

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the	)	
Application of the Ohio	)	
School Consortium for a	)	Case No. 11-6011-GA-WVR
Requested Clarification or	)	
Waiver	)	

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**MEMORANDUM CONTRA OF COLUMBIA GAS OF OHIO, INC. TO THE  
REQUEST FOR CLARIFICATION OR WAIVER BY THE OHIO SCHOOL  
CONSORTIUM**

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Pursuant to Rule 4901-1-12(B)(1) of the Ohio Administrative Code, Columbia Gas of Ohio, Inc. ("Columbia") submits this Memorandum Contra to the Request for Clarification or in the Alternative Waiver Permitting Participating Parochial and Private Schools and Public Libraries to Continue General Transportation Service ("Request") filed by the Ohio School Consortium ("OSC") on December 21, 2011.

**INTRODUCTION**

On January 30, 2009, as supplemented on March 26 and 31, 2009, Columbia filed an application pursuant to Section 4929.04, Revised Code, for approval of a general exemption of certain natural gas commodity sales services or ancillary services contained in Chapters 4905, 4909, and 4935, Revised Code in Case No. 08-1344-GA-EXM.

On October 7, 2009, the parties filed a Stipulation. The Stipulation was signed by all of the parties.<sup>1</sup>

The Commission approved the Stipulation in an Opinion and Order dated December 2, 2009. The Stipulation provided that Columbia would conduct two auctions in order to implement two consecutive one-year long Standard Service Offer ("SSO") periods, starting in April 2010 and April 2011. Through those auctions, Columbia would obtain commodity gas supplies from alternative

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<sup>1</sup> JP Morgan, NJR Energy, and Sempra Energy Trading LLC did not sign the Stipulation; however, indicated they did not oppose the stipulation.

suppliers for both its PIPP and sales customer requirements and pass the price of the gas on to its sales customers at a monthly SSO rate. Bid winners of the SSO auctions will be assigned an undivided percentage of the standard service customers' demand. The Stipulation also provided that Columbia will conduct a third auction for the annual period beginning April 2012. This auction will be a Standard Choice Offer ("SCO") auction.

The Stipulation also contained a section detailing eligibility and terms for Transportation Service. Effective April 1, 2012, non-residential customers using less than 6,000 Mcf a year are eligible for transportation service, but must subscribe to 100% Standby Service. The 100% standby service is not required for Public School Districts pursuant to the Stipulation which states, "Public School Districts that are receiving Transportation Service as of the date of this Stipulation, including any new or existing facility placed into service in any such Public School District during the term of this Stipulation." (2009 Stipulation at 12). Language requiring standby service was purposefully omitted.

Columbia held its first two SSO auctions in accordance with the Stipulation. On April 15, 2011, Columbia filed a Revised Program Outline, reflecting the operational changes necessary to implement the initial SCO auction in February 2012. On May 9, 2011, the OCC and OP&E filed objections to the SCO auction and requested the suspension of the SCO auction. Ohio Gas Marketers Group ("OGMG") and North Coast Gas Transmission, LLC ("North Coast") also objected to certain portions of the Revised Program Outline that were simply reflections of the 2009 Stipulation. A hearing was held on July 14, 2011 and the Commission issued a Second Opinion and Order on September 7, 2011 upholding the transition to the SCO as originally prescribed by the 2009 Stipulation and rejected efforts by certain parties to alter the 2009 Stipulation. OSC did not participate in the hearing or file any comments to Columbia's Revised Program Outline. Columbia filed its new tariffs on October 14, 2011 reflecting the terms of the original Stipulation. By Entry dated November 22, 2011, the Commission approved the tariffs and directed Columbia to file the tariffs in final form. Columbia filed the final tariffs on December 30, 2011.

**THE COMMISSION SHOULD DENY OSC'S REQUEST FOR  
CLARIFICATION AND ITS REQUEST FOR A WAIVER.**

Despite its absence from the most recent SCO proceedings, and despite its silence about any tariff concerns prior to the Commission's approval of the tariffs, OSC now seeks to change the Stipulation by including private and parochial schools and public libraries in the definition of "Public School District." In the alternative, OSC seeks a waiver of Columbia's tariff requirement in order to sweep private and parochial schools and public libraries under the umbrella of "Public School Districts" to circumvent the 100% standby requirement described in the Stipulation. Columbia urges the Commission to reject this request for several reasons.

First, the language of the Stipulation is clear and does not need clarification. "Public School Districts" is used within the same meaning as in the Ohio Revised Code.

"Public school" means either of the following: (1) a school operated by a school district, educational service center, or board of mental retardation and developmental disabilities, including facilities used for child care programs for preschool children operated by the district, center, or board; or (2) a community school established under the statutes governing such schools, including a facility operated by an Internet- or computer-based community school, that is used as a classroom or laboratory for one or more students.

82 *Oh Jur Schools, Universities, and Colleges* § 1, citing Ohio Rev. Code §§ 3314.01-3314.99. Parochial schools, private schools and public libraries do not fit within this definition.

Further, it is one of the very basic tenants of contract law that "[w]hen the language of a written contract is clear, a court may look no further than the writing itself to find the intent of the parties." *Westfield Ins. Co. v. Galatis*, (2003)100 Ohio St.3d 216 at ¶ 11. Here, the language in the Stipulation is clear and does not require any clarification.

Second, the timing of OSC's request to alter the Stipulation would, if granted, cause increased uncertainty and confusion for those potential suppliers under Columbia's initial SCO auction who are currently in the process of finalizing the development of their bidding plans. This uncertainty is likely to result in higher bid prices to the detriment of Columbia's customers.

Additionally, the timing of OSC's request comes at the end of a period of substantial systems' upgrades made by Columbia to facilitate the changes incorporated in the Stipulation necessary to effectuate the SCO. Enabling parties to receive a waiver of the Stipulation requirements at this time will force Columbia to make and maintain manual adjustments to automated processes established pursuant to the Stipulation, a requirement that will place an additional burden on Columbia and thus increase its costs; again to the detriment of Columbia's customers.

Third, the OSC should not be permitted to change the language of the Stipulation prior to the expiration of the initial term of the Stipulation. The Stipulation remains in effect until March 31, 2013 and OSC has failed to offer a compelling reason as to why the Stipulation should be altered prior to that date. Columbia is willing to discuss modifications to its transportation service for private and parochial schools and public libraries *after* the expiration of the Stipulation.

Finally, OSC has known about the standby requirement since the adoption of the Stipulation in 2009. Counsel for OSC was a key participant in the settlement negotiations and intimately familiar with the provisions of the Stipulation. As recently as May 2011, the Commission provided interested parties multiple opportunities to file objections to Columbia's Revised Program Outline and to the SCO auction as a whole. OSC did not avail itself to the procedural made available by the Commission and should not be permitted to do so now at this late date.

## CONCLUSION

For the foregoing reasons, Columbia respectfully requests that the OSC Request filed on December 21, 2011 be denied. Columbia is willing to discuss

varying options with the OSC regarding private and parochial schools and libraries at the expiration of the 2009 Stipulation.

Respectfully submitted,

**COLUMBIA GAS OF OHIO, INC.**

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing document was served via electronic mail on the following persons this 5<sup>th</sup> day of January, 2012.

/s/ Brooke E. Leslie

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Summary: Memorandum Memorandum Contra of Columbia Gas of Ohio, Inc. to the Request for Clarification or Waiver by the Ohio School Consortium electronically filed by B. Scott on behalf of Columbia Gas of Ohio