

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**PREPARED DIRECT TESTIMONY
OF THOMAS J. BROWN, JR.
ON BEHALF OF COLUMBIA GAS OF OHIO, INC.**

COLUMBIA GAS OF OHIO, INC.

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COLUMBIA GAS OF OHIO, INC.

**PREPARED DIRECT TESTIMONY
OF THOMAS J. BROWN, JR.**

INTRODUCTION

Q: Please state your name and business address.

A: My name is Thomas J. Brown, Jr. and my business address is 200 Civic Center Drive, Columbus, Ohio 43215.

Q. By whom are you employed and in what capacity?

A. I am employed by Columbia Gas of Ohio, Inc. ("Columbia") as Director, Regulatory Affairs.

Q. What are your responsibilities as Director, Regulatory Affairs?

A. My principle responsibilities include coordination of regulatory matters involving Columbia, the Public Utilities Commission of Ohio and other regulatory stakeholders. I am generally responsible for establishing and maintaining effective relationships with key external parties. Since 1994 I have been primarily responsible for coordinating Columbia's relationships with members of its Regulatory Stakeholder Group. I have been directly involved in negotiating a series of complex and integrated settlements regarding the establishment of Columbia's base rates, the resolution of issues in Columbia's GCR audit cases, the establishment of Columbia's Customer CHOICE Program, the creation of Columbia's Standard Service Offer/Standard Choice Offer Program, modifications of the terms and conditions for Columbia's Gas Transportation Service and other matters.

Q. What is your educational background?

A. I received a Bachelor of Science in Business Administration from The Ohio State University in June, 1972. In 1975, I received a Juris Doctor degree from The Ohio State University.

Q. Please briefly describe your professional experience.

A. I have held my current position as Director, Regulatory Affairs for Columbia since 1991. From June 1988 until 1991 I was employed as Counsel in Columbia's Law Department. From March 1987 through May 1988 I was a Master Commissioner for the Supreme Court of Ohio. From June 1984 until December 1986, I was engaged in the private practice with law firm of Emens,

1 Hurd, Kegler & Ritter in Columbus, Ohio. From September 1975 to May
2 1984, I held various positions in Columbia's Law Department.
3

4 **Q. Have you testified before the Public Utilities Commission of Ohio?**

5 A. Yes. I have testified on behalf of Columbia in several proceedings before the
6 Commission.
7

8 **Q. What is the purpose of your Direct Testimony in this proceeding?**

9 A. I am supporting the Joint Stipulation and Recommendation ("Stipulation")
10 that was filed in this case on October 4, 2012. I will describe the Stipulation
11 and the background of Columbia's CHOICE Program and its evolution into
12 a Standard Choice Offer ("SCO") Auction Program. I am also supporting the
13 Revised Program Outline and the proposed revised Tariff Sheets that have
14 been filed in this proceeding. I will discuss which provisions of the Commis-
15 sion's earlier orders in Case No. 08-1344-GA-EXM require modification and
16 how granting the Joint Motion to Modify the Commission's Orders will ben-
17 efit Columbia's customers and further Ohio's state energy policy. Finally, I
18 will discuss how the Stipulation meets the Commission's three-part test for
19 approval of a stipulation.
20

21 **BACKGROUND OF THE STIPULATION**

22

23 **Q: Please describe the background of the Stipulation filed on October 4,**
24 **2012 in this case.**

25 A: On January 30, 2009, as supplemented on March 26 and 31, 2009, Colum-
26 bia filed an application pursuant to Section 4929.04, Revised Code, for ap-
27 proval of a general exemption of certain natural gas commodity sales ser-
28 vices or ancillary services contained in Chapters 4905, 4909, and 4935, Re-
29 vised Code. That application was docketed as Case No. 08-1344-GA-EXM.
30 Much of the detail related to Columbia's proposal was included in a Pro-
31 gram Outline that was an attachment to the Application.
32

33 The parties to the case filed a Joint Stipulation and Recommendation on
34 October 7, 2009 ("2009 Stipulation"). The 2009 Stipulation recommended
35 approval of Columbia's exemption from regulation and recommended
36 approval of revisions to the Program Outline. Among other things, the
37 2009 Stipulation did the following:
38

- Eliminated Columbia's gas cost recovery mechanism as of April 1, 2010, and replaced it with two annual Standard Service Offer ("SSO") auctions, followed by annual Standard Choice Offer ("SCO") auctions;
- Established an agreed upon level of Columbia's peak day demand and peak day capacity portfolio, which levels would not be subject to audit through March 31, 2013; and,
- Established Columbia's off-system sales/capacity release revenue sharing mechanism through March 31, 2013.

