

FILE

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	:	
Columbia Gas of Ohio, Inc., for	:	
Authority to Defer Environmental	:	Case No. 08-606-GA-AAM
Investigation and Remediation Costs.	:	

**OBJECTIONS SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Michael DeWine
Attorney General

William L. Wright
Section Chief
Public Utilities Section

Steven L. Beeler
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Fl.
Columbus, Ohio 43215
(614) 466-4395
Fax: (614) 644-8764
william.wright@puc.state.oh.us
steven.beeler@puc.state.oh.us

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I. INTRODUCTION AND BACKGROUND

On December 6, 2011, Columbia Gas of Ohio (“Columbia” or “Company”) filed an “Annual Deferral Report of Columbia Gas of Ohio, Inc.” (“2011 Report”) in this case seeking authority to defer on its books environmental investigation and remediation costs incurred during the period December 2010 through November 2011 at six sites in Ohio.

Columbia filed the 2011 Report pursuant to a Public Utilities Commission of Ohio (“Commission”) Entry dated September 24, 2008 (“2008 Entry”). In the 2008 Entry, the Commission approved Columbia’s May 19, 2008 Application requesting authority to defer on its books environmental investigation and remediation costs where Columbia no longer owns the site in question or where the site is owned by Columbia but is no longer used and useful in providing gas to customers.¹ In Paragraph 6 of the Entry, the Commission notes that the majority of the remediation costs are associated with former Manufactured Gas Plant (“MGP”) sites that were operated in Ohio from approximately 1850 through 1950 in order to produce commercial grade gas from the combustion of coal, oil, and other fossil fuels. The Commission further noted that, while the MGPs no longer exist, the remains of subsurface structures and associated residuals such as coal tar, scrubber wastes, chemicals, and tanks commonly remain underground at the sites.² In Paragraph 7, the Commission found that, pursuant to Chapter 3745-300, O.A.C., and the Federal Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), the environmental hazards should be removed and that as the generator of the wastes and owner of the property (or corporate successor) at the time of disposal

¹ Entry at 3 (September 24, 2008).

² *Id.* at 2.

Columbia is a party responsible under Chapter 3745-300 O.A.C. and/or CERCLA for removing the wastes and restoring the property.³

Along with approving Columbia's Application to defer the environmental remediation costs, the Commission also set some limitations on the deferral authority conferred to Columbia, permitted Columbia to accrue carrying costs on the deferrals, established some ongoing reporting requirements, and set up an automatic approval process. The 2008 Entry's limitations and requirements and the automatic approval process are described below:

Paragraph 9 limited Columbia's deferral authority to only those costs in excess of \$25,000 per site;

Paragraph 9 authorized carrying charges on all deferred amounts between the dates when expenditures were incurred and recovery commences and sets the rate at Columbia's embedded debt-only interest rate, exclusive of equity component and compounding;

Paragraph 11 required Columbia to make an annual filing detailing the costs incurred in the prior 12 month period covered by the requested deferrals and the total amount deferred to date; and

Paragraph 11 established that the annual requested deferrals shall be considered granted unless the Staff files an objection to any of the requested deferrals within 30 days of the date of the annual filing.⁴

In its 2011 Report filing, Columbia proposes to defer a total of \$3,137,961.68 for ongoing and new environmental investigation and remediation at six sites during the period December 1, 2010 through November 30, 2011. Columbia identifies the six sites as: Remediation – Marion Ohio ("Marion"); Bellevue, Ohio Manufactured Gas Plant

³ *Id.*

⁴ *Id.* at 3.

("Bellevue"); Toledo Land and Structure – Manufactured Gas Plant ("Toledo MGP"); Swan Creek Manufactured Gas Plant ("Swan Creek"); Fremont Manufactured Gas Plant, Fremont, Ohio ("Fremont"); Former Manufactured Gas Plant Sites – Fostoria, OH ("Fostoria").⁵ Columbia also included schedules providing detailed cost data for each site.

On December 21, 2011, the Office of the Ohio Consumers' Counsel ("OCC") filed comments in this proceeding. The OCC recommends that the Commission reject certain of Columbia's proposed deferrals. The OCC maintains that Columbia's 2011 Report: (1) "seeks deferral authority inconsistent with the Company's Application previously approved by the Commission; (2) includes a request for costs incurred outside of the reporting period; and (3) includes a site sold during the reporting period; therefore, any gain on the sale should be credited to the deferral account..."⁶

On December 30, 2011, Columbia filed Reply Comments in response to OCC's Comments.

II. STAFF'S REVIEW AND OBJECTIONS

The Staff has reviewed Columbia's proposed deferrals for compliance with the Commission's original 2008 Entry and sound ratemaking principals regarding deferring costs for potential future recovery at regulated utilities. In these Objections, the Staff takes no position regarding the level or prudence of the environmental remediation costs that Columbia is seeking to defer. The Staff's lack of objection to creation of deferrals at

⁵ Annual Deferral Report of Columbia Gas of Ohio Inc., Attachments 1-12 (December 6, 2011).

