

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**REPLY MEMORANDUM OF  
COLUMBIA GAS OF OHIO, INC.  
TO THE MEMORANDUM CONTRA OF THE  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**BACKGROUND**

Columbia Gas Ohio's last rate case was filed in 2008<sup>1</sup>. In that case Columbia Gas of Ohio, Inc. ("Columbia") proposed an increase in base rates, as well as an alternative rate regulation plan. The alternative regulation plan was proposed, in part, in order to implement Columbia's Infrastructure Replacement Program ("IRP").

A stipulation was agreed to in Columbia's 2008 Rate Case, in which all issues except rate design were resolved by agreement among the parties. The stipulation was filed on October 24, 2008, and approved in a Commission Opinion and Order dated December 3, 2008.

The 2008 Rate Case stipulation, as approved by the Commission, authorized the initial five-year phase of Columbia's IRP. The stipulation provided, in pertinent part:

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

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<sup>1</sup> Case Nos.08-0072-GA-AIR et al.

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 pursuant to Section 4929.05, Revised Code, and shall include all applicable due process protections.<sup>2</sup>

On December 9, 2011, Columbia Gas of Ohio, Inc. filed its Notice of Intent in this proceeding. As stated in the Notice of Intent, Columbia plans to file an alternative regulation plan application, the primary purpose of which is to extend Columbia's IRP for another five years beyond the expiration of the initial five-year period authorized in the 2008 Rate Case.

On December 22, 2011, Columbia filed a Motion for Waiver of some of the Standard Filing Requirements ("SFR") that might otherwise be applicable to Columbia's alternative regulation plan application. On January 6, 2012, the Office of the Ohio Consumers' Counsel ("OCC") filed a Memorandum Contra Columbia's Motion for Waivers of the SFR. Columbia hereby files this Reply Memorandum.

#### **ALTERNATIVE RATE PLAN APPLICATIONS MAY BE FILED WITHOUT FILING A BASE RATE CASE**

Columbia has requested a waiver of certain sections of the rules otherwise applicable to this alternative regulation plan filing because the Commission's rules have not kept pace with statutory changes, and, as a result, the currently effective alternative regulation plan rules are no longer consistent with the applicable alternative regulation plan statutes.<sup>3</sup>

The General Assembly first authorized the filing of natural gas company alternative rate plan applications with the enactment of Revised Code § 4929.05 in 1996. As originally enacted, this statute required that an alternative rate plan be filed in conjunction with a rate case application under Revised Code § 4909.18 and § 4909.15.<sup>4</sup>

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2 Case Nos. 08-0072-GA-AIR et al., Joint Stipulation and Recommendation (October 24, 2008) at 9.

3 The Commission has recently initiated a rulemaking proceeding in which the alternative regulation plan rules are currently under review. See PUCO Case No. 11-5590-GA-ORD.

4 As enacted the statute provided:

(A) As part of an application filed pursuant to section 4909.18 of the Revised Code, a natural gas company may request approval of an alternative rate plan. After notice, investigation, and hearing, and after determining just and reasonable rates and charges for the natural gas company pursuant to section 4909.15 of the Revised Code, the public utilities commission

Thus, when Columbia filed its alternative regulation plan application in March 2008 it did so in conjunction with a base rate case. However, there have been significant statutory changes since March 2008 that relate to Revised Code § 4929.05.

In 2008 the General Assembly enacted a new statute, Revised Code § 4929.051, which became effective July 31, 2008. This statute authorized the filing of an alternative rate plan application without the filing of a base rate case if the natural gas company proposed a revenue decoupling mechanism and an energy conservation program, and if the rates and charges in the alternative rate plan application were based upon the revenue requirement in the utility's most recent base rate case.<sup>5</sup>

In 2011, the General Assembly enacted further changes to both Rev. Code § 4929.05 and § 4929.051, both of which became effective September 9, 2011. The revisions to Rev. Code § 4929.05 make it clear that natural gas companies may file alternate rate plan applications without the filing of base rate case.<sup>6</sup>

The amendments to Rev. Code § 4929.051 similarly made it clear that the General Assembly intended that natural gas companies can file alternative rate plan applications independent of base rate case applications.<sup>7</sup>

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shall authorize the applicant to implement an alternative rate plan if ... [specified conditions are satisfied].

Ohio Revised Code Annotated § 4929.05 (Page 2000).