By Opinion and Order dated December 2, 2009 ("First Opinion and Order"), the Commission approved the 2009 Stipulation, as well as the Program Outline.

The Commission issued a Second Opinion and Order in Case No. 08-1344-GA-EXM on September 7, 2011, in which it reaffirmed Columbia's transition to an SCO auction.

The most recent version of the Program Outline is that docketed on April 15, 2011, with a replacement page docketed on October 14, 2011, pursuant to the Commission's Second Opinion and Order on September 7, 2011.

As noted above, several provisions of the 2009 Stipulation expire March 31, 2013. Significant among the provisions that expire March 31, 2013, are Columbia's specified levels of peak day demand and peak day capacity portfolio exempt from audit. The ongoing operation of Columbia's CHOICE and SCO programs is affected by Columbia's levels of peak day demand and peak day capacity portfolio.

In this case, Columbia, Staff, the Ohio Gas Marketers Group¹, the Retail Energy Supply Association² and Dominion Retail, Inc. (all of the foregoing

¹ 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.

² 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; 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.

referred to collectively as the "Joint Movants" or "Parties") have filed a motion pursuant to R.C. § 4929.08(A) and the terms of the Commission's First Opinion and Order, requesting that the Commission modify the Exemption Orders, and thus the terms of the exemption, for a five-year period to begin after the initial term of the 2009 Stipulation approved in Case No. 08-1344-GA-EXM.

In the 2009 Stipulation, the signatory parties reserved their rights to propose modifications to the exemption, and the Commission's right to grant modifications to the exemption, to become effective after the Stipulation's initial term. R.C. § 4929.08(A) also authorizes the Commission to modify an order granting an exemption after notice and a hearing. The Joint Motion and Stipulation filed in this case represent proposed modifications to the Exemption Orders.

The ongoing operation of Columbia's CHOICE and Standard Choice Offer ("SCO") programs will be affected by the Commission's action with respect to the Stipulation and Recommendation filed in this case. Under the Revised Program Outline that the Commission approved in the Second Opinion and Order, an SCO Auction for the next program year (April 1, 2013 through March 31, 2014) is scheduled for January 29, 2013. The supplier education meeting for potential SCO suppliers has been rescheduled for January 8, 2013. Under the next SCO auction, gas has to flow by April 1, 2013. It may be possible to postpone the auction for a few weeks, and still have time to complete all the processing necessary for gas to flow on April 1, 2013. However, an Order in this case is needed by the end of December 2012 in order to ensure that Columbia will have sufficient time to prepare for that supplier education meeting and the subsequent auction, so that all parties will know the "ground rules." This matter is also addressed in the testimony of Columbia witness Michael Anderson.

Q. What are the provisions of the Joint Stipulation for which the Joint Movants are seeking an expedited ruling?

A. Columbia and the other Joint Movants are seeking an expedited resolution of those issues in the Joint Motion that relate to the upcoming, 2013 SCO Auction and do not relate to the proposed exits from the merchant function. Specifically, Columbia seeks an expedited ruling on the following sections of the Joint Stipulation:

- SCO Auction Goals, Objectives, Timing, and Calendar (Stipulation at p. 3);
- SCO Supplier Security Requirements (*id.*);
- SCO Supplier Payments (*id.*);
- Columbia Capacity Contracts (*id.* at p. 4);
- Capacity Allocation Process (*id.*);
- Daily Nominations – Demand and/or Supply Curves (*id.* at p. 5);
- Off-System Sales and Capacity Release (*id.* at pp. 3, 5);
- Enhancements to Billing for Competitive Retail Natural Gas Suppliers (*id.* at pp. 10-12, except the last paragraph).

THE STIPULATION

Q: What relief is requested by the Joint Motion filed on October 4, 2012?

A: The Joint Motion requests and recommends that the Commission issue such order as is necessary to modify the Exemption Orders in the manner described in the Stipulation, including the described modifications from the 2009 Stipulation and Program Outline filed in Case No. 08-1344-GA-EXM.

Q: How does the Stipulation change the 2009 Stipulation?

A: The Stipulation changes two provisions of the 2009 Stipulation.

First, the Stipulation provides that the Second Agreement shall commence on April 1, 2013, and shall have a term extending through March 31, 2018. After the expiration of the term, the provisions of the Second Agreement including the then-approved method of supplying commodity – the SCO auction – shall continue until modified by the Commission unless otherwise stated herein.

