

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Joint Motion to)	
Modify the December 2, 2009 Opinion)	Case No. 12-2637-GA-EXM
and Order and the September 7, 2011)	
Second Opinion and Order in Case No.)	
08-1344-GA-EXM)	

**INTERLOCUTORY APPEAL
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL
AND
OHIO PARTNERS FOR AFFORDABLE ENERGY**

The Attorney Examiner's Entry of October 18, 2012 ("October 18 Entry")¹ is a departure from precedent and imposes unfair limits on the ability of the Appellants to advocate for Columbia's customers in this important case where rates and the future of Columbia Gas' standard choice offer ("SCO") — that has been spectacular in lowering the price of natural gas for consumers—are at risk.² The Office of the Ohio Consumers' Counsel ("OCC") and Ohio Partners for Affordable Energy ("OPAE") hereby submit this Interlocutory Appeal³ to the Public Utilities Commission of Ohio ("PUCO" or "the Commission") and respectfully request that the PUCO reverse this decision and establish a more reasonable and fair procedural schedule.

The October 18 Entry provides less time for the litigation of this case than taken by the Stipulators [being Columbia Gas, the marketer groups (representing approximately

¹ Attached hereto as Attachment A.

² *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 08-1344-GA-EXM, Second Opinion and Order at 8 (September 7, 2011) See Attachment B.

³ The appeal is filed pursuant to Ohio Adm. Code 4901-1-15.

23 marketers)⁴ and the PUCO Staff] who spent four months in a process to produce a settlement lacking any support by a customer representative. That settlement essentially gives Columbia the off-system sales revenues that it wants and gives marketers the progress toward eliminating the standard choice offer that, while a great rate for consumers, is a lower price than marketers generally offer. Especially considering the significance of these issues for Ohio consumers, the October 18 Entry established an unreasonably constrained procedural schedule that requires the filing of initial briefs a mere **three days** following the conclusion of the evidentiary hearing and denies parties the opportunity to file reply briefs.⁵ The Appellants appreciate that the October 18 Entry does not limit the process to the extent that the Stipulators may have preferred.

The October 18 Entry should be modified, pursuant to Ohio Admin. Code 4901-1-15(E), to provide more time for process and at least ten days for briefs and a week for reply briefs. The PUCO should not allow the Stipulators, who developed a settlement lacking diversity of support by consumer parties, to cut short due process for consumer parties and others by the Stipulators' own prolonged negotiation process. Moreover, in Ohio where it is policy⁶ to “promote...reasonably priced natural gas services...,” the PUCO should not give any deferential treatment—which is what occurs under the

⁴ The Ohio Gas Marketers Group for purposes of this proceeding includes: Constellation NewEnergy, Inc., Direct Energy Services, LLC, Direct Energy Business, LLC, Interstate Gas Supply, Inc., Integrys Energy, Inc., Just Energy Group, Inc. and SouthStar Energy LLC; and RESA's members include: Champion Energy Services, LLC; ConEdisonSolutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.

⁵ October 18 Entry at 5 (emphasis added).

⁶ R.C. 4929.02(A)(1).

PUCO's three-prong settlement standard—to settlements lacking meaningful customer support such as what is tendered in this case.

Finally, the PUCO should modify the Legal Notice in the October 18 Entry. The Notice does not (but should) reference for the public that the Stipulation contains steps toward Columbia exiting the residential merchant function, meaning steps toward ending the standard choice offer that has brought much relief to consumers from higher natural gas prices (as noted by Hess in its filing).⁷ The notice does not (but should) reference the sentence in the Settlement that definitively places all customers at risk of an exit: “The Parties agree that Columbia **will exit** the merchant function if participation in Columbia’s CHOICE program meets specified thresholds.”⁸ And the Notice does not (but should) reference for the public that the extent to which Columbia shares off-system sales revenues with customers is at issue. Finally, the Notice does not (but should) reference the settlement provision that standard choice offer suppliers (but not Choice and other suppliers) will pay \$.10 per Mcf for security, a discriminatory provision that is transparent in its harmfulness to the standard choice offer that has provided a great benefit to consumers.

The reasons for this Interlocutory Appeal are explained in the attached Memorandum in Support.

⁷ Hess Motion to Intervene Memorandum in Support at 6 (October 9, 2012).

⁸ Stipulation at 5 (October 4, 2012 (emphasis added)).

