

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Columbia Gas of Ohio, Inc., for an) Case No. 09-06-GA-UNC
Adjustment to Rider IRP.)

OPINION AND ORDER

The Public Utilities Commission of Ohio, having considered the record in this matter and the stipulation and recommendation submitted by the signatory parties, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Mark R. Kempic, Assistant General Counsel, Stephen B. Seiple, Lead Counsel, and Daniel A. Creekmur, Attorney, Columbia Gas of Ohio, Inc., 200 Civic Center Drive, P.O. Box 117, Columbus, Ohio 43216-0117, on behalf of Columbia Gas of Ohio, Inc.

Richard Cordray, Ohio Attorney General, by Duane W. Luckey, Section Chief, and Anne L. Hammerstein, Assistant Section Chief, 180 East Broad Street, Columbus, Ohio 43215-3793, on behalf of Staff of the Commission.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Larry S. Sauer, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215-3485, on behalf of the residential utility consumers of Columbia Gas of Ohio, Inc.

OPINION:

I. Background

Columbia Gas of Ohio, Inc. (Columbia), is a natural gas company as defined in Section 4905.03(A)(6), Revised Code, and a public utility under Section 4905.02, Revised Code. Columbia supplies natural gas to 1.4 million customers in 61 counties in Ohio (Columbia Ex. 2, at 1; Staff Ex. 1, at 2).

By opinion and order issued December 3, 2008, in *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Authority to Amend filed Tariffs to Increase the Rates and Charges for Gas Distribution Service*, Case No. 08-72-GA-AIR et al. (*Columbia Distribution Rate Case*) the Commission approved a stipulation which, *inter alia*, included a provision establishing the Infrastructure Replacement Program rider (Rider IRP). The purpose of Rider IRP was to recover the costs incurred by Columbia for: future maintenance, repair, and replacement of customer-owned service lines that present an existing or probable hazard

to persons or property, and the replacement of certain risers prone to failure over a period of three years;¹ the accelerated main replacement program (AMRP), which includes replacement of cast iron, wrought iron, unprotected coated steel, and bare steel pipe in the company's distribution system, and metallic service lines; and the installation, over a five-year period, of automatic meter reading devices (AMRD) on all residential and commercial meters. In accordance with the stipulation approved in the *Columbia Rate Case*, Rider IRP was to be in effect for the lesser of five years or until new rates become effective as a result of Columbia filing an application for an increase in rates. In addition, the stipulation approved in the *Columbia Distribution Rate Case* provided that the rider would be adjusted annually to account for any over- or under-recovery and the company was to file applications annually, supporting adjustments to the Rider IRP rates. The stipulation set a cap on the Rider IRP charges for small general service (SGS) class customers of \$1.10, \$2.20, \$3.20, \$4.20, and \$5.30 for the charges that become effective on May 1 of each year in 2009, 2010, 2011, 2012, and 2013, respectively.

Moreover, the stipulation in the *Columbia Distribution Rate Case* further defined the process for consideration of the periodic adjustments to Rider IRP. In accordance with the stipulation, within 30 days of the Commission's order adopting the stipulation and annually by November 30 thereafter, Columbia will file a prefiling notice to implement adjustments to the riders. Subsequently, Columbia will file its application and an update of year-end actual data by the following February 28 of each year. The stipulation provides that Staff and other parties then may file comments and that Columbia has until March 31 of each year to resolve the issues raised in the comments. If the issues raised in the comments are not resolved, the stipulation requires that a hearing be held. The goal of the process set forth in the stipulation is for the proposed amendments to the riders to be effective on May 1 each year.

In accordance with the Rider IRP provisions of the stipulation in the *Columbia Distribution Rate Case*, Columbia filed its prefiling notice on January 2, 2009, in the instant case.² However, the schedules filed with that notice of intent were not based on actual and projected data, but on estimated and projected data. Therefore, by entry issued February 13, 2009, the attorney examiner found that, since actual data that would comply with the

¹ It is noted in the stipulation that the replacement of customer-owned service lines and prone-to-failure risers was approved by the Commission in *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of Tariffs to Recover, Through and 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 et al., Opinion and Order (April 9, 2008).