<sup>5</sup> The statute stated:

An alternative rate plan filed by a natural gas company under section 4929.05 Revised Code and proposing a revenue decoupling mechanism may be an application not for an increase in rates if the rates, joint rates, tolls classifications, charges or rentals are based upon the billing determinants and revenue requirement authorized by the public utilities commission in the company's most recent rate case proceeding and the plan also establishes, continues, or expands an energy efficiency or energy conservation program.

Ohio Revised Code Annotated § 4929.051 (Page Supp. 2011).

<sup>6</sup> After revision, Rev. Code § 4929.05 now provides:

(A) A natural gas company may request approval of an alternative rate plan by filing an application under section 4909.18 of the Revised Code, regardless of whether the application is for an increase in rates. After investigation, which may include a hearing at the discretion of the public utilities commission, the commission shall authorize the applicant to implement an alternative rate plan if ... [specified conditions are satisfied].

Ohio Revised Code Annotated § 4929.05 (Lexis-Nexis 2011).

<sup>7</sup> The statute now provides:

Despite these statutory changes the Commission's alternative regulation plan rules still reflect the provisions of the original version of Revised Code § 4929.05, and presume that alternative rate plan applications will be filed in conjunction with base rate cases. Specifically, the requirements in Ohio Admin. Code § 4901:1-19-05(C) are based on the original version of Revised Code § 4929.05. Thus, the requirements of Ohio Admin. Code § 4901:1-19-05(C) reflect the need to file the SFRs found in Appendix A to Ohio Admin. Code § 4901:1-7-01, and other exhibits required by Revised Code § 4909.15 that are primarily used to demonstrate "just and reasonable rates" in a base rate proceeding. With the enactment of the 2011 revisions to Revised Code § 4929.05, natural gas companies may file applications for approval of alternative rate plans without filing a base rate case. As a result, when a natural gas company files an alternative rate plan application there is no longer a need to file any of the exhibits contemplated by subsections (A) through (E) of Revised Code § 4909.15, or any of the exhibits in Appendix A that support a base rate proceeding. Providing this information would serve no purpose in evaluating an alternative rate plan application. Therefore, the sections of Ohio Admin. Code § 4901:1-19-05(C)(1) and (2) that reference a base rate proceeding should be waived.

## **THE OCC'S INTERPRETATION OF THE STIPULATION IS INCORRECT**

Notwithstanding the statutory changes explained above, the OCC argues that the 2008 Rate Case stipulation requires Columbia to file a base rate case. The OCC is wrong, and its misinterpretation of the 2008 Rate Case stipulation should be rejected. The stipulation clearly and unambiguously contemplates extending the IRP upon filing an alternative regulation plan application.

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(A) An alternative rate plan filed by a natural gas company under section 4929.05 of the Revised Code and proposing to initiate or continue a revenue decoupling mechanism shall be considered an application not for an increase in rates if the rates, joint rates, tolls, classifications, charges, or rentals are based upon the billing determinants and revenue requirement authorized by the public utilities commission in the company's most recent rate case proceeding and the plan also establishes, continues, or expands an energy efficiency or energy conservation program.

(B) An alternative rate plan filed by a natural gas company under section 4929.05 of the Revised Code and seeking authorization to continue a previously approved alternative rate plan shall be considered an application not for an increase in rates.

Ohio Revised Code Annotated § 4929.051 (Lexis-Nexis 2011).

The OCC cites the same language in the stipulation that is quoted earlier in this Reply Memorandum – “That request for reauthorization [of Columbia’s IRP] 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.”<sup>8</sup> The language of the stipulation is clear and unequivocal – to extend its IRP Columbia must file a rate case or an alternative regulation plan application. Columbia may file one or the other, but there is no requirement to file both. For reasons that are not clear the OCC has chosen to ignore the plain meaning of this language setting forth two alternative methods of filing for extension of Columbia’s IRP.

Columbia can only speculate as to how the OCC may have come to the mistaken conclusion that it did, but based on the OCC’s pleading it appears that the OCC may have become confused about the meaning of other language in the 2008 Rate Case stipulation. Earlier in this Reply Memorandum Columbia quoted that part of the stipulation that deals with the extension of Columbia’s IRP beyond the initial five-year term. The quoted language, from page 9 of the stipulation, is part of a larger paragraph – paragraph 10A of the stipulation. Paragraph 10A, which is quoted in full in the OCC’s Memorandum Contra, deals with two distinct topics: (1) alteration of the original five-year term of the IRP during that five-year term, and, (2) extension of the IRP beyond its original five-year term. At issue in this docket is only an extension of the IRP beyond the original five-year term. Columbia is proposing no changes to the original five-year IRP that runs through 2012. However, the OCC may be mistakenly intermingling concepts that apply only to alteration of the original five-year IRP.