Respectfully submitted,

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**REQUEST FOR CERTIFICATION
AND
APPLICATION FOR REVIEW
AND
MEMORANDUM IN SUPPORT**

I. INTRODUCTION

The Stipulators filed a Joint Motion to Modify Orders Granting Exemption (“Joint Motion”), with their Stipulation attached (and filed another motion to seek an expedited case process). The Stipulation was signed by only Columbia, the Ohio Gas Marketers Group (“OGMG”),⁹ Retail Energy Supply Association (“RESA”),¹⁰ Dominion Retail, Inc. and the PUCO Staff (“Staff”) (collectively “Columbia, PUCO Staff and the Marketers”). It is worth noting that while many of the members of OGMG are also members of RESA, no customer or customer representative signed on as part of the Joint Motion.

⁹ The Ohio Gas Marketers Group for purposes of this proceeding includes: Constellation NewEnergy, Inc., Direct Energy Services, LLC, Direct Energy Business, LLC, Interstate Gas Supply, Inc., Integrys Energy, Inc., Just Energy Group, Inc. and SouthStar Energy LLC.

¹⁰ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.

Among the issues addressed in the Joint Motion, the most important is Columbia's potential exit from the merchant function. The "exit," as it has become known, would result -- if it occurs -- in customers no longer having the option of buying natural gas from a utility-provided default service -- in this case the SCO. The SCO is a market-based rate established through an open auction process that has been spectacularly successful in providing Ohioans with a low-priced option for natural gas. As noted on Attachment B, the auction results since September 2008, for all three of the LDCs that conduct auctions, have produced lower (or in the case of one Vectren auction equal to) prices for customers in each succeeding auction to date. Instead, if an exit were to occur in the future, customers would be required to take service directly from one of the Marketers that signed the settlement or other Marketers, even if those customers preferred the SCO option.

In addition, Columbia, PUCO Staff and the Marketers have moved the Commission for Bifurcation of the Capacity and Balancing Issues ("Joint Motion to Bifurcate"). This was because Columbia, PUCO Staff and the Marketers claimed the capacity-related issues were "time sensitive."¹¹ The OCC, OPAE (the only customer or customer representatives in this case) and Hess (a supplier for the standard choice offer auction that has greatly benefited consumers) all opposed the Joint Motion to Bifurcate. These are important issues that affect customers' rates and thus warrant a full and fair process. Those issues include the proposed renewal of upstream interstate pipeline capacity contracts from Columbia's own affiliates, as well as, stipulators' proposed allocation of the revenues from off-system sales in a way that allocates up to \$60 million from customers to Columbia.

¹¹ Joint Motion Memorandum Contra at 10.

Columbia, PUCO Staff and the Marketers have also moved for expedited consideration (“Joint Motion to Expedite”). The October 18 Entry denied the Joint Motion to Bifurcate. The October 18 Entry did accelerate the case schedule, and noted that after the hearing the PUCO will reconsider Columbia’s, PUCO Staff’s and the Marketers’ request to bifurcate.¹² The accelerated time-line is unfair to the non-signatory parties. And the Stipulators should not be given the benefit of an expedited litigation schedule that is prompted by their own prolonged use of months of time for their negotiation.

The Joint Motion to Expedite should have been denied. And instead there should have been more time allowed for the litigation process, including at a minimum more time for the brief and including a reply brief instead of no reply being allowed.

II. REQUEST FOR CERTIFICATION AND APPLICATION FOR REVIEW.

A. This Interlocutory Appeal Should Be Certified For the Commission To Consider Modifying The Current Procedural Schedule And Public Notice Established In The October 18 Entry.

OCC and OPAE hereby request the Commission to certify this interlocutory appeal. Ohio Adm. Code 4901-1-15(B) states:

Except as provided in paragraph (A) of this rule, no party may take an interlocutory appeal from any ruling issued under rule 4901-1-14 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference unless the appeal is certified to the commission by the legal director, deputy legal director, attorney examiner, or presiding hearing officer. The legal director, deputy legal director, attorney examiner, or presiding hearing officer shall not certify such an appeal unless he or she finds that: the appeal presents a new or novel question of

¹² October 18 Entry at 4.

interpretation, law, or policy, **or is taken from a ruling which represents a departure from past precedent and an immediate determination by the commission is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties**, should the commission ultimately reverse the ruling in question. (Emphasis added).

The OCC and OPAE interlocutory appeal meets both criteria for certification.

