbia that a governmental action that causes a substantial impairment (which category, we have explained, does not include our decision in this proceeding) is not required, under Supreme Court precedent, to be directed at remedying a general social or economic problem. The Court in *Energy Reserves* used that as an example of an appropriate public purpose for a regulation. As the *Energy Reserves* decision was issued five years after the decision in *Allied Structural*, we will follow the *Energy Reserves* dictates. The purpose of our decision was thoroughly discussed in our opinion and order.

We also agree with Columbia that this decision is made in an area that has been highly regulated for many years. Of course, the dispute on this issue results from a differing approach to defining the industry in question. Only if USP defines the industry in question as the operation of a warranty service business for underground pipelines could we deem it to be unregulated. We, on the other hand, find it most relevant to consider regulation of the safety of gas pipelines, since it is for safety reasons that we took this action. Gas pipeline safety was clearly regulated at multiple levels prior to the issuance of the opinion and order in this proceeding.

A few other points made by USP must be addressed. USP believes that our action was required to cover all natural gas companies operating in Ohio, rather than just Columbia (USP application for rehearing at 16). Of course, in the field of utility regulation, we often deal with one utility at a time. USP also complains that the safety problem we identified with regard to steel service lines is only potential, not actual (USP application for rehearing at 16). We disagree with this semantic argument. Any time a customer service line leaks, there is indeed a present safety problem. The law does not require lines to be actually leaking prior to our taking preventative action to improve safety. We note, however, that our decision only has effect when there is indeed a hazardous leak.

With regard to USP's suggestion that we erred in our discussion of Columbia's ability to train personnel, supervise repairs, or ensure uniformity, we acknowledge that Columbia has some ability to train plumbers and to inspect repairs under the current process. However, Columbia ultimately has no control over the plumbers or the actual repair process. As we explained in the opinion and order, testimony at the hearing addressed the fact that oversight by Columbia would be substantially improved and uniformity would be increased. (Opinion and order at 18-19.) In addition, testimony regarding the current system revealed that plumbers are not always present for Columbia's inspections and may leave their qualification documentation on the meter, that plumbers who are not DOT-qualified may perform repairs based on another plumber's qualification card, and that Columbia does not now have sufficient managerial control to ensure that all plumbers who perform work are qualified. (Tr. II at 45, 93, 101.) We also note that a USP witness testified that 20 to 30 percent of plumbers take shortcuts in their work, which problems are found during Columbia's inspections. (Tr. IV at 103-106.) It remains our belief that approval of the stipulation is critical to Columbia's ability to ensure the safety of the affected lines.

Finally, as to USP's note that warranty customers and renters would not be more likely to report gas odor under the new system, we would point out that there are numerous Columbia customers who are neither warranty holders nor renters. We continue to believe, as we stated in the opinion and order, that these customers, at least, would be more likely to report an odor of gas if they did not expect to be financially responsible for the consequent repairs.

(d) USP also contends that the Commission erred in its application of the third prong of the *Energy Reserves* test, asserting that the Commission failed to discuss the rights and responsibilities of contracting parties. It also argues that the change made by the stipulation's adoption cannot be suitable to the public purpose because the adoption of the stipulation was *ultra vires*. It suggests

that the Commission was wrong in its statement that the proposed change would allow Columbia to supervise the selection of workers, the materials to be used, and the work performed, as it already performs these operations. Finally, USP asserts that the Commission failed to support its conclusion that public safety will be improved by assigning maintenance responsibility to the party who is legally responsible for complying with safety regulations. (USP application for rehearing at 18-19.)

Columbia responds to USP's assertion that the Commission was required to analyze the rights and responsibilities of the contracting parties. Columbia emphasizes that, contrary to USP's assertion, the *Energy Reserves* test actually requires an analysis of whether the adjustment of those rights and responsibilities is based on reasonable conditions and is of a character appropriate to the public purpose in question. (Columbia memorandum contra at 7-8.)