Second, the Off-System Sales and Capacity Release (“OC revenue sharing mechanism will continue for a five-year term (April 1, 2013 through March 31, 2018), except as modified and described in the Program Outline.

Q: How does the Stipulation change the Program Outline?

A: The Stipulation will change numerous provisions in the outline. The revised Program Outline was filed in this docket on October 31, 2012.

Q: Was the Program Outline changed to reflect the fact that the Commission has previously approved the SCO auction process?

1 A: Yes, the Program Outline was revised to reflect the fact that the SCO has
2 been approved and continues unless discontinued by Commission action
3 or by Columbia's exit from the merchant function.
4

5 **Q: Please describe the changes, if any, to the SCO Supplier Security Re-**
6 **quirements section of the Program Outline.**

7 A: In addition to the Letter of Credit, SCO Suppliers will now be required to
8 provide Columbia with a cash deposit in the amount of ten cents per Mcf
9 multiplied by the initial estimated annual delivery requirements for the
10 SCO Program Year of the tranches won by that SCO Supplier. This securi-
11 ty will provide a liquid account to meet supply default expenses incurred
12 by Columbia other than compensation to the non-defaulting SCO Suppli-
13 ers. Any funds remaining at the end of each Program Year will be trans-
14 ferred to the CSRR commencing June 2014, for the 2013 Program Year.
15

16 **Q. OCC and OPAE contend that the \$.10/MCF cash deposit the Joint Stipu-**
17 **lation assessed to SCO Suppliers, but not to CHOICE Suppliers, is un-**
18 **duely discriminatory. How do you respond?**

19 A. The \$.10/MCF cash deposit charged to SCO Suppliers provides a liquid
20 account to meet supply default expenses incurred by Columbia. The de-
21 posit is collected from all winning SCO Auction bidders, in proportion to
22 their estimated annual delivery requirements for the SCO won by each of
23 them. Currently, in the event of default by an SCO Supplier, the non-
24 defaulting SCO Suppliers are secured against the cost of the defaulting
25 supplier through Letters of Credit that all SCO Suppliers must provide.
26 The \$.10/MCF deposit provides additional security for Columbia against
27 such costs. Notably, any unused portion of that liquid deposit account at
28 the end of each Program Year becomes a credit to the CSRR.
29

30 Accordingly, the \$.10/MCF deposit provides security for Columbia, com-
31 parable to the security afforded to all non-defaulting SCO Suppliers by the
32 Letters of Credit that all SCO Suppliers must provide. In that respect, the
33 deposit provision eliminates what might be regarded as an existing dis-
34 crimination between Columbia and the SCO Suppliers. In any event, the
35 contention that the \$.10/MCF deposit requirement is unduly discriminato-
36 ry because it is not also applied to Choice Suppliers is misguided.
37

38 First, the two types of suppliers pose very different default risks to Co-
39 lumbia. In particular, the risk, and potential costs, to Columbia of default

1 by an SCO Supplier is significantly greater than the risks to Columbia of a
2 default by a Choice Supplier. Second, the risk of a default by an SCO Sup-
3 plier is more immediate, and conversely the risk of default by a Choice
4 Supplier is more remote, to Columbia. That is because risk of default in
5 the case of Choice Suppliers is absorbed in the first instance by the SCO
6 Suppliers, while default by an SCO Supplier(s) is more likely to cause a
7 direct and immediate impact on Columbia.

8
9 Consequently, in my opinion the two situations, SCO Supplier default on
10 the one hand and Choice Supplier default on the other hand, are not com-
11 parable. As a result, I believe it is reasonable to treat the two situations dif-
12 ferently.

13
14 **Q: Please describe the changes, if any, to the SCO Supplier Payments sec-**
15 **tion of the Program Outline.**

16 A: The Balancing Fee will be reduced from \$.32/Mcf to \$.27/Mcf. The Balanc-
17 ing Fee will also be charged directly to customers instead of being charged
18 to Suppliers. This change is addressed further in the testimony of Colum-
19 bia witness Michael Anderson.

20
21 **Q: Please describe the changes, if any, to the Columbia Capacity Contracts**
22 **section of the Program Outline.**

23 A: Columbia's firm city gate interstate and intrastate pipeline transportation
24 and storage capacity will be adjusted to 1,963,178 Dth/day on April 1,
25 2013, and 1,940,214 Dth/day on November 1, 2013. This change is also ad-
26 dressed further in the testimony of Columbia witness Michael Anderson.