In this case, the October 18 Entry represents a “departure from past precedent” under Ohio Adm. Code 4901-1-15(B) because it adopts an unfair briefing schedule that provides only three days for Initial Briefs, and no opportunity for a Reply Brief. This will not allow for the processing of the case in a way that will provide the contemplated opportunity for all parties to advocate their positions to the PUCO for informed PUCO decision-making including through an ample briefing schedule that allows for formulation of arguments and replies.

In addition, an “immediate determination” by the Commission under Ohio Adm. Code 4901-1-15(B) is needed to prevent the likelihood of undue prejudice or expense to one or more of the parties because interested parties are denied an adequate opportunity to present their arguments on brief. Three days is an inadequate amount of time under almost any circumstance, and even more concerning in this case where the subject matter (an exit from the merchant function) is of such importance to Columbia’s 1.2 million residential customers. And denial of a reply opportunity precludes the opportunity to rebut arguments submitted to the PUCO.

Furthermore, the October 18 Entry includes a Legal Notice for the evidentiary hearing that does not adequately inform interested persons of the issues involved in this proceeding. Inasmuch as the Stipulation lacks support of any customer parties, it is especially imperative that the notice fully disclose the issues in contention to allow the

interested public an opportunity to evaluate whether to intervene or otherwise participate in this proceeding in order to prevent undue prejudice.

B. Application For Review

1. The Procedural Schedule Does Not Provide an Adequate Opportunity for Interested Parties to Obtain Information, Develop Positions and Make Recommendations on Brief.

On October 4, 2012, Columbia, PUCO Staff and the Marketers filed a Joint Motion to Modify Orders Granting Exemptions pursuant to Section 4929.08, Revised Code, to provide Columbia the opportunity to exit the merchant function for non-residential customers as early as April 1, 2014.¹³ Two weeks later later, the Attorney Examiner issued an Entry establishing a procedural schedule. The October 18 Entry states:

The attorney examiner finds that the following procedural schedule is practicable and should be established for this proceeding:

(a) November 5, 2012 – Deadline for the filing of motions to intervene.

(b) November 5, 2012 – Deadline for the filing of comments and/or memorandum contra the October 4, 2012, joint motion to modify.

(c) November 12, 2012 – Deadline for the filing of reply comments and replies to memorandum contra the October 4, 2012, joint motion to modify.

(d) November 12, 2012 – Deadline for the filing of direct testimony by joint movants. In its testimony, Columbia must delineate, in detail (referencing page numbers, section headings, and paragraphs), the issues in the Stipulation that relate to capacity, balancing, SCO, and billing, that it needs to have resolved expeditiously.

¹³ Joint Motion at (October 4, 2012).

(e) November 26, 2012 – Deadline for the filing of testimony on behalf of intervenors.

(f) December 3, 2012 – A hearing shall commence at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio.

(g) **Briefs will be due three calendar days after conclusion of the hearing. Reply briefs will not be accepted.** In order to accommodate the timely filing of briefs, Columbia should arrange for same-day transcripts.¹⁴

The October 18 Entry departs from Commission precedent.

The potential exit from the merchant function by a local distribution company (“LDC”) is one of the most significant issues facing natural gas customers today. There has been only one LDC in the United States that has exited the merchant function to date -- Atlanta Gas Light.¹⁵ There are currently two LDCs with proceedings before the Commission with an objective to exit the merchant function for non-residential customers, Columbia and Dominion East Ohio (“Dominion”).¹⁶

The evidentiary hearing in the Dominion Exit Case was concluded on October 17, 2012. In that case, the Attorney Examiner established the following briefing schedule that should be precedent for the schedule here: Initial Briefs are due November 13, 2012 (27 days following the conclusion of the evidentiary hearing) and Reply Briefs are due November 21, 2012 (35 days following the conclusion of the evidentiary hearing).¹⁷ It should also be noted that the briefing schedule in the Dominion Exit Case was not established until the conclusion of the hearing.

¹⁴ October 18 Entry at 4-5 (emphasis added).

¹⁵ http://www.eia.gov/oil_gas/natural_gas/restructure/state/ga.html (last visited October 23, 2012).

¹⁶ *In re Dominion East Ohio Exit the Merchant Function Case* (“*Dominion Exit Case*”), Case No. 12-1842-GA-EXM, Joint Motion (June 15, 2012).

¹⁷ Tr. Vol. II at 241-242 (Stenman) (October 17, 2012).

