

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY

The attorney examiner finds:

- (1) On December 3, 2008, the Commission approved and adopted a stipulation regarding applications filed by Columbia Gas of Ohio, Inc. (Columbia), for approval of an increase in gas distribution rates (Case No. 08-72-GA-AIR); for approval of an alternative rate plan for its gas distribution service (Case No. 08-73-GA-ALT); for approval of an application to modify certain accounting methods (Case No. 08-74-GA-AAM); and for authority to revise its depreciation accrual rates (Case No. 08-75-GA-AAM).¹ See *Columbia Gas of Ohio, Inc.*, Case Nos. 08-72-GA-AIR, et al. (October 24, 2008) (*Rate Case Stipulation*).
- (2) On December 9, 2011, Columbia filed a notice of intent to file an application for approval of an alternative rate plan pursuant to Rule 4901:1-19-05, Ohio Administrative Code (O.A.C.). Attached to its notice, Columbia provided several prefiling notice exhibits, including a summary of the alternative rate plan. According to the summary, Columbia sought authority to implement an alternative rate plan consisting of a five-year extension of the infrastructure replacement program (IRP) portion of its alternative rate plan, which was originally approved pursuant to the *Rate Case Stipulation*, as well as a new economic development cost recovery mechanism.
- (3) On December 22, 2011, Columbia filed a motion for a waiver of certain provisions contained in Rule 4901:1-19-05(C), O.A.C., regarding standard filing requirements (SFRs) required to be filed with alternative rate plan applications. In support of its

¹ The Ohio Consumers' Counsel and Ohio Partners for Affordable Energy were signatories to the stipulation.

motion, Columbia asserted that the SFRs set forth in Rule 4901:1-19-05(C), O.A.C., were based on previous language in Section 4929.05, Revised Code, which contemplated an alternative rate plan being filed only in conjunction with a base rate proceeding. Columbia claimed in its motion for waiver, however, that recent changes to Section 4929.05, Revised Code, by Am. Sub. H. B. 95 allowed the filing of an alternative rate plan without an accompanying base rate case. Columbia asserted that, consequently, there was no need to file exhibits associated with base rate proceedings, including sections (A) through (E) of Section 4909.15, Revised Code. Columbia concluded that it was entitled to a waiver of all sections in Rules 4901:1-19-05(C)(1) and (2), O.A.C., that reference a base rate proceeding.

- (4) On January 6, 2012, the Ohio Consumers' Counsel (OCC) filed a memorandum contra Columbia's motion for a waiver of the SFRs. In its memorandum contra, OCC argued that, pursuant to the *Rate Case Stipulation*, Columbia agreed that reauthorization of its IRP beyond the initial five-year term would only be done with a contemporaneous filing of a base rate proceeding. OCC stated that it does not concede that Am. Sub. H. B. 95 modified Section 4929.05, Revised Code, as Columbia proposed, but argued that, even if it did, the changes in the statute do not excuse Columbia from fulfilling the terms of the *Rate Case Stipulation*. OCC urged the Commission to deny Columbia's motion for a waiver and require Columbia to file for reauthorization of its Rider IRP in conjunction with a base rate case.
- (5) On January 11, 2012, Columbia filed a reply memorandum to OCC's memorandum contra. In its reply, Columbia reiterated its position that the recent changes to Sections 4929.05 and 4929.051, Revised Code, allow the filing of alternative rate plan applications without the filing of a base rate case. Further, Columbia argued that OCC's interpretation of the *Rate Case Stipulation* was incorrect, and that the terms provide that extension of Rider IRP beyond the original five-year term may be accomplished by either the filing of a base rate case or an alternative rate plan pursuant to Section 4929.05, Revised Code.

- (6) Also on January 11, 2012, Ohio Partners for Affordable Energy (OPAE) filed a reply memorandum to OCC's memorandum contra. In its reply, OPAE argued that, under the terms of the *Rate Case Stipulation*, Columbia must file its request for an extension of its alternative regulation plan in conjunction with a review of base rates. Further, OPAE asserted that Am. Sub. H. B. 95 does not preclude Columbia's fulfillment of the terms of the *Rate Case Stipulation*.
- (7) Thereafter, on January 13, 2012, Columbia filed a motion to strike and a memorandum in reply to OPAE's reply memorandum to OCC's memorandum contra. In its motion to strike, Columbia argued that the Commission has recognized that rules authorizing the filing of memoranda contra do not authorize the filing of memoranda in support of another party's motion. Columbia argued that OPAE's filing merely supported OCC's memorandum contra and, consequently, should be stricken. Additionally, Columbia contended that OPAE's filing fails on substantive grounds. On January 19, 2012, OPAE responded with a memorandum contra Columbia's motion to strike. Thereafter, on January 23, 2012, Columbia filed a reply memorandum to OPAE's memorandum contra.
- (8) On March 5, 2012, Columbia filed an amended notice of intent to file an application for approval of an alternative rate plan. In its amended notice, Columbia stated that it intends to file its application pursuant to Section 4929.051(B), Revised Code. Columbia stated in its amended notice that its application will seek authority to continue the IRP portion of its alternative regulation plan for another five-year period. Additionally, Columbia stated that its application will clarify the scope of its IRP.