27
28 **Q: Please describe the changes, if any, to the Capacity Allocation Process**
29 **section of the Program Outline.**

30 A: Columbia will continue the use of its existing annual design peak day cal-
31 culation process for Core Market demand, which is premised on a 1-in-10
32 probability of occurrence. Columbia will assign Suppliers capacity, includ-
33 ing the Columbia provided peaking service, equal to up to 100% of the de-
34 sign peak day requirements of their customers.

35
36 Columbia shall determine its design peak day demand annually, as noted
37 above, for the term of the Agreement. Columbia will retain its existing
38 peak day capacity portfolio through March 31, 2018 with the following
39 modifications to Columbia's capacity contracts: (1) the Sempra peaking

1 contract for 31,200 Dth/day shall be permitted to terminate effective March
2 31, 2013; (2) 22,964 Dth/day of North Coast Gas Transmission firm trans-
3 portation service capacity along with 23,255 Dth/day of associated up-
4 stream Crossroads Pipeline Company firm transportation service capacity
5 will be terminated when the respective contracts expire October 31, 2013;
6 and, (3) Columbia shall renew 100% of its existing Columbia Gulf FTS-1
7 capacity through March 31, 2016. Thereafter, Columbia will renew its Co-
8 lumbia Gulf FTS-1 contracts to cover 75% of the volume under contract
9 prior to March 31, 2016, and such renewal shall be for the two-year period
10 April 1, 2016 through March 31, 2018.

11
12 As a result of the Commission's directions to Columbia, North Coast and
13 Staff in Case No. 08-1344-GA-EXM, effective April 1, 2013, Columbia will
14 retain the remaining North Coast capacity and treat it as operationally re-
15 quired. This capacity will be utilized as part of the Columbia-provided
16 peaking service. These changes are addressed further in the testimony of
17 Columbia witness Michael Anderson.

18
19 **Q: Please describe the changes, if any, to the Daily Nominations – Demand**
20 **and/or Supply Curves section of the Program Outline.**

21 A: New paragraphs have been added to the Program Outline to reflect Co-
22 lumbia's agreement to update the morning weather forecast in the after-
23 noon for the current day and provide that information on a timely basis to
24 Suppliers. In addition, since Columbia is retaining the North Coast capaci-
25 ty, the need for North Coast Supply Curves has been eliminated.

26
27 **Q: Please describe the changes, if any, to the Off-System Sales and Capacity**
28 **Release section of the Program Outline.**

29 A: The cumulative cap on Columbia's retained Off-System Sales/Capacity Re-
30 lease revenues will be revised to a total of \$60,000,000 over the five-year
31 term of the Second Agreement. This change is addressed further in the tes-
32 timony of Columbia witness Michael Anderson.

33
34 **Q: Does the Stipulation address an exit from the commodity merchant**
35 **function?**

36 A: Yes. The Joint Movants agree that Columbia will exit the merchant func-
37 tion if participation in Columbia's CHOICE program meets specified
38 thresholds. The term "exit the merchant function" means that all of Co-

1 lumbia's residential and/or non-residential customers are provided com-
2 modity service by Competitive Retail Natural Gas Suppliers ("Supplier").
3

4 Upon exit from the merchant function, Columbia will provide no default
5 commodity service for CHOICE-Eligible customers. CHOICE-Eligible
6 Customers may enroll with a Supplier. Those CHOICE-Eligible Customers
7 that do not enroll with a Supplier will be assigned to a Supplier, pursuant
8 to Columbia's Monthly Variable Rate ("MVR") Program.
9

10 CHOICE-Eligible Non-Residential Customers are a sub-class of CHOICE-
11 Eligible Customers and consist of those CHOICE-Eligible Customers who
12 are Commercial or Industrial Customers.
13

14 Upon exit from the merchant function, Columbia will continue as the
15 supplier of last resort. Columbia will also retain responsibility for all sys-
16 tem balancing obligations, and will maintain operational control of the in-
17 terstate/intrastate pipeline capacity necessary to satisfy that obligation.
18

19 **Q: Please describe the process that the Stipulation proposes for an exit**
20 **from the merchant function.**

21 **A:** The Stipulation recommends a multi-year, incremental transition process.
22

23 Beginning the first month following the signing of the Stipulation, Co-
24 lumbia will evaluate customer participation³ in its CHOICE program. Be-
25 ginning April 1, 2013, Columbia will send monthly updates on the per-
26 centage of participation in the CHOICE program to Staff and other inter-
27 ested members of the stakeholder group.
28

29 Following Commission approval of the Joint Motion filed in this proceed-
30 ing, Columbia, in consultation with its stakeholder group, will develop
31 and conduct a customer survey to determine Non-Residential Customers'
32 educational needs and general knowledge of Columbia's CHOICE pro-
33 gram. Columbia and the stakeholder group will use the results of the
34 Non-residential customer survey to design an education program for all
35 CHOICE-Eligible Non-Residential Customers regarding:

³ Customer participation in the CHOICE program is measured according to the percentage of CHOICE-Eligible accounts that are not served under the SCO because they have selected a CRNGS supplier or are participating in a governmental aggregation.