Columbia, PUCO Staff and the Marketers are seeking approval to transition from the Standard Choice Offer (“SCO”) auction process (that has been very beneficial for consumers) to an exit for Columbia’s non-residential customers. However, Columbia has not yet completed providing SCO service through even a single winter heating season (in contrast with Dominion that has operated under the SCO for four years).¹⁸ The Stipulation in this case has no customer parties supporting the Stipulation, while the Dominion Stipulation had OCC supporting. While the intervention deadline has not yet passed, at this point OCC, OPAE, Hess and Stand Energy Corporation¹⁹ are opposing the Stipulation, while in the Dominion case only one party (OPAE) opposed.

It is not known how many witnesses will prepare testimony, what issues will be litigated, and how many days will be needed for the evidentiary hearing. In addition, under the proposed schedule Intervenors will only have 14 days after Columbia submits testimony delineating in details the page number, section headings and paragraphs that relate to capacity, balancing, SCO and billing. Despite, the Joint Movants request for bifurcation, they have not yet provided this level of detail, and in some instances the Columbia testimony will be the first time that Intervenors will receive this information. The short 14-day interval between Columbia’s testimony and Intervenor testimony will make it very difficult for Intervenors to conduct discovery and use this information in testimony.

The October 18 Entry does not accommodate reasonable times for the case process including for briefing the case (and disallowed a reply brief). The modification to the procedural schedule proposed by OCC and OPAE will prevent the likelihood of

¹⁸ *In re Columbia Auction Case*, Case No. 08-1344-GA-EXM, Staff Report at 2 (February 14, 2012).

¹⁹ See Motion to Intervene by Stand Energy Corporation at 1-3 (October 22, 2012).

undue prejudice that would result from the current procedural schedule. Therefore, the Commission should modify the procedural schedule to set a time line for this case that allows for more time for the case preparation phase and provides at least ten days for Initial Briefs and at least one week for Reply Briefs. The Appellants appreciate that the October 18 Entry does not limit the process to the extent that the Stipulators may have preferred.

2. The Legal Notice Will Not Adequately Inform Interested Parties and the Public of the Issues Involved in this Proceeding.

“The fundamental requisite of due process of law is the opportunity to be heard.”²⁰ Due process for individuals is a constitutional right protected by the Fourteenth Amendment. The opportunity to be heard can have no meaning however if one is not informed of the issues in contention and consequently can not make a decision as to whether to challenge or object to the matter.²¹

The Ohio General Assembly took steps to preserve an individual’s right to be heard when it formulated the various provisions of the Revised Code. For instance when utilities seek to increase rates to customers in Ohio, the General Assembly deemed it necessary and appropriate to ensure that customers and the municipalities affected by the rate increase are accorded notice of the proposed rate application.²² Specifically here, R.C. 4929.04 and R.C. 4929.08 impose notice requirements upon natural gas utilities

²⁰ *Grannis v. Ordean*, 234 U.S. 385, 394, 34 S.Ct. 779, 784 (1914), citing *Louisville & N.R. co. v. Schmidt*, 177 U.S. 230, 236 (1900); *Simon v. Craft*, 182 U.S. 427, 436 (1901).

²¹ See for example *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S. Ct. 652 (1950). where the Court noted that “[t]he right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.”

²² See R.C. 4909.18(E), R.C. 4909.19 and R.C. 4909.43(B).

seeking exemption from commodity sales service, as well as, a modification of an order granting exemption as Columbia is doing in this case.²³

The October 18 Entry addressed the statutory requirement that Columbia publish notice of the hearing. The October 18 Entry states:

In accordance with Section 4929.08, Revised Code, the attorney examiner finds that Columbia shall publish notice of the hearing in this case one time in a newspaper of general circulation in each county of Columbia's service area. Such notice shall be published by October 28, 2012. The notice shall read as follows:

LEGAL NOTICE

Columbia Gas of Ohio, Inc., and various parties filed an application addressing the provision of pipeline capacity to customers as of April 2013 and proposing to discontinue providing commodity service to choice-eligible nonresidential customers, Case No. 12-2637-GA-EXM. As proposed, once Columbia's Choice Program reaches specific thresholds, nonresidential customers would receive commodity service from a competitive retail natural gas supplier. Motions to intervene are due by November 5, 2012. A hearing is scheduled for December 3, 2012, 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio. Further information may be obtained by contacting the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, viewing the Commission's web page at <http://www.puc.state.oh.us> or contacting the Commission's hotline at 1-800-686-7826.²⁴

The Legal Notice as provided for in the October 18 Entry does not adequately inform consumers of the issues in contention. Consequently, consumers impacted by this case cannot make a decision as to whether to challenge or object to the matter.