² The Commission notes that the header included in the company's filings references a request for an adjustment of Columbia's Demand-Side Management (DSM) rider (Rider DSM). However, as the company noted in footnotes in its prefiling notice and its application, an adjustment for Rider DSM will be included in future filings (Columbia Ex. 1, at 1; Columbia Ex. 2, at 1). Therefore, since Rider DSM is not at issue in this case, the reference to Rider DSM in the header of this case should be removed from all future filings in this case.

terms of the stipulation in the *Columbia Distribution Rate Case* had not yet been docketed, the procedure set forth in the stipulation should be modified in order to allow staff and the stipulating parties reasonable time to analyze and evaluate the data to be supplied by Columbia. The examiner found that, at such time as Columbia files actual data, an entry establishing the procedural deadlines in this docket would be issued. Thereafter, on February 27, 2009, Columbia filed its application, along with the actual data in compliance with the stipulation in the *Columbia Distribution Rate Case*, in this case, requesting an adjustment to Rider IRP.

By entry issued April 6, 2009, the attorney examiner granted the motion to intervene in this case filed by the Office of the Ohio Consumers' Counsel (OCC). In addition, the examiner required that Staff and intervenors file comments on the application by May 15, 2009, and that Columbia file a statement, by May 22, 2009, informing the Commission whether the issues raised in the comments have been resolved. Furthermore, in the event all of the issues raised in the comments had not been resolved, the entry set the hearing in this matter for June 2, 2009.

On May 15, 2009, Staff and OCC filed comments raising issues regarding Columbia's application in this case. On May 22, 2009, Columbia filed a statement stating that the parties in this case had reached an agreement in principle on the issues raised in the comments and requesting that the hearing scheduled for June 2, 2009, go forward.

The hearing in this matter was conducted, as scheduled, on June 2, 2009, at the offices of the Commission. At the hearing, Columbia submitted a stipulation and recommendation (stipulation) signed by Columbia, Staff, and OCC (Jt. Ex. 1). In addition, at the hearing, the following exhibits were admitted into the record without objection: Columbia submitted its prefiling notice (Columbia Ex. 1), the application filed on February 27, 2009 (Columbia Ex. 2), the testimony of its witnesses (Columbia Exs. 3-4), the AMRP auditor's report (Columbia Ex. 5), and its statement filed on May 22, 2009 (Columbia Ex. 6). OCC submitted its comments filed on May 15, 2009 (OCC Ex. 1). Staff submitted the comments that it filed on May 15, 2009 (Staff Ex. 1).

II. Summary of the Application and Comments

Columbia states that the application is based on a test year beginning January 1, 2008, and ending December 31, 2008, with a date certain of December 31, 2008 (Columbia Ex. 2, at 3). According to Columbia's witness Stephanie Noel, the order in the *Columbia Distribution Rate Case* provided for the recovery of return on and return of Columbia's capitalized AMRP, riser, and AMRD investments, in addition to the related costs, such as program operating expenses and deferred expenses (Columbia Ex. 3, at 4). Columbia's witness David Roy offers that, in 2008, the company completed 289 AMRP projects at a

cost of \$39.3 million, replaced 76,705 risers at a cost of \$35.1 million, and replaced 8,047 hazardous service lines at a cost of \$9.6 million (Columbia Ex. 4, at 4-5).

Columbia submits that, for rates effective July 2009, the total annual revenue requirement for Rider IRP would be \$15,259,231. This total is comprised of \$5,896,396 for the AMRP, \$9,362,835 for the risers, and \$0.00 for the AMRD program, since the AMRD program will not begin until 2009 (Columbia Ex. 2, at 3, Sch. AMRP-1, Sch. R-1; Columbia Ex. 3, at 15). Ms. Noel notes that, since Columbia was not able to file its first Rider IRP prefiling notice in this case until January 2, 2009, which is later than the annual process approved in the *Columbia Distribution Rate Case*, Columbia has proposed a shortened ten-month recovery period, from July 2009 through April 2010, for recovery of the annual revenue requirement proposed in this case. According to Ms. Noel, if the new rates go into effect July 1, 2009, the rates for SGS class customers will be set at \$.096 per month, which is less than the cap of \$1.10 per month approved in the *Columbia Distribution Rate Case* (Columbia Ex. 3, at 17, 19). Furthermore, as proposed by Columbia in the application, the July 1, 2009, Rider IRP rates would be \$3.83 for general service (GS) customers, and \$91.41 for large general service (LGS) customers (Columbia Ex. 2, at Att. A-2).