Once again, we note that this prong of the test need not have been reached, both because we found no substantial impairment and because we found an appropriate public purpose. That being said, however, as we discussed in the opinion and order and above, we believe that the transfer of responsibility to Columbia that is effectuated by this proceeding will enhance Columbia's ability to train plumbers, to monitor and inspect their work, to ensure uniformity, and, thereby, to improve safety. We note that USP's *ultra vires* argument has already been rejected. Its argument that Columbia already had the ability to supervise, choose materials, and inspect work was discussed above and explained on the basis that its current limited abilities will be substantially enhanced by the transfer of responsibility. Finally, as to support for our conclusion that public safety will be improved, we would indicate that the discussion on pages 18 and 19 led to this determination. USP's third assignment of error is denied.

(9) USP's fourth assignment of error claims that the Commission erred in finding that adoption of the stipulation would not result in a

taking of property. USP first complains that the Commission incorrectly stated that "only lines repaired or replaced by Columbia would belong to Columbia" when, in reality, only repaired portions of lines would belong to Columbia (USP application for rehearing at 20). While USP correctly states that only repaired parts of lines would be the property of Columbia, we believe that this minor difference is of no consequence to the point being made in the opinion and order.

USP goes on to assert that the Commission made an unreasonable ultimatum in its statement that a homeowner who does not want Columbia to repair a hazardous line may choose not to have gas service. USP points out that the homeowner will no longer be able to choose who will repair or replace lines. (USP application for rehearing at 20-21). Columbia agrees with the Commission, noting that customers only need to allow it to make repairs as a condition of service. It contends that this is a *de minimis* intrusion on property rights. (Columbia memorandum contra at 8.) In rejecting this argument, we would note that a homeowner's right to choose who will repair a gas line, as well as the materials and methods to be used, are already restricted by existing safety regulations. Because of the inherently volatile nature of natural gas, numerous conditions are reasonably placed on the right to receive gas service.

USP also contends that a customer is not adequately compensated for any taking that does exist by being given the use of a functional service line (USP application for rehearing at 21-22). First, to the extent that there is an argument to be made with regard to a taking, that would be a claim that could only be made by a property owner, not by USP. USP has no legal standing to assert a claim that our decision in this case results in an unconstitutional taking of property of Columbia's customers. Nevertheless, as we discussed in our opinion and order, we find no taking. (Opinion and order at 21.) Even assuming, *arguendo*, that there were a taking, we also conclude that use of a non-leaking service line, in place of one that was hazardous, at no cost to the homeowner, would be adequate compensation for any taking that is alleged to result from the transfer of responsibility to Columbia.

Finally, USP asserts that the Commission failed to consider that USP purchased its warranty business from a Columbia affiliate and that this proceeding would "reclaim" a large portion of that business. It notes that Columbia itself commented, in another case,

that the Commission does not have the power to appropriate the private property of a customer and transfer it to a utility. (USP application for rehearing at 22.) As we have previously discussed, we do not believe that our decision results in the transfer of private property from customers to Columbia. We also do not believe that the source of USP's business is relevant to any issue over which we have jurisdiction. USP's fourth assignment of error is denied.

(10) For its fifth assignment of error, USP asserts that the Commission erred in relying on statements contained in a reply brief and not within the record to conclude that Columbia has notified individual members of the public at risk from the prone-to-failure risers. USP suggests that we should have required Columbia to file affidavits indicating what notices were sent to customers in compliance with our September 12, 2007, entry on rehearing in this proceeding. (USP application for rehearing at 22-23.) We find that this suggestion is reasonable and is, therefore, granted. Within five days after the issuance of this entry on rehearing, Columbia shall file an affidavit indicating, with specificity, each notice that was sent to customers, notifying them of the risk of prone-to-failure risers in compliance with our September 12, 2007, entry on rehearing. Within ten days following that filing, any party may present arguments as to why such affidavit should not be admitted into the record and considered by the Commission.