²³ Joint Motion at 1 (October 4, 2012).

²⁴ October 18 Entry at 5.

Therefore, the PUCO should modify the Legal Notice in the October 18 Entry.to explain in sufficient detail for the public that the Stipulation contains steps toward Columbia exiting the residential merchant function, meaning steps toward ending the standard choice offer that has brought much relief to consumers from higher natural gas prices. (The Stipulation’s potential for a residential exit is not noted in the Legal Notice, as only the non-residential issue is referenced.)

In addition, the PUCO should modify the notice to reference the sentence in the Settlement that definitively places all customers at risk of an exit: The Stipulation states: “The Parties agree that Columbia **will exit** the merchant function if participation in Columbia’s CHOICE program meets specified thresholds²⁵ And the PUCO should modify the Notice to reference for the public that Columbia’s sharing of off-system sales revenues with them is at issue. Finally, the PUCO should modify the Notice to reference the Settlement provision that standard choice offer suppliers (but not Choice or other suppliers) will pay \$.10 per Mcf for security, a provision that can negatively impact what SCO customers pay for natural gas.

The notice should be adequate in its content to enable parties impacted by the case to make an informed decision with regards to whether to participate or not. The notice as drafted does not provide adequate description of the proceedings and details of the Stipulation. The notice should be modified to explain the issues in understandable terms, as follows:

LEGAL NOTICE

Columbia Gas of Ohio, Inc., and various parties filed an application seeking terms for Columbia to exit from the merchant

²⁵ Stipulation at 5 (October 4, 2012 (emphasis added)).

function, first for non-residential customers and potentially later for residential customers. This means customers would lose the option of purchasing natural gas under the standard choice offer. (PUCO Case No. 12-2637-GA-EXM) Certain parties signed a settlement that states: “The Parties agree that Columbia **will exit** the merchant function if participation in Columbia’s CHOICE program meets specified thresholds.” The settlement establishes conditions under which Columbia will cease providing a standard choice offer for non-residential customers as early as April 1, 2013, and establishes the conditions under which Columbia may file an application to cease providing a standard choice offer for residential customers that could take place as early as April 1, 2016.

In addition, there are issues that impact the rates charged to Columbia customers regarding customers’ natural gas commodity service. For example the settlement addresses (1) the contracts Columbia holds with its affiliate for interstate pipeline capacity, the costs of which are ultimately charged to customers; (2) the extent to which Columbia will have to share with customers the revenues resulting from its off-system sales of natural gas using pipeline and storage assets paid for by customers; and (3) a requirement to make service choice offer suppliers pay more (\$.10 per Mcf) for credit security than other suppliers pay, which can make the service choice offer more expensive for customers.

Motions to intervene are due by November 5, 2012. A hearing is scheduled for December 3, 2012, 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio. Further information may be obtained by contacting the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, viewing the Commission’s web page at <http://www.puc.state.oh.us> or contacting the Commission’s hotline at 1-800-686-7826.

Therefore, for the reasons stated above, OCC and OPAE respectfully request that the October 18 Entry be modified under Ohio Adm. Code 4901-1-15(E).

III. RECOMMENDATION AND CONCLUSION

The Commission should modify the procedural schedule under Ohio Adm. Code 4901-1-15 to set a time line for this case as described above and that allows at least ten days for Initial Briefs and at least one week for Reply Briefs (and allows for a Reply Brief). And the Legal Notice should be revised and improved for the public's information. For all the reasons stated above, the Commission should grant the Interlocutory Appeal.

BRUCE J. WESTON
OHIO CONSUMERS' COUNSEL

/s/ Larry S. Sauer

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Interlocutory Appeal* was served upon the persons listed below, electronically, this 23rd day of October 2012.

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application to Modify,)
in Accordance with Section 4929.08,)
Revised Code, the Exemption Granted) Case No. 12-2637-GA-EXM
Columbia Gas of Ohio, Inc., in Case No. 08-)
1344-GA-EXM.)