Paragraph 10A of the stipulation also provides that if the IRP is to be modified during its initial five-year term, such mid-term alterations of the IRP may be accomplished by the filing of a base rate case, or the filing of an application to establish base rates pursuant to an alternative regulation plan. Thus, if Columbia were proposing a modification of the existing IRP that runs through 2012 the OCC would be correct that such a modification would require a review of base rates along with any alternative rate plan proposal. However, where the OCC errs is in assuming that the same base rate review process applies to extensions of the IRP, as opposed to modifications of the IRP during its initial five-year term. The plain language of the stipulation clearly indicates that a different standard applies to extensions of the IRP.

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<sup>8</sup> Case Nos. 08-0072-GA-AIR et al., Joint Stipulation and Recommendation (October 24, 2008) at 9 (emphasis added).

In discussing this stipulation provision, the OCC claims, "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 'base rates'..."<sup>9</sup> This is simply not the case -- the plain wording of the stipulation contains no such commitment. The commitment is to file a base rate case or an alternative regulation plan application pursuant to Revised Code § 4929.05.

The OCC further claims that, "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."<sup>10</sup> The stipulation contains no requirement for a review of base rates in conjunction with an extension of the IRP, and if this was, in fact, so important to the OCC the OCC should have insisted upon language that clearly required a base rate review as a condition of extension of Columbia's IRP.

To the contrary, the language regarding continuation of the IRP was carefully crafted by the parties to recognize that changes to Revised Code § 4929.05 might permit future alternative rate plan applications to be filed without the necessity of filing base rate case applications. As noted earlier herein, Revised Code § 4929.051 was enacted effective July 31, 2008, to permit the filing of alternative rate plan applications, under certain conditions, without the filing of a simultaneous rate case. The Stipulation was not finalized and filed until October 24, 2008. The parties were aware of the enactment of Revised Code § 4929.051 and fully intended to provide an alternative to a rate case filing in order to continue Columbia's IRP.

Additional changes were enacted to Revised Code § 4929.05 in 2011 that further diluted the link between base rate applications and alternative rate applications. The OCC argues that these statutory changes do not supersede the commitments in the stipulation.<sup>11</sup> Contrary to the OCC's assertion, there is no inconsistency between the stipulation and the 2011 statutory revisions. The stipulation simply provides that Columbia may file an alternative rate plan application to extend its IRP. Nothing in the stipulation states, or even implies, that the parties contemplated that language to mean that an alternative rate plan application

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<sup>9</sup> Case No. 11-5515-GA-ALT, OCC Memorandum Contra (January 6, 2011) at 4.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 3.

would be filed pursuant to a statutory scheme that existed prior to the signing of the stipulation, if, in fact, such an agreement could even be considered lawful.

The remainder of the OCC's arguments, found on pages 4-6 of its Memorandum Contra, are all based upon the OCC's misreading of the stipulation and its faulty assumption that extension of Columbia's IRP must be accompanied by a review of base rates. For the reasons explained above, the OCC has mischaracterized the stipulation and the OCC has improperly assumed that there is a base rate review requirement. All of the OCC's other arguments fail because they are based upon a faulty premise. While the OCC accuses Columbia of attempting to "re-litigate" the 2008 Rate Case stipulation<sup>12</sup>, it is clearly the OCC, not Columbia, that is trying to re-litigate the 2008 Rate Case stipulation by imposing conditions contrary to the plain meaning of the words that all parties, including the OCC, used to express their agreement.

Wherefore, for the reasons stated above, the Commission should reject the OCC's Memorandum Contra in its entirety, and should approve Columbia's Motion for Waiver.

Respectfully submitted,

**COLUMBIA GAS OF OHIO, INC.**

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<sup>12</sup> *Id.* at 6.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Memorandum of Columbia Gas of Ohio, Inc. was served upon all parties of record by regular U. S. mail this 11<sup>th</sup> day of January, 2012.

/s/ Stephen B. Seiple

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Summary: Memorandum Reply Memorandum of Columbia Gas of Ohio, Inc. to the  
Memorandum Contra of the Office of the Ohio Consumers' Counsel electronically filed by B.  
Scott on behalf of Columbia Gas of Ohio