In its comments, Staff recommends five adjustments to Columbia's AMRP calculation and three adjustments to Columbia's riser program calculations. With the adjustments recommended by Staff, the monthly charges for SGS, GS, and LGS customers would be \$0.89, \$3.69, and \$89.19, respectively. The five adjustments to the AMRP calculation recommended by Staff include: a \$650,584 reduction to the amount requested for meter move-out related AMRP additions; a \$55,322 increase to the depreciation expense; adjustments to the rate base regarding the exclusion of \$4,543 for net deferred post-in-service carrying charges (PISCC) depreciation and the associated \$113 annualized amortization from operating expenses, and an increase of \$11,137 for removing PISCC depreciation from the calculation of deferred taxes on liberalize depreciation; a reduction in the rate base of \$254,041 to recognize the deferred income taxes on capitalized PISCC; and a reduction in the property tax expense of \$23,670. The three adjustments recommended by Staff to the riser program include: a reduction to the rate base of \$210,497 to recognize the deferred income taxes on capitalized PISCC; a reduction to the operations and maintenance expense of \$402,884; and a reduction to the property tax expense of \$13,234 (Staff Ex. 1, at 14-17).

OCC, in its comments, recommends four adjustments to Columbia's calculations of Rider IRP. First, OCC submits that the costs associated with customer education of the AMRP and the riser program should not be recovered in the year they are expended; therefore, the customer education expenses should be reduced by \$374,439. Second, OCC maintains that Rider IRP should not recover costs for training; therefore, \$79,414 should be excluded from recovery through the IRP Rider. Third, OCC proposes a reduction of \$52,242 to account for the current property tax. Finally, it is OCC's position that Rider IRP

should not be the mechanism to collect from customers the costs of replacing old plastic with new plastic mains; therefore, OCC submits that the expenses should be reduced by \$216,522 to address this adjustment. With these four adjustments, OCC states that the monthly Rider IRP rate for SGS customers should be reduced to \$0.92 (OCC Ex. 1, at 3-8). Moreover, OCC recommends that Columbia should identify projects that may qualify for funding from the American Recovery and Reinvestment Act of 2009, and that Columbia should document its efforts to obtain such funding (OCC Ex. 1, at 9).

III. Summary of the Stipulation

As stated previously, a stipulation, signed by Columbia, Staff, and OCC, was submitted on the record, at the hearing held on June 2, 2009. The stipulation was intended by the signatory parties to resolve all outstanding issues in this proceeding. The stipulation includes, *inter alia*, the following provisions:

- (1) The annual revenue requirement for the AMRP shall be \$5,672,532 and for the riser program it shall be \$8,168,593, for a total annual revenue requirement for Rider IRP of \$13,841,125.
- (2) The monthly Rider IRP rates shall be \$0.86, \$3.63, and \$87.94 for the SGS, GS, and LGS class customers, respectively.
- (3) Columbia will continue to encourage its AMRP contractors to use Ohio labor and will provide information on Ohio labor participation in future AMRP filings. This accounting treatment does not apply to PISCC calculated in accordance with Commission orders in other cases.
- (4) Columbia will record PISCC as those charges are described in the stipulation approved in the *Columbia Distribution Rate Case*.
- (5) Customer education expenses should be amortized over four years and, beginning in July 2009, Columbia may accrue carrying costs on the average monthly unrecovered balance of the customer education costs. The carrying charge rate shall be determined annually based on Columbia's embedded debt-only interest rate.

(Jt. Ex. 1, at 2-4, Sch. AMRP-1, Sch. R-1).

CONCLUSION:

Rule 4901-1-30, Ohio Administrative Code, authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR *et al.* (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (2) Does the settlement, as a package, benefit ratepayers and the public interest?
- (3) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559 (1994), citing *Consumers' Counsel, supra*, at 126. The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (*Id.*).

The signatory parties agree that the stipulation is a product of serious bargaining among capable, knowledgeable parties, and represents a just and reasonable resolution of issues raised by the parties (Jt. Ex. 1 at 1). Columbia's witness, Ms. Noel, testified that the stipulation is the product of an open process in which all parties were represented by capable knowledgeable experts. The witness points out that the signatory parties regularly participate in Commission proceedings and they represent a broad range of

interests (Tr. at 9-10). Upon review of the terms of the stipulation, based on our three-prong standard of review, the Commission finds that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

With regard to the second criterion, Ms. Noel testified that the stipulation benefits ratepayers and is in the public interest. She points out that, as a result of the negotiations, the revenue increase agreed to by the stipulating parties is lower than the increase proposed by Columbia in its application (Tr. at 10). Upon review of the stipulation, we find that, as a package, it satisfies the second criterion.