Contemporaneously, Columbia filed an accompanying amended motion for waiver of the SFRs. In its amended motion for a waiver of the SFRs, Columbia stated that it intends to file its application requesting authority to implement an alternative regulation plan in April 2012. Columbia further stated that recent modifications to Section 4929.051(B), Revised Code, by Am. Sub. H. B. 95 eliminated the requirement that an applicant file a base rate case in conjunction with an alternative rate plan case, as the statute now provides that, where the

applicant seeks authorization to continue a previously approved alternative rate plan, the application shall be considered not for an increase in rates. Columbia argued that, consequently, the Commission is no longer required to determine just and reasonable base rates under Section 4909.15, Revised Code, as part of an alternative rate plan application filed pursuant to Section 4929.051(B), Revised Code. Therefore, Columbia argued that it is unnecessary to file exhibits (A) through (E) of Section 4909.15, Revised Code, or any of the exhibits in Appendix A that support a base rate proceeding. Thus, Columbia stated that the portions of Rules 4901:1-19-05(C)(1) and (2), O.A.C., that reference a base rate proceeding, should be waived.

- (9) On March 16, 2012, Columbia, Staff, OCC, and OPAE filed a joint stipulation regarding procedural matters in this case, whereby the parties agreed that the pleadings filed on January 6, 2012, and on January 11, 2012, should apply to Columbia's amended motion for waiver, that Columbia's January 13, 2012, motion to strike and reply memorandum should be considered only a reply memorandum to OPAE's January 11, 2012, pleading, that Columbia withdraws its motion to strike, and that the pleadings filed on January 19, 2012, and January 23, 2012, are moot. By entry issued March 19, 2012, the attorney examiner adopted the joint procedural stipulation and granted OCC and OPAE intervention in this proceeding.
- (10) Section 4929.05, Revised Code, as amended by Am. Sub. H. B. 95 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 the natural gas company has made a showing and the commission finds that all of the following conditions are met:

- (1) The natural gas company is in compliance with section 4905.35 of the Revised Code and is in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code.
 - (2) The natural gas company is expected to continue to be in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code after implementation of the alternative rate plan.
 - (3) The alternative rate plan is just and reasonable.
 - (B) The applicant shall have the burden of proof under this section.
- (11) Further, Section 4929.051(B), Revised Code, as amended by Am. Sub. H. B. 95, provides:
- 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.
- (12) As an initial matter, the attorney examiner notes that the amendments to Section 4929.05, Revised Code, make it clear that a natural gas company may request approval of an alternative rate plan without filing an accompanying base rate case. However, the revisions do not eliminate the Commission's responsibility under Section 4909.18, Revised Code, to determine whether such an application is for an increase in rates. Instead, the revisions carve out situations set forth in Sections 4929.051, Revised Code, under which alternative rate plans shall be considered applications not for an increase in rates, including under division (B) where the application seeks to continue a previously approved alternative rate plan. Consequently, the current and applicable versions of

Sections 4929.05 and 4929.051, Revised Code, permit the filing of an alternative rate plan without an accompanying base rate case only where the application meets the specific requirements set forth in Section 4929.051, Revised Code.


- (13) Furthermore, the attorney examiner notes that Rule 4901:1-19-03, O.A.C., governing waivers, provides that the Commission may waive any provisions in Chapter 4901:1-19, O.A.C., for good cause shown. In determining whether good cause has been shown, the rule states that the following factors may be taken into consideration: (1) whether other information, which would be provided if the waiver is granted, is sufficient for the Commission's Staff to review the application; (2) whether the information required to be filed by the rules is relevant to the Commission's consideration of the application; (3) whether the information that is the subject of the waiver request is reasonably available to the applicant; (4) the expense to the applicant in providing the information at the subject of the waiver request; and (5) whether granting of the waiver is in the public interest.
- (14) Here, Columbia's amended notice of intent sets forth that it will seek a continuation of the IRP portion of its alternative rate plan for an additional five years and that the application will be filed pursuant to Section 4929.051(B), Revised Code. The attorney examiner finds that, upon review of Columbia's amended notice of intent filed on March 5, 2012, it appears that Columbia intends to make an filing under Section 4929.051(B), Revised Code. Additionally, the attorney examiner finds that Columbia's amended motion for a waiver appropriately sets forth the factors enumerated in Rule 4901:1-19-03, O.A.C., that are to be taken into consideration in determining whether good cause has been shown. Upon consideration of the pleadings, the attorney examiner finds that, at this time, Columbia should be permitted to file its application without the information required by the sections of Rules 4901:1-19-05(C)(1) and (2), O.A.C., that reference a base rate proceeding. Therefore, the attorney examiner concludes that Columbia's motion for waiver should be granted, contingent upon the Commission's final review and consideration. If the Commission later finds that additional information is needed, Columbia may be required to submit the requisite information at that time.

It is, therefore,

ORDERED, That, pursuant to Finding (14), Columbia's motion for waiver is granted contingent on the Commission's final review and consideration, and Columbia may, at this time, file its application without the information required by the sections of Rules 4901:1-19-05(C)(1) and (2), O.A.C., that reference a base rate proceeding, pursuant to Finding (13). It is, further,

ORDERED, That a copy of this entry be served upon all interested parties of record.

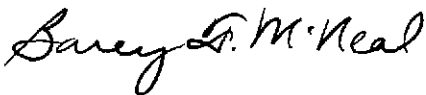
THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Mandy L. Willey
Attorney Examiner

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Entered in the Journal

MAY 01 2012



Barcy F. McNeal
Secretary