

In the Matter of the Application of )  
Columbia Gas of Ohio, Inc. for Approval ) Case No. 11-5515-GA-ALT  
of an Alternative Form of Regulation. )

<sup>2</sup> PFN at Attachment 5. (Rider IRP provides Columbia with the ability to continue to track and recover, on an annual basis, the costs of an infrastructure replacement program.)

2) establish an economic development (“ED”) program<sup>3</sup> as alternative regulation plans pursuant to R.C. 4929. The Columbia Motion asks the Commission to waive certain alternative regulation filing requirements. For the reasons discussed below, the Commission should deny the Columbia Motion.

## **II. ARGUMENT**

The Columbia Motion seeks Commission waiver of certain filing requirements contained within Ohio Adm. Code 4901:1-19-05(C). Columbia’s rationale for granting the waiver is that the filing requirements “are based on previous language in section 4929.05 of the Revised Code.”<sup>4</sup> Columbia further explained its position by stating:

Prior to recent changes to Chapter 4929 of the Revised Code pursuant to House Bill 95, 4929.05 contemplated an alternative rate plan being filed only in conjunction with a base rate proceeding. Thus the requirements of OAC 4901:1-19-05 (C) reflect the need to file the SFRs found in Appendix A to OAC 49012:1-7-01, and other exhibits required by 4909.15 which are primarily used to demonstrate “just and reasonable rates” in a base rate proceeding.<sup>5</sup>

In essence, Columbia is arguing that the settlement it signed with OCC and others in 2008 is changed by the law in effect in 2012. But Columbia’s arguments do not establish the existence of good cause as required under Ohio Adm. Code 4901:1-19-03. For all the following reasons, the Commission should deny the Columbia Motion.

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<sup>3</sup> Id. (The ED recovery mechanism will provide Columbia with the ability to recover the costs of implementing an economic development program.)

<sup>4</sup> Columbia Motion at 2.

<sup>5</sup> Columbia Motion at 2.

First, the passage of House Bill 95 does not supersede the commitments that Columbia agreed to in the Joint Stipulation and Recommendation<sup>6</sup> that it signed with OCC and others in 2008. That settlement resulted in the implementation of the Company's IRP, subject to certain agreements, and controls any subsequent extension of the IRP. That settlement was reached in the base rate case that Columbia filed in 2008 -- Case No. 08-72-GA-AIR, et al.

As part of the Rate Case Stipulation, the Commission approved Columbia's present IRP.<sup>7</sup> The Rate Case Stipulation also included a provision that addressed requirements applicable to any request by Columbia to extend its IRP beyond the initial 5-year term of the program. The Rate Case Stipulation stated:

The IRP shall be in effect for the lesser of five years from the effective date of rates approved in this proceeding or until new rates become effective as a result of Columbia's filing of an application for an increase in rates pursuant to Section 4909.18, Revised Code, or Columbia's filing of a proposal to establish base rates pursuant to an alternative method of regulation pursuant to Section 4929.05, Revised Code. **Thus, unless Columbia's IRP is altered by the filing of an application for an increase in rates pursuant to Section 4909.18, Revised Code, or the filing of a proposal to establish base rates pursuant to an alternative method of regulation pursuant to Section 4929.05, Revised Code, Columbia will make IRP filings in late 2008, 2009, 2010, 2011 and 2012, with the revised Rider IRP to become effective in May of each year 2009 through 2013. The IRP filing procedure is more fully described hereinafter. At the conclusion of the five-year period specified herein, Columbia must request that the Commission reauthorize Rider IRP in order to continue the mechanism beyond the five-year period. That request for reauthorization must be made as part of an application for an increase in rates pursuant to Section 4909.18, Revised Code, or Columbia's filing for an alternative method of regulation**

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<sup>6</sup> *In re Columbia Gas of Ohio Base Distribution Rate Case*, Case No. 08-72-GA-AIR, et al. Joint Stipulation and Recommendation ("Rate Case Stipulation") at 9 (October 24, 2008). (Emphasis added).

<sup>7</sup> *Id.* Opinion and Order at 8-10 (December 3, 2008).

**pursuant to Section 4929.05, Revised Code**, and shall include all applicable due process protections.<sup>8</sup>

In the above settlement condition, Columbia agreed that its future filing to seek reauthorization of its infrastructure replacement program (beyond the initial 5-year term) would only be done with a contemporaneous filing for review of the “base rates” it charges customers. In this regard, the Stipulation calls for Columbia, when seeking reauthorization of its IRP, to file it as part of an application for an increase in base rates pursuant R.C. 4909.18 or file it as a proposal to establish base rates pursuant to an alternative method of regulation pursuant to R.C. 4929.05. This requirement for a review of base rates as part of the agreement that Columbia signed with OCC in 2008 was a key consumer protection in OCC’s decision to settle that case.

But now, four years later, Columbia is seeking a waiver from the standard filing requirements that are primarily used to demonstrate “just and reasonable rates” in a base rate proceeding.<sup>9</sup> A public utility’s compliance with Ohio Admin. Code 4901:1-19-05 (C)<sup>10</sup> (for the PUCO’s standard filing requirements) is an integral component of the process of setting base rates. Columbia’s adherence to Ohio Admin. Code 4901:1-19-05 (C) will allow for the processing of a base rate case at the PUCO, as contemplated in the settlement. A waiver of the Code will not allow for that processing of a base rate case.