ENTRY

The attorney examiner finds:

- (1) By opinion and order issued on December 2, 2009, in *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 08-1344-GA-EXM (08-1344), the Commission approved the terms of a stipulation and recommendation (08-1344 stipulation) entered into by the parties in that proceeding. The 08-1344 stipulation provided, *inter alia*, that Columbia Gas of Ohio, Inc. (Columbia), would hold an auction to secure natural gas supplies, initially through a standard service offer (SSO) structure and, subsequently, through a standard choice offer (SCO) structure, and approved a Program Outline, which reflected the changes necessary to implement the SSO structure through March 31, 2012.
- (2) On September 7, 2011, the Commission issued a second opinion and order in 08-1344, which, *inter alia*, authorized the continuation of the 08-1344 stipulation and approved a Revised Program Outline reflecting the changes necessary to implement the initial SCO auction in February 2012, for the 12-month period beginning April 1, 2012.
- (3) On October 4, 2012, Columbia, Ohio Gas Marketers Group, Retail Energy Supply Association, Dominion Retail, Inc., and Staff (jointly referred to herein as joint movants) initiated the instant case and filed a joint motion to modify the December 2, 2009, and September 7, 2011, orders in 08-1344, in accordance with Section 4929.08(A), Revised Code (joint motion to modify), along with a Stipulation and Recommendation (Stipulation). According to joint movants, the Stipulation

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would modify the details of Columbia's exemption granted in 08-1344 for a five-year term commencing on April 1, 2013 through March 31, 2018.

- (4) On October 5, 2012, the Ohio Consumers' Counsel (OCC) filed a motion to intervene in this matter stating that the issues in this proceeding, including the joint movants' proposed allocation of the revenues from off-system sales and Columbia's possible exit from the merchant function, will affect residential customers' rates. Therefore, as the representative of the residential customers of Columbia, OCC states that it should be granted intervention.
- (5) On October 9, 2012, Hess Corporation (Hess) filed a motion to intervene in this matter submitting that, as a large energy provider, a competitive retail natural gas service provider in Ohio, and an active participant in Columbia's SCO auctions, it should be granted intervention. Hess states that its participation will contribute to the resolution of the facts in this case, it will not prolong or delay this proceeding, and its unique financial interests cannot be adequately represented by any other party.
- (6) On October 10, 2012, Ohio Partners for Affordable Energy (OPAЕ) filed a motion to intervene in this matter stating that, as an advocate for affordable energy policies for low and moderate income Ohioans, including residential and nonprofit organizations, it has a real and substantial interest in this case. According to OPAЕ, no other party to this proceeding will represent its interests.
- (7) In accordance with Rule 4901-1-12, Ohio Administrative Code (O.A.C.), upon consideration of the motions to intervene filed by OCC, Hess, and OPAЕ, the attorney examiner finds that they are reasonable and should be granted.
- (8) As part of their October 4, 2012, filing, joint movants also filed a motion for bifurcation of the Commission's consideration of the issues addressed in the Stipulation. Joint movants explain that, because the education meeting for potential SCO suppliers that will be participating in the January 29, 2013, SCO auction, will be held on December 4, 2012, the Commission's order considering issues contained in the

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Stipulation that pertain to capacity, balancing, SCO, and billing should be issued no later than November 30, 2012. Therefore, joint movants request that these issues be considered by the Commission on an expedited basis. With regard to the remaining issues contained in the Stipulation, joint movants offer that the process and order considering these issues can be scheduled for a later time.

- (9) On October 9, 2012, Hess filed a memorandum contra joint movants' motion. Hess states that it opposes an expedited ruling on the joint motion to modify the orders granting exemption, because, in accordance with Section 4929.08(A), Revised Code, notice and a hearing must be provided before the Commission's previous order can be modified; thus, an expedited ruling would be unlawful. However, Hess does not oppose an expedited ruling on the motion for bifurcation, nor does it oppose the motion for bifurcation, as long as the Stipulation is also bifurcated and the parties are provided ample due process in each phase of the proceeding, including meaningful time for discovery, hearing, and briefing.
- (10) On October 11, 2012, OCC and OPAE jointly filed a memorandum contra the joint motion to modify and the joint movants' motion to bifurcate the issues. In response to the motion to bifurcate, OCC and OPAE point out that, if consideration of the issues is bifurcated, the Commission would not be able to determine if the Stipulation, as a package, benefits customers and is in the public interest, which is one prong of the three-prong standard used by the Commission in considering stipulations. In addition, OCC and OPAE note that the joint movants have not been clear as to exactly which provisions of the Stipulation should be bifurcated and considered on an expedited basis. OPAE and OCC submit that the Commission should not rush the procedural process in this case and should provide interested parties due process.
- (11) Section 4929.08, Revised Code, provides that, upon the motion of any person adversely affected by an exemption, and after notice and hearing, the Commission may modify any order granting such exemption.