Finally, the signatory parties agree that the stipulation violates no regulatory principle or precedent and promotes the efficiency of the AMRP rate-setting process (Jt. Ex. 1, at 1). Columbia states that notification of the proposed Rider IRP increases was published when the company filed the *Columbia Distribution Rate Case*; therefore Columbia requests that the Commission find that no legal notice publication is required in this case (Columbia Ex. 2, at 1, 7). The Commission notes that Rider IRP and the annual adjustment mechanism for the rider were approved by the Commission in the *Columbia Distribution Rate Case* in accordance with the alternative rate plan provisions in Section 4929.05, Revised Code. Therefore, the Commission agrees that this application should be considered as an application not for an increase in rates under Section 4909.18, Revised Code, on the basis that Section 4929.11, Revised Code, specifically authorizes the Commission to allow an automatic adjustment mechanism in the rate schedules of a natural gas company. Section 4909.18, Revised Code, specifically provides that newspaper publication of notice of a hearing is only required in the event the Commission determines that an application may be unjust or unreasonable. Although this matter was set for hearing, the hearing was scheduled because the parties to the stipulation in the *Columbia Distribution Rate Case* provided for a hearing in the stipulated process, not because of any conclusion by the Commission as to the justness or reasonableness of the application. Therefore, no legal notice publication is required. Accordingly, upon consideration, the Commission finds that there is no evidence that the stipulation violates any important regulatory principle or practice and, therefore, the stipulation meets the third criterion.

The Commission notes that Columbia is only authorized to recover a certain narrowly defined group of expenses under Rider IRP for the AMRP. Such expenses, being recovered under an adjustable rider, should be precisely and directly related to accelerated replacements of aging infrastructure made during the applicable test-year period. With the exclusions provided for in the stipulation, we believe that the agreement of the signatory parties accomplishes this goal.

We find that the stipulation entered into by the parties is reasonable and should be adopted. Therefore, Columbia should be authorized to implement the new rates for Rider IRP in a manner consistent with the stipulation and this order and the proposed tariff

pages contained in Jt. Ex. 1 at Att. 1, should be approved. The Commission finds that Columbia should file, in final form, four, complete, printed copies of the final tariff pages with the Commission's docketing division, as set forth in this order. The effective date of the new rates for Rider IRP shall be a date not earlier than the date upon which the final tariff pages are filed with the Commission or the first billing cycle of July, whichever is later.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) Columbia is a natural gas company as defined in Section 4905.03(A)(6), Revised Code, and a public utility under Section 4905.02, Revised Code.
- (2) In accordance with the IRP provisions in the *Columbia Distribution Rate Case*, Columbia filed its prefiling notice in this case on January 2, 2009.
- (3) On February 27, 2009, Columbia filed its application in this case.
- (4) By entry issued April 6, 2009, OCC was granted intervention.
- (5) Comments on the application in this case were filed by OCC and Staff on May 15, 2009.
- (6) The hearing in this matter was held on June 2, 2009.
- (7) At the hearing, a stipulation was submitted, intending to resolve all issues in this case. No one opposed the stipulation.
- (8) The stipulation meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.
- (9) Columbia should be authorized to implement the new rates for Rider IRP consistent with the stipulation and this order.

ORDER:

It is, therefore,

ORDERED, That the stipulation of the parties be adopted and approved. It is, further,

ORDERED, That Columbia take all necessary steps to carry out the terms of the stipulation and this order. It is, further,

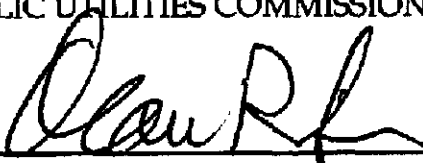
ORDERED, That Columbia be authorized to file in final form four complete copies of the tariff pages consistent with this opinion and order and to cancel and withdraw its superseded tariff pages. Columbia shall file one copy in its TRF docket (or may make such filing electronically as directed in Case No. 06-900-AU-WVR) and one copy in this case docket. The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is, further,

ORDERED, The effective date of the new rates for Rider IRP shall be a date not earlier than the date upon which four complete, printed copies of the final tariff pages are filed with the Commission or the first billing cycle of July, whichever is later. It is, further,

ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this opinion and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman

Paul A. Centolella



Valerie A. Lemmie

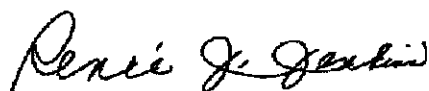
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Entered in the Journal

JUN 24 2009



Renee J. Jenkins
Secretary