- Columbia's CHOICE program and available supply options as Columbia exits the merchant function (Phase 1), and
- Columbia's exit of the merchant function as it affects remaining SCO customers who have not selected a supplier by the end of the SCO program period (Phase 2).

Phase 1 of the education program will be implemented by the first day of October after the Non-Residential Customer participation level in the CHOICE program meets or exceeds 70% of the CHOICE-Eligible Non-Residential Customers for three consecutive months, as described below. Phase 1 of the education plan will target all CHOICE-Eligible Non-Residential Customers about changes in the CHOICE program, specifically that Columbia will no longer provide SCO service to CHOICE-Eligible customers after the actual exit of the merchant function occurs. Education materials will be tailored to address educational needs identified through the surveys and information about the Commission's Apples to Apples chart.

Phase 2 of the education program will be implemented by the first day of January prior to Columbia's exit from the merchant function for Non-residential customers. Phase 2 will be targeted specifically at the remaining Non-Residential, CHOICE-Eligible SCO customers. Education materials will emphasize the MVR process and include, among other things, an informational letter at the initial transfer to an MVR Supplier and periodic bill inserts thereafter of the participating MVR Suppliers' monthly rates as posted on the Apples to Apples chart. The Phase 2 educational process shall continue for one year after the transfer of customers to MVR Suppliers.

Following Commission approval of the Joint Motion filed in this proceeding, Columbia, in consultation with its stakeholder group, will develop an educational program for all CHOICE-Eligible Customers.

Q: Please describe the process for an exit from the merchant function for non-residential customers.

A: Beginning on or about April 1, 2013, and continuing on or about the first day of each month of the term of this Second Agreement until Columbia exits the merchant function with regard to Non-Residential Customers,

1 Columbia will evaluate Non-Residential Customer participation in Co-
2 lumbia's CHOICE program for the preceding twelve months ("the evalua-
3 tion period"). On June 1 each year, Columbia will determine whether dur-
4 ing the evaluation period preceding the June 1 review the Non-Residential
5 Customer participation level in the CHOICE program met or exceeded
6 70% of the CHOICE-Eligible Non-Residential Customers for three consec-
7 utive months. If the consecutive three month 70% customer participation
8 threshold has been met, then Columbia will exit the merchant function
9 with regard to Non-Residential Customers effective the first April 1 that
10 follows. If the consecutive three month 70% customer participation
11 threshold for CHOICE-Eligible Non-Residential Customers has not been
12 met by June 1 of any year during the term of this Second Agreement, then
13 Columbia will continue its SCO auction for gas to be supplied to Non-
14 Residential Customers during the subsequent program year (the following
15 April 1 through March 31). Each June 1 during the term of this Second
16 Agreement, Columbia shall determine whether the threshold has been
17 met for Non-Residential customer participation until such level is met.
18

19 **Q: What does the Stipulation provide regarding an exit from the merchant**
20 **function for residential customers?**

21 **A:** Beginning on or about April 1, 2013, and continuing on or about the first
22 day of each month of the term of this Second Agreement until Columbia
23 has filed an application to exit the merchant function with regard to Resi-
24 dential Customers, Columbia also will evaluate Residential Customer par-
25 ticipation in Columbia's CHOICE program for the preceding three
26 months. If during the evaluation period the customer participation level in
27 the CHOICE program met or exceeded 70% of the CHOICE-Eligible Resi-
28 dential Customers for three consecutive months, then Columbia shall file
29 an application with the Commission to exit the merchant function for all
30 CHOICE-Eligible Residential Customers on the first April that is: (1) at
31 least one month after that evaluation period, and (2) at least twelve
32 months after Columbia exits the merchant function with regard to Non-
33 Residential Customers.
34

35 The Stipulation provides that the Commission will hold a hearing and Co-
36 lumbia will bear the burden of proof to show the Commission, in the exer-
37 cise of its discretion, that it should approve Columbia's application. The
38 Stipulation acknowledges the Commission may evaluate and consider the
39 effects of Columbia's exiting the merchant function on Non-Residential