(11) USP's sixth assignment of error indicates that the Commission erred by not specifying a deadline for the replacement of risers. USP points out that the Commission stated that it could not evaluate Columbia's proposed three-year schedule and ordered Columbia to work with staff regarding scheduling and efficiencies. USP believes that the stipulation should have included a proposed deadline and that, at this point, the Commission should require the parties to file evidence indicating what the scheduling of riser replacement work should be and then determine the reasonableness of that schedule. (USP application for rehearing at 23-24.) The Commission disagrees. The most efficient methodologies may change over time, based on experience, customer requests, the available labor pool, or other factors. In order to obtain the best outcome, the Commission believes that the parties should be allowed the freedom to seek out efficiencies that may arise from time to time and to modify plans as appropriate. Therefore, the Commission finds that this issue should be left to the parties and Commission staff. Should problems arise in this area,

those problems may, of course, be brought to the attention of the Commission. In addition, in order to monitor Columbia's progress in replacing prone-to-failure risers, Columbia shall submit, to staff, quarterly reports on such replacements. Rehearing on this ground is denied.

(12) USP's seventh ground for rehearing states that the Commission should not have relied on the riser material plan, as it is not part of the record. USP points out that the original stipulation did not address the best method for replacing the prone-to-failure risers and that the Commission, in the opinion and order, stated that the amended stipulation had resolved that problem by adding the riser material plan. As that plan had not been admitted into the record, USP asserts that the Commission could not base its decision on that plan. (USP application for rehearing at 24.)

The parties unanimously agreed that the amended stipulation may be admitted into evidence, without testimony or the opportunity for cross-examination (Agreement, February 4, 2008, at para. 12). In reliance upon that agreement, the amended stipulation is hereby admitted into evidence. The amended stipulation includes, in paragraph 21, the requirement that Columbia submit a riser material plan. In the opinion and order, on page 25, we did reference the riser material plan, as indicated by USP. However, that reference merely stated that, by including the requirement for preparation and filing of the riser material plan, Columbia had resolved USP's concern that it had not reached a conclusion about the best method for replacing prone-to-failure riser. The plan itself did not need to be in evidence for us to consider the fact that it was being prepared and filed. It was not the content of the riser material plan that was critical to our conclusion; only its existence. The fact of its existence was in evidence. This assignment of error is denied.

(13) USP next asserts, in the eighth ground for rehearing, that the Commission should not have found that Columbia's proposal as to the lack of regularity of inspections under the stipulation was reasonable. USP believes that the stipulation sacrifices safety for convenience as it allows Columbia to avoid making a follow-up trip for leak testing by having its contractors already present for the repair process. USP points to testimony emphasizing the importance of an independent, third-party check of completed repairs. (USP application for rehearing at 24-25.)

As Columbia noted, we fully considered this argument in the opinion and order. USP argued this point following the hearing. We found, in the opinion and order, that Columbia's proposal was reasonable in light of its managerial control, oversight, training, education, and supervision of the workers in the field. In light, also, of the problems encountered by Columbia in its current efforts to inspect repair work (opinion and order at 29), we remain unconvinced that third-party inspection of every repair is necessary or appropriate.

(14) The ninth assignment of error relates to serious bargaining. USP claims that the Commission failed to address the timing and the nature of the subject matter of the stipulation before considering whether serious bargaining occurred. USP divides its argument on this ground into two sections. First it discusses the timing of negotiations that led to the stipulation. It notes that the stipulation was docketed 17 days after the completion of the hearing, on the last business day before briefs were due. USP reasons that the "timing alone should suggest to the Commission that the signatory parties did not engage in serious bargaining." (USP application for rehearing at 25-26.) USP is, in essence, complaining that negotiations continued, after the hearing, among some of the parties to the proceeding. USP was not included in those continuing discussions. However, we understand that both the intervening warrantors, including USP, and the other parties believed the settlement discussions were futile. The unanimous agreement signed by the parties on February 4, 2008, indicates that USP would not accept a settlement, on October 19, 2007, in which Columbia would assume exclusive responsibility for the future repair and maintenance of hazardous customer service lines. The parties also state that USP did not seek or initiate settlement discussions after October 19, 2007, because it thought continued negotiations were futile and that Columbia also believed that continued negotiations would be futile. (Agreement at paras. 2 and 6.) We do not believe that the test of stipulations requires that parties continue to negotiate with one party once that party has rejected a settlement that gave Columbia exclusive responsibility for the future repair and maintenance of hazardous customer service lines. We also do not believe that the parties' determination not to perform a vain act is indicative of the seriousness of bargaining among the remaining parties. We note, in addition, that the steps taken in this case after the filing of the stipulation provided all parties with due process.