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- (12) Upon consideration of joint movants' motion for bifurcation and the responses of Hess, OCC, and OPAGE, the attorney examiner finds that, at this time, insofar as joint movants request bifurcation of the hearing process, the motion to bifurcate should be denied. Understanding that the SCO auction is scheduled for the end of January 2013, the attorney examiner believes that due process, including discovery, notice, and a hearing, can be achieved within this timeframe. The attorney examiner notes that, while the process will move forward and the joint motion to modify and the Stipulation will be considered, in total, at the hearing scheduled herein, upon consideration of the record in this matter, the Commission may, subsequent to the hearing, consider joint movants' request to bifurcate consideration of the issues.
- (13) To facilitate the Commission's timely review of the joint motion to modify and the Stipulation, the attorney examiner finds it appropriate to set the following procedural schedule:
- (a) November 5, 2012 - Deadline for the filing of motions to intervene.
 - (b) November 5, 2012 - Deadline for the filing of comments and/or memorandum contra the October 4, 2012, joint motion to modify.
 - (c) November 12, 2012 - Deadline for the filing of reply comments and replies to memorandum contra the October 4, 2012, joint motion to modify.
 - (d) November 12, 2012 - Deadline for the filing of direct testimony by joint movants. In its testimony, Columbia must delineate, in detail (referencing page numbers, section headings, and paragraphs), the issues in the Stipulation that relate to capacity, balancing, SCO, and billing, that it needs to have resolved expeditiously.
 - (e) November 26, 2012 - Deadline for the filing of testimony on behalf of intervenors.

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- (f) December 3, 2012 – A hearing shall commence at 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio.
 - (g) Briefs will be due three calendar days after conclusion of the hearing. Reply briefs will not be accepted. In order to accommodate the timely filing of briefs, Columbia should arrange for same-day transcripts.
- (14) In accordance with Section 4929.08, Revised Code, the attorney examiner finds that Columbia shall publish notice of the hearing in this case one time in a newspaper of general circulation in each county of Columbia's service area. Such notice shall be published by October 28, 2012. The notice shall read as follows:

LEGAL NOTICE

Columbia Gas of Ohio, Inc., and various parties filed an application addressing the provision of pipeline capacity to customers as of April 2013 and proposing to discontinue providing commodity service to choice-eligible nonresidential customers, Case No. 12-2637-GA-EXM. As proposed, once Columbia's Choice Program reaches specific thresholds, nonresidential customers would receive commodity service from a competitive retail natural gas supplier. Motions to intervene are due by November 5, 2012. A hearing is scheduled for December 3, 2012, 10:00 a.m., at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio. Further information may be obtained by contacting the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, viewing the Commission's web page at <http://www.puc.state.oh.us> or contacting the Commission's hotline at 1-800-686-7826.

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- (15) The attorney examiner finds that, in the event any additional motions are made in this proceeding, any memorandum contra shall be filed within four calendar days and reply memorandum will not be accepted. Parties shall provide service of pleadings via hand delivery, facsimile, or e-mail.
- (16) In addition, the attorney examiner finds that the response time for discovery shall be shortened to five calendar days. Unless otherwise agreed to by the parties, discovery requests and replies shall be served by hand delivery, facsimile, or e-mail. An attorney serving a discovery request shall attempt to contact the attorney upon whom the discovery request will be served in advance to advise him/her that a request will be forthcoming. If the parties can not resolve a dispute regarding discovery, the party requesting such discovery must immediately notify the attorney examiner.

It is, therefore,

ORDERED, That the motions to intervene filed by OCC, Hess, and OPAE be granted. It is, further,

ORDERED, That, in accordance with finding (12), joint movants' motion to bifurcate be denied. It is, further,

ORDERED, That notice of the hearing be published as set forth in finding (14). It is, further,

ORDERED, That the procedural schedule and time frames set forth in findings (13), (15), and (16) be adhered to by the parties. It is, further,

ORDERED, That copies of the entry be served upon all parties of record in this case.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Christine M. T. Pirik

By: Christine M. T. Pirik
Attorney Examiner

JRJ/dah

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10/18/2012 11:15:25 AM

In

Case No(s). 12-2637-GA-EXM

Summary: Attorney Examiner Entry denying the motion to bifurcate and establishing the procedural schedule in this case; electronically filed by Debra Hight on behalf of Christine M. T. Pirik, Attorney Examiner, Public Utilities Commission of Ohio.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Columbia Gas of Ohio, Inc., for)
Approval of a General Exemption of) Case No. 08-1344-GA-EXM
Certain Natural Gas Commodity Sales)
Services or Ancillary Services.)