1 Customers as part of the Commission's evaluation and consideration of
2 Columbia's application to exit the merchant function for Residential Cus-
3 tomers.
4

5 If the Commission approves the application, Columbia will exit the mer-
6 chant function with regard to Residential Customers effective the first
7 April 1 that is at least five months after the issuance of the opinion and
8 order approving the application. If the consecutive three month 70% cus-
9 tomer participation threshold for CHOICE-Eligible Residential Customers
10 has not been met, or the Commission has not issued an opinion and order
11 approving an application by Columbia to exit the merchant function with
12 regard to CHOICE-Eligible Residential Customers, by November 1 of any
13 year during the term of this Second Agreement, then Columbia will con-
14 tinue its SCO auction for gas to be supplied to Residential Customers dur-
15 ing the subsequent program year (the following April 1 through March
16 31).
17

18 If any consecutive three month 70% participation threshold has not been
19 met as of June 1, 2016, Columbia and its stakeholders agree to meet to dis-
20 cuss prospective gas supply options for CHOICE-Eligible customers to be
21 effective April 1, 2018.
22

23 **Q: Do you believe that a filing to exit the merchant function for residential**
24 **customers at a 70% CHOICE participation rate is too low?**

25 A: No. Columbia views the exit for residential customers to be an option for
26 the Commission to consider as it looks at how the evolution in commodity
27 sales service within the State of Ohio is progressing and whether an exit is
28 an appropriate path to follow and consistent with state policy and goals.
29 The 70% level provides a good benchmark at which time Commission re-
30 view would be appropriate. Additionally, in order for Columbia to file
31 such an application participation rates in Columbia's CHOICE program
32 must approximately double from present levels, levels achieved after ap-
33 proximately fifteen years of statewide CHOICE availability. Should cus-
34 tomers actively choose a CHOICE supplier at double the present rate, they
35 would be sending a strong message that would justify review by the
36 Commission.
37

38 **Q: Do you believe that the Joint Motion, if approved, will inject uncertain-**
39 **ty and serve to destabilize Columbia's otherwise strong market?**

1 A: No. Upon approval of the Joint Motion Columbia's market will remain vi-
2 brant and active. Columbia has over 877,500 customers served by
3 SCO/Default Sales Service ("DSS) suppliers. The approval of the Joint Mo-
4 tion will not change that. The SCO program provides strong and stable
5 competition to CHOICE and the Joint Motion does not change that. Co-
6 lumbia's SCO program provides the largest pool of demand of any such
7 program in the nation by a significant margin. Even if the 70% threshold is
8 met and Columbia were to make a filing to exit the merchant function,
9 approximately 350,000 customers would still remain on the SCO/DSS pro-
10 gram. Both Vectren and DEOG offer SCO programs with a lower number
11 of SCO/DSS customers that maintain significant supplier participation.
12

13 **Q: Please explain the proposed Monthly Variable Rate ("MVR") program.**

14 A: If Columbia exits the merchant function for Non-Residential CHOICE-
15 Eligible customers, those CHOICE-Eligible customers who have not se-
16 lected a CHOICE Supplier and are not served through a Government Ag-
17 gregation Program shall receive commodity service through Columbia's
18 Monthly Variable Rate ("MVR") program. Such customers shall remain on
19 Columbia's Customer List. The parties agree that the MVR program will
20 apply only to Non-Residential CHOICE-Eligible customers upon such ex-
21 it.
22

23 Suppliers that are active in Columbia's CHOICE program ("CHOICE
24 Suppliers") may elect each February 1 to be MVR Suppliers for the up-
25 coming program year (April through the following March). MVR Suppli-
26 ers may elect each February to end their participation or continue in the
27 MVR program for the following program year.
28

29 Non-residential customers establishing service with Columbia for the first
30 time (including both the initial installation of a new meter at a premise as
31 well as an account transfer or switch from one customer to another) and
32 customers relocating within Columbia's service territory will be served
33 under the DSS for two billing cycles. Subsequently, CHOICE-Eligible Non-
34 Residential Customers who have not selected a CHOICE supplier and are
35 not served through a Governmental Aggregation Program will be as-
36 signed to an MVR Supplier. Prior to Columbia's exit of the merchant func-
37 tion, a method for assigning Non-Residential Choice-Eligible Customers
38 that have not selected a CHOICE Supplier or are not in a governmental
39 aggregation to an MVR Supplier should be determined. The Parties

1 acknowledge and agree that such method should be determined as part of
2 this proceeding and include both the initial allocation upon Columbia's
3 exits as well as an allocation methodology for future supply default
4 CHOICE-Eligible Customers.
5