USP's second area of discussion in this claimed error relates to the nature of the settlement. USP contends that, because the stipulation has an impact on the business prospects of warrantors and those warrantors were not a part of the continuing settlement discussions, it cannot have been the result of serious bargaining. USP insists that the parties who continued to be involved in discussions were giving up nothing in sacrificing the rights of warrantors, independent plumbers, and landlords. (USP application for rehearing at 26.) We disagree with this line of argument. The stipulation relates to gas pipeline safety, inspection, and maintenance, not to the "competitive warranty service industry." The parties bargained seriously regarding these issues. That the resultant agreement had an impact on warrantors' business models does not mean that the warrantors had to agree with the outcome. It would be difficult to identify any stipulation that comes before us where there is not some business interest that is impacted and not in agreement with the stipulation. This ground for rehearing is denied.

(15) The tenth assignment of error posits that the Commission erred in finding that the stipulation, considered as a whole, will benefit ratepayers and the public. USP contests the Commission's failure to set a specific deadline for completion of the riser replacement project. In addition, it insists that our conclusion that public safety will be enhanced by allowing Columbia to take responsibility for repair of hazardous customer service lines is insufficient and is unsupported by evidence of record. Finally, USP disputes the Commission's conclusions that Columbia is in a better position than its customers to make appropriate safety determinations and decisions regarding repairs. USP believes that this statement was unsupported by evidence and is contrary to statutory mandates for customer choices in a competitive market. (USP application for rehearing at 26-28.)

Columbia points to the testimony of staff witness Steele, who opined that, as a result of the stipulation, Columbia would have better control of work quality, more efficient repair outcomes, and better verification of materials and performance. Columbia also emphasizes that customers should not be left with exclusive decision-making responsibilities for safety issues. (Columbia memorandum contra at 10-11.)

First, we note that we have previously discussed USP's desire that the Commission set a deadline for riser repairs. With regard to support for our conclusion that public safety will be enhanced as a result of approval of the stipulation, as noted by Columbia, Mr. Steele's testimony provided support for that determination. Finally, as to USP's argument that Ohio law mandates that customers should have choices in a competitive market, we find that such requirements are irrelevant to the pipeline safety issues before us. Section 4929.02, Revised Code, the recitation of the state policy behind the adoption of that chapter, addresses competition in the market for the purchase of natural gas. It does not require that customers have any right to make choices concerning safety issues affecting the general public. This ground for rehearing is denied.

(16) The eleventh assignment of error contends that the Commission erred in finding that approval of the stipulation will not violate state policy. USP accuses the Commission of failing to "consult" Section 4905.91, Revised Code. USP offers that this section grants the Commission certain powers over intrastate gas pipelines but "none involve the transfer of responsibility over customer service lines from a nonregulated entity to a natural gas company." USP also asserts that the Commission failed to explain "how it could assert jurisdiction over out-of-state non-customer land owners and under what authority it could create a new monopoly over what has previously been non-jurisdictional property." (USP application for rehearing at 28.)

Columbia counters that a statute's silence on a particular issue does not mean that such issue would violate state policy. According to Columbia, that the statute allows the Commission to adopt rules relating to pipeline safety tends to support the appropriateness of the Commission's action. (Columbia memorandum contra at 11-12.)