SECOND OPINION AND ORDER

The Public Utilities Commission of Ohio (Commission), considering the testimony and other evidence presented at the hearing, which commenced July 14, 2011, in this matter and considering the comments on the Revised Program Outline, and being otherwise fully advised, hereby issues its second opinion and order.

APPEARANCES:

Stephen B. Seiple and Brooke E. Leslie, Counsel, NiSource Corporate Services Company, 200 Civic Center Drive, Columbus, Ohio 43215, on behalf of Columbia Gas of Ohio, Inc.

Mike DeWine, Ohio Attorney General, by Stephen A. Reilly, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Public Utilities Commission of Ohio.

Janine L. Migden-Ostrander, Ohio Consumers' Counsel, by Joseph P. Serio, Larry S. Sauer, and Kyle L. Verrett, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential customers of Columbia Gas of Ohio, Inc.

David C. Rinebolt, 231 West Lima Street, P.O. Box 1793, Findlay, Ohio, 45839, on behalf of Ohio Partners for Affordable Energy.

Bricker & Eckler, LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215, on behalf of DTE Energy Trading, Inc.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43215, on behalf of Ohio Gas Marketers Group, comprised of Constellation NewEnergy-Gas Division, LLC; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc.; Just Energy d/b/a Commerce Energy; Direct Energy Services, LLC; SouthStar Energy Services LLC; and Vectren Retail, LLC.

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Table 1

	DEO		Vectren		Columbia	
Maximum GCR adder calculated by Staff	\$2.50		\$2.36		\$3.06	
Auction Dates	DEO RPA/ type of auction	DEO % of GCR adder	Vectren RPA/ type of auction	Vectren % of GCR adder	Columbia RPA/ type of auction	Columbia % of GCR adder
10/06 - 8/08	\$1.44 SSO	57.6				
9/08 - 3/09	\$2.33 SSO	93.2	\$2.35 SSO	99.6		
4/09 - 3/10	\$1.40 SSO/SCO ⁵	56.0	\$2.35 SSO	99.6		
4/10 - 3/11	\$1.20 SSO/ SCO	48.0	\$1.55 SCO	65.7	\$1.93 SSO	63.1
4/11 - 3/12	\$1.00 SSO/ SCO	40.0 SC O	\$1.35	57.2	\$1.88 SSO	61.4

(Staff Ex. 1 at 3-5, SEP-1; Tr. I at 191, 196-210, 218-220; OCC Exs. 4-6.)

Staff witness Puican contends that the SCO model has unquestionably produced substantial savings to customers. He asserts that these savings and the high level of participation in the auctions should not be endangered by rejecting the proven SCO model and going backward to an SSO-only model. (Staff Ex. 1 at 9, SEP-2.)

In response to the value of an SCO retail auction offered by Mr. Puican, OCC witness Slone submits that his analysis is flawed because Mr. Puican did not take into consideration several factors. For example, Mr. Slone asserts that the source of the gas in the marketers' supply portfolio, e.g., shale gas or local production, should have been considered in the analysis, because it can have a profound effect on the RPA in an auction. In addition, Mr. Slone argues that the prevailing market conditions should be taken into consideration in an analysis of the auction. However, Mr. Slone acknowledges that he does not have data and did not do an analysis to substantiate his claim that these factors could explain the decrease in DEO's SCO RPA over the last three auctions. (OCC Ex. 11 at 3-7; Tr. II at 379, 390.)

⁵ Mr. Puican explains, for each auction event between April 2009, and April 2011, DEO conducted first an SSO auction and then an SCO auction (Tr. I at 218-219).

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in

Case No(s). 12-2637-GA-EXM

Summary: Request Interlocutory Appeal by the Office of the Ohio Consumers' Counsel and Ohio Partners for Affordable Energy electronically filed by Patti Mallarnee on behalf of Sauer, Larry S.