6 MVR Suppliers shall provide their MVR prices to Columbia each month
7 for the applicable billing month. The MVR price provided to Columbia
8 shall be no greater than the Supplier's MVR price posted on the Commis-
9 sion's Apples to Apples chart for the same billing period. MVR Suppliers
10 agree to have their MVR prices posted on the Commission's Apples to
11 Apples chart each month.
12

13 Non-residential customers may migrate from the MVR program by enrol-
14 ling with a CHOICE Supplier or participating in a Government Aggrega-
15 tion program in accordance with the enrollment submission process,
16 without incurring a cancellation fee.
17

18 **Q: How does Columbia propose to allocate the Non-Residential Choice-**
19 **Eligible Customers to MVR Suppliers upon exit?**

20 **A:** Columbia supports the allocation to MVR Suppliers on a proportional ba-
21 sis, as compared to the MVR Supplier's Choice enrollment at the time of
22 allocation. A minimum of 1% will be assigned to an MVR Supplier with
23 equal to, or less than 1% Choice enrollment. This initial allocation will
24 preserve the relative market shares of the CHOICE suppliers at the time of
25 the exit. On-going customer allocations would be done on a random, ro-
26 tating basis based upon the list of participating MVR Suppliers.
27

28 **Q: How does the Stipulation enhance Columbia's CHOICE Program?**

29 **A:** Columbia has agreed to implement numerous enhancements to its current
30 billing system to provide Suppliers with greater flexibility for enrolling
31 customers and offering new products and billing options. Columbia has
32 agreed to use its best effort to implement as many of those changes as rea-
33 sonably possible by April 1, 2013. These billing enhancements are ad-
34 dressed further in the testimony of Columbia witness Michele Caddell.
35

1 **REQUIREMENTS FOR MODIFICATION OF A COMMISSION ORDER**
2 **GRANTING AN EXEMPTION**

3
4 **Q: What are the requirements for modification of a Commission Order**
5 **granting an exemption?**

6 A: The 2009 Stipulation allows the Stipulation's parties to seek, and the
7 Commission to grant, modifications to the exemption's terms for the peri-
8 od after the Stipulation's initial term. On page 8 of the 2009 Stipulation, the
9 signatory parties "reserve[d] the right to propose changes to the Agree-
10 ment to become effective after the end of the initial term." On the same
11 page, the parties agreed that the provisions of the Stipulation would "con-
12 tinue [after the expiration of the initial term] until modified by the Com-
13 mission."

14
15 Ohio statute also authorizes the Commission to modify the terms of the
16 exemption. The Exemption Orders were issued under R.C. 4929.04. The
17 Commission has the authority to modify or abrogate the Exemption Or-
18 ders under certain specified conditions. Specifically, R.C. 4929.08(A) pro-
19 vides:

20
21 The public utilities commission has jurisdiction over every natural
22 gas company that has been granted an exemption or alternative
23 rate regulation under section 4929.04 or 4929.05 of the Revised
24 Code. As to any such company, the commission, upon its own mo-
25 tion or upon the motion of any person adversely affected by such
26 exemption or alternative rate regulation authority, and after notice
27 and hearing and subject to this division, may abrogate or modify
28 any order granting such an exemption or authority only under both
29 of the following conditions:

30
31 (1) The commission determines that the findings upon which the
32 order was based are no longer valid and that the abrogation or
33 modification is in the public interest;

34
35 (2) The abrogation or modification is not made more than eight
36 years after the effective date of the order, unless the affected natural
37 gas company consents.
38

1 As discussed below, certain findings upon which the Exemption Orders
2 were based are no longer valid. As a result, Columbia is adversely affected
3 by the exemption as it currently stands, and modification of the Exemp-
4 tion Orders is in the public interest. The eight-year limitation in R.C. §
5 4929.08(A)(2) does not apply, because Columbia consents to the modifica-
6 tions sought in this proceeding. Regardless, the First Opinion and Order
7 was approved two and one half years ago, well under the eight-year limit
8 imposed by R.C. 4929.08(A)(2). Therefore, under both the Commission's
9 First Opinion and Order and statute, the Commission has the authority to
10 modify the Exemption Orders granting Columbia's exemption.

11
12 **Q: What findings upon which the Exemption Order was based are no long-**
13 **er valid?**

14 A: The exemption from regulation granted Columbia in Case No. 08-1344-
15 GA-EXM was the first such exemption for Columbia. In abandoning the
16 GCR and implementing gas supply auctions, Columbia was initiating a
17 new method of supplying gas to customers.