We agree with Columbia's reasoning that the fact that the law does not specifically address the transfer of responsibility of customer service lines does not imply its prohibition. We also note that Section 4905.91, Revised Code, begins with a statement that the included powers are granted "[f]or the purpose of protecting the public safety with respect to intrastate pipe-line transportation . . .." Thus, public safety is clearly part of the policy of the state. Further, as to USP's contention that we are attempting to assert jurisdiction

over nonregulated customers and out-of-state land-owners, we will repeat that we are merely asserting jurisdiction over Columbia. We are regulating the means by which it is to provide gas service and assure pipeline safety. This is clearly within our statutory jurisdiction under Chapter 4905., Revised Code. This assignment of error is denied.

(17) USP's twelfth assignment of error states that we erred in failing to require that notice of this case and the hearing be provided to plumbers, warranty service providers, and property owners because of the impact on contract rights and property rights that are affected by the proceeding. Recognizing that the case was not brought under a statute that required such notice, USP nevertheless argues that it was unreasonable for the Commission to adversely affect the businesses of many Ohio companies without at least giving notice to those affected. (USP application for rehearing at 29.)

Innumerable similar examples exist in which Commission decisions impact persons or entities that were neither parties to a Commission proceeding nor individually notified of its existence. The law does not require such notice in this case and we do not believe that it was unreasonable to proceed without such notice. Rehearing on this ground is denied.

(18) The thirteenth ground for rehearing complains that there was no evidence showing that Columbia has the managerial ability or experience to manage the repair and replacement of hazardous customer service lines. USP notes that neither Columbia witnesses nor staff witness testified on this subject. USP believes that the Commission should have made such a determination prior to transferring responsibility to Columbia. (USP application for rehearing at 29-30.)

Columbia disagrees, pointing out that its witness Ramsey testified that, in 2006 alone, Columbia repaired 1, 652 leaks on its bare steel lines. It also points out that Columbia has significantly greater experience and managerial ability than USP, as it has been repairing and replacing company service lines for decades and it is responsible for inspecting plumbers' repairs. (Columbia memorandum contra at 12-13.)

In light of Columbia's position as a major provider of gas service in the state of Ohio and based on our longstanding regulatory oversight of Columbia, we are confident that Columbia has managerial ability or experience sufficient to repair hazardous customer service lines. In addition, we find that the fact that the record demonstrates its repair of 1,652 leaks on similar lines during 2006 alone is sufficient to evidence such abilities. This ground for rehearing is denied.

(19) USP's last assignment of error states that the decision was not supported by the manifest weight of the evidence. It contends that the direct testimony of several witnesses and the cross-examination of others were ignored. (USP application for rehearing at 30.) The Commission considered all evidence before it in reaching its determinations. This ground for rehearing is denied.

(20) Columbia's application for rehearing cites one assignment of error. It suggests that the Commission reconsider its directive that reimbursement between November 24, 2006, and April 9, 2008, be limited to customers with prone-to-failure risers who replace such risers and an associated service line with a hazardous leak. Columbia points out that the stipulation supplemented the Commission's prior order "by including reimbursement for service line repairs and replacements not associated with prone to failure risers *in addition* to reimbursement for service line repairs and replacements associated with prone to failure risers." (Columbia application for rehearing at 5 [emphasis in original].) Columbia attempts to convince the Commission that this approach is consistent with its prior orders.

USP, in its memorandum contra Columbia's application for rehearing, points out that Columbia's reimbursement of customers for repairs previously made to hazardous service lines that are not associated with prone-to-failure risers would increase the cost of this program and notes that it provides no estimates of the extent of such increase. Columbia also, according to USP, provides no policy reason for expanding the retroactive reimbursement program. USP asserts that the Commission's opinion and order is clear that the reimbursement for previous repairs only applied to prone-to-failure risers and associated service lines with hazardous leaks.