⁶ Comments of the Office of the Ohio Consumers' Counsel at 2 (December 21, 2011).

any particular site should not, however, be construed as the Staff's lack of objection or support for future recovery of deferred amounts related to the site. In fact, the Staff expressly reserves the right to investigate and make any necessary adjustments to the deferrals when Columbia applies to recover the deferred assets.

The Staff objects to creation of a deferral for the Toledo MGP site. This site was "owned and operated by Columbia as a Service Center until it sold the property and building in March 2011"⁷ and relocated its employees in mid-2010 to complete its environmental investigations. The new owner, River Road Redevelopment II, LLC (R3II), is now responsible for all remediation and Columbia is indemnified for "any future work necessary on the land portion of the site."⁸ After remediation, R3II will construct a new commercial office building.

The rationale for Staff's objection is twofold. First, the Staff believes that the intent of the Commission's original 2008 Entry was to allow creation of deferrals for environmental clean up costs at sites no longer owned by Columbia or no longer in service. These costs could not otherwise be included in Columbia's base rates due to the fact that the sites are no longer used and useful in providing gas service to customers. The Toledo MGP site, however, was included as part of Columbia's plant-in-service in its most recent base rate case (Case No. 08-72-GA-AIR) and was used and useful in providing service. The Commission previously determined the proper method for recording environmental remediation costs at sites that are used and useful in providing

⁷ Annual Deferral Report of Columbia Gas of Ohio Inc., Attachment 5 (December 6, 2011).

⁸ *Id.*

gas service. In Case No. 99-195-GA-AAM, the Commission determined that environmental investigation and remediation of MGPs at sites still owned by Columbia and still used and useful are improvements that add value or increase the useful life of the asset and that associated remediation costs were already capitalized to the appropriate asset account. Therefore, the Commission concluded that no change to Columbia's existing process for accounting for the remediation was necessary.⁹ The Toledo MGP site falls under the process the Commission established in the 99-195-GA-AAM case and Columbia's March 2011 sale of the site should not alter the treatment of past environmental remediation costs. The Commission determined that such costs were capital improvements to the site and, therefore, the Staff is of the opinion that the remediation costs should be treated the same as capital improvements to any other asset that Columbia might sell in between base rate cases. In such cases, the value of the improvements goes with the asset sold, the company retains any proceeds from the sale or suffers any loss, the value of the asset remains in the plant-in-service as valued in the company's last rate case, and the Company continues to earn a return of and a return on the asset until it is removed from the plant-in-service at its next rate case. Such should be the case with the sale of the Toledo MGP site. The value of the environmental remediation at the site was presumably included in the purchase price paid by R3II. Columbia should be responsible for the loss that it reports in its Reply Comments. The site remains in Columbia's plant-in-service, and customers continue to pay Columbia a return of and a return on the site despite its sale. The process that the Commission

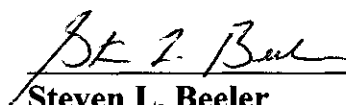
⁹ Entry in Case No 99-195-GA-AAM at 2 (August 5, 1999).

established in the 99-195-GA-AAM for recording environmental remediation costs at sites owned by Columbia and used and useful in providing gas service applies in this instance and should not be modified because Columbia chose to sell the site.

The second reason for Staff's objection is that the Commission has already determined that the environmental remediation costs at the Toledo MGP site were capital improvements. Nothing about the costs as they were originally incurred has changed that would make them operation or maintenance expenses.

With the reservations expressed above regarding future recovery, the Staff has no objection to creation of deferrals for the remaining five sites as Columbia proposes. These sites were no longer owned by Columbia or were no longer used and useful in rendering gas service to customers when the remediation costs were incurred and they otherwise comport with the Commission's 2008 Entry. The Staff recommends that the deferrals for these sites be authorized by operation of the 30-day automatic approval process established in the Commission's original 2008 Entry.

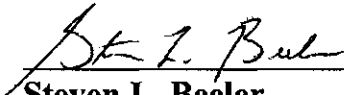
Respectfully Submitted,



Steven L. Beeler
Assistant Attorney General
Public Utilities Section
180 East Broad Street, 6th Fl.
Columbus, OH 43215-3793
(614) 466-4396
FAX: (614) 644-8764
steven.beeler@puc.state.oh.us

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Objections was served by electronic mail upon the following parties of record, this January 5, 2012.



Steven L. Beeler
Assistant Attorney General

PARTIES OF RECORD:

Larry S. Sauer
Joseph P. Serio
Assistant Consumers' counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
serio@occ.state.oh.us
sauer@occ.state.oh.us

Stephen B. Seiple
Brooke E. Leslie
200 Civic Center Drive
P.O. Box 117
Columbus, OH 43216
sseiple@nisource.com
bleslie@nisource.com