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<sup>8</sup> *In re Columbia Gas of Ohio Base Distribution Rate Case*, Case No. 08-72-GA-AIR, et al. Rate Case Stipulation at 9 (October 24, 2008). (Emphasis added).

<sup>9</sup> Columbia Motion at 2.

<sup>10</sup> The requirements of Ohio Adm. Code 4901:1-19-05 (C) reflects the need to file the standard filing requirements found in Appendix A of Ohio Adm. Code 4901:1-7-1 and other exhibits required by R.C. 4909.15.

In filing its Motion, Columbia appears to be claiming that its agreement with OCC and others in 2008 should be recast according to changes in the law it supported in House Bill 95. Assuming *arguendo* that the changes to Chapter 4929 of the Revised Code (brought about by House Bill 95) that Columbia relies upon for support of its Motion permits the filing of an alternative regulation proceeding without an accompanying base rate filing, there is nothing in R.C. Chapter 4929 that precludes the fulfillment of Columbia's 2008 agreement for the filing of a base rate case with its request for a reauthorization of the infrastructure replacement program.

Specifically, Columbia would not be in violation of R.C. 4929.05 if, in conjunction with its filing for a reauthorization of its IRP, the Company complies with the 2008 settlement by filing for an increase in rates pursuant to R.C. 4909.18 or by filing a proposal to establish base rates pursuant to an alternative method of regulation pursuant to Section 4929.05, as was agreed upon as part of the Rate Case Stipulation. Therefore, the Commission should follow the 2008 Stipulation and require Columbia to file the appropriate case for review of its "base rates" (per paragraph 10A of the Rate Case Stipulation) under the circumstance where Columbia requests reauthorization of its IRP.

Additionally, as a signatory party to the Rate Case Stipulation, OCC found the settlement provision at issue now to be an especially important consideration for OCC's decision to agree to the initial 5-year IRP term in 2008. It would be particularly unfair to OCC and generally detrimental to the settlement process that the PUCO values to now allow Columbia to seek reauthorization of the IRP as a matter of single-issue ratemaking -- an issue that will, over the next 5 years, potentially allow Columbia to collect from

residential customers approximately \$200 million<sup>11</sup> in additional IRP revenues -- without the quid pro quo of the review of Columbia's base rates that OCC negotiated.

Finally, the Rate Case Stipulation did not provide for any exceptions that would permit Columbia to seek reauthorization of its IRP for an additional period of time without filing an application for an increase in rate pursuant to R.C. 4909.18 or the filing of a proposal to establish base rates pursuant to an alternative method of regulation pursuant to Section 4929.05. By Columbia's own admission, its Motion specifically seeks a waiver from the standard filing requirements found in Appendix A to Ohio Adm. Code 49012:1-7-01, and other exhibits required by 4909.15 which are primarily used to demonstrate "just and reasonable rates" in a base rate proceeding.<sup>12</sup> The Columbia Motion seeks to re-litigate that provision of the Rate Case Stipulation. The doctrine of collateral estoppel bars such attempts by Columbia to re-litigate the Columbia Rate Case Stipulation.<sup>13</sup> Therefore, the Commission should deny the Columbia Motion, and require that a Columbia filing for reauthorization of its IRP be made in conjunction with a review of Columbia's base rates as was agreed upon in the Rate Case Stipulation.

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<sup>11</sup> Columbia is proposing the IRP Rider rate cap to increase by \$1.00 per month each year for the next 5 years. \$12 increase per customer in year 1 = \$14.4 million, \$24 increase per customer in year 2 = \$28.8 million, \$36 increase per customer in year 3 = \$43.2 million, \$48 increase per customer in year 4 = \$57.6, and \$60 increase per customer in year 5 = \$72.0 million. ( $\$14.4 + 28.8 + 43.2 + \$57.6 + \$72.0 = \$216$  million).

<sup>12</sup> Columbia Motion at 2.

<sup>13</sup> The doctrine of collateral estoppel states: Collateral estoppel may be applied in a civil action to bar the re-litigation of issues already determined by an administrative agency and left unchallenged if the administrative proceeding was judicial in nature and if the parties had an adequate opportunity to litigate their versions of the disputed facts and seek review of any adverse findings. *Tedesco v. Glenbeigh Hospital of Cleveland* (1989), 1989 Ohio App. LEXIS 899, 903

### III. CONCLUSION

For all the reasons stated above, the Commission should deny Columbia's Motion for a waiver of the PUCO's standard filing requirements in that Columbia has failed to demonstrate good cause.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the *Memorandum Contra Columbia Motion to Stay Discovery* was served on the persons stated below via electronic service, this 6th day of January, 2012.

/s/ Larry S. Sauer

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Summary: Memorandum Memorandum Contra Columbia Gas of Ohio Inc.'s Motion for Waiver of Standard Filing Requirements by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Sauer, Larry S.