We agree with USP on this issue. Our July 11, 2007, entry allowed Columbia to repair not only prone-to-failure risers but also

hazardous service lines, regardless of whether those lines were associated with prone-to-failure risers. Together with that authority, we required reimbursement of customers who arranged for the repair of these items themselves. On rehearing of that entry, we limited Columbia's authority and its reimbursement obligation to prone-to-failure risers and associated hazardous customer service lines. Columbia now attempts to argue that, in such entry on rehearing, we only limited its authority but did not change the reimbursement obligation. It is nonsensical to suggest that we would have required Columbia to reimburse customers for repairs that it was not otherwise obligated to undertake itself. Clearly, the reimbursement obligation was limited to the same extent as the repair authority. We did not determine whether or not to grant Columbia the authority to repair hazardous customer service lines that are not associated with prone-to-failure risers until the issuance of the opinion and order in this case. Therefore, we see no logical reason to allow or require Columbia to reimburse customers for such repairs prior to our decision. Rehearing on this ground is denied.

(21) Arguments for rehearing not discussed in this second entry on rehearing have been adequately considered by the Commission in its opinion and order and are being denied.

(22) With regard to its April 23, 2008, motion for stay, USP contends that the Commission's grant of a stay would avoid significant economic harm to warranty providers such as USP and to independent plumbers in the event that the Commission reaches a different conclusion on rehearing. If, on the other hand, the opinion and order is affirmed on rehearing, the stay would, according to USP, provide an opportunity for notice and coordination of messages to customers, thereby avoiding confusion and uncertainty. USP also notes that a stay would permit notice to plumbers who are certificated the Department of Transportation that they may no longer repair or replace customer service lines in Columbia's territory. The motion for a stay specifically excludes repair or replacement of prone-to-failure risers.

USP contends that the most important factor that the Commission must consider in determining whether to grant a motion to stay is the harm that could be suffered by the moving party if relief is not granted. In addition, it notes that the Commission should also consider likelihood of success on the merits, substantial harm to

other parties if the stay is granted, and whether the stay would serve the public interest. USP believes that warrantors will suffer significant harm if the stipulation is implemented. It also is concerned that poor communication to the public about this change will harm plumbers, contractors, and customers. USP also asserts that Columbia will suffer little harm if the motion is granted, as it would just preserve the status quo for a period of time. USP argues that there is no imminent threat to public safety that would prevent the Commission from allowing resolution of issues prior to implementation.

(23) Columbia's memorandum contra the motion to stay first asserts that USP applied the incorrect test in its argument in favor of the motion. Columbia states that a more recent test describes the most important factor as the interest of the public. Columbia states that the other factors to be considered are whether there has been a strong showing that the moving party is likely to prevail on the merits, whether the moving party has shown that it would suffer irreparable harm absent the stay, and whether the stay would cause substantial harm to other parties.

(24) Regardless of the test to be adopted, we find no basis for granting the extended stay requested by USP, either of implementation of the opinion and order or of approval of new tariffs. Both were requested for a period lasting until after the second monthly billing cycle following our issuance of this entry on rehearing. We find little likelihood of success on the merits, especially in light of our ruling today with regard to the applications for rehearing. As we have found that the changes we have ordered are in the interest of public safety, we also find that public safety requires implementation in a reasonably expeditious fashion. We also note that it should take little time for DOT OQ plumbers to be notified of the changes that have been approved. Therefore, while no tariffs have yet been filed by Columbia and, therefore, no tariff approval is pending, we will agree that any tariffs that may be approved by the Commission to effectuate the matters covered by this proceeding will not become effective any earlier than June 18, 2008. This period of time will allow for necessary notifications to be made.

It is, therefore,

ORDERED, That the stipulation be admitted into evidence in this proceeding. It is, further,

ORDERED, That USP's application for rehearing be granted in part and denied in part. It is, further,

ORDERED, That the parties comply with the provisions of this entry on rehearing. It is, further,

ORDERED, That Columbia's application for rehearing be denied. It is, further,

ORDERED, That USP's motion for a stay be granted to the extent set forth in this entry on rehearing. It is, further,

ORDERED, That Columbia submit, to staff, quarterly reports of its progress in replacing prone-to-failure risers. It is, further,

ORDERED, That a copy of this entry on rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

Paul A. Centolella

Ronda Hartman Fergus

Valerie A. Lemmie

Cheryl L. Roberto

JWK;geb

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Reneé J. Jenkins
Secretary