18
19 The auction process is now no longer new or novel, and there is no longer
20 uncertainty about the auction process. Columbia has held three auctions,
21 and the parties agree that the auctions have provided customer benefits.
22 The Retail Price Adjustment in Columbia's second and third auctions de-
23 creased from that in the first and second auctions respectively.

24
25 While there is now less uncertainty about the auction process, since the
26 2009 Stipulation was approved in December 2009, the introduction of
27 Marcellus shale gas, and subsequently Utica shale gas, has created the po-
28 tential for new gas supply opportunities in Ohio. How these opportunities
29 will develop is unknown, but the opportunities could potentially impact
30 Ohio utilities' use of interstate pipeline capacity.

31
32 **Q: How is Columbia adversely affected by these changes?**

33 A: It will likely take several years to fully assess the physical impacts of shale
34 gas on Ohio markets, and until all market participants can assess these
35 impacts it makes sense not to make long-term interstate pipeline capacity
36 contract decisions that could adversely impact Columbia's ability to relia-
37 bly serve its customers and make the best use of all pipeline capacity
38 available to it. Consequently, the factual assumptions underlying Colum-
39 bia's capacity contracts have changed since the Commission issued the Ex-

1 exemption Orders. Yet, the 2009 Stipulation approved by the Exemption Or-
2 ders provides for a peak day capacity portfolio that differs from that
3 needed by Columbia during the period after the Stipulation's initial term.
4

5 Columbia has also begun to plan for a possible exiting of the merchant
6 function. When the 2009 Stipulation was approved in December 2009, Co-
7 lumbia had not expressed a present intent to, and did not contemplate
8 seeking to, exit the merchant function. Since then, the stakeholders believe
9 such an exit may be warranted, if participation in Columbia's CHOICE
10 program meets sufficient levels. The Exemption Orders do not, however,
11 authorize Columbia to exit the merchant function.
12

13 For these reasons, the Exemption Orders are adversely affecting Colum-
14 bia, the findings underlying the Commission's Exemption Orders are no
15 longer valid, and modifications to those Orders should be granted.
16

17 **Q: Are the changes proposed in the Stipulation in the public interest?**

18 **A:** Yes. The Stipulation modifies the details of Columbia's exemption for a
19 term that will commence on April 1, 2013, and continue through March 31,
20 2018. The Parties believe that there are likely benefits to be derived from
21 continuing the current exemption agreement, with modifications. Such a
22 continuation would permit Columbia to retain flexibility in a rapidly
23 evolving marketplace. The exact terms under which the exemption should
24 continue involve interrelationships among complicated issues, including
25 uncertainty as to how best contract for interstate pipeline capacity in a
26 changing marketplace.
27

28 It is in the public interest for the Commission to permit Columbia and its
29 stakeholders to maintain flexibility, particularly with regard to interstate
30 pipeline capacity, while the market for shale gas develops without impact-
31 ing reliability. The other substantive modifications to the Exemption Or-
32 ders are also in the public interest. Modifying the Balancing Fee, which is
33 currently charged to Suppliers (and factored into Suppliers' charged
34 rates), to instead charge it directly to customers would improve transpar-
35 ency in the way marketers' rates are set. The proposed modifications
36 would allow Columbia to upgrade its computer systems to allow for more
37 varied and diverse marketing services. The proposed modifications would
38 also allow new Columbia customers to enroll in the CHOICE program
39 immediately, if they choose, and would enable Columbia to exit the mer-

chant function for specified customer classes if certain levels of shopping are achieved.

Q: OCC and OPAE have noted that, according to Columbia’s “shadow billing” data, CHOICE customers have paid \$884,587,332 more than GCR, SSO, or SCO customers since 1997. Is this a relevant figure for the Commission to consider in weighing the Joint Stipulation?

A. No, for several reasons. First, discussion of the figure implies that the CHOICE program was designed to generate guaranteed savings. That is simply not the case. The intent of the CHOICE program has always been to provide customers with alternatives for the purchase of their gas supply. Second, that figure is a combined, cumulative total for all Columbia CHOICE customers over the past fifteen-and-a-half years. It tells the Commission nothing about the cost difference for an average customer in any particular month. Third, that figure includes calculated cost differences for commercial, industrial, and residential customers. If the Commission grants the Joint Motion, it would be approving an exit from the merchant function for only commercial and industrial customers. The cost differences for residential customers are irrelevant to weighing the merits of a non-residential exit. Fourth, most of that figure represents the theoretical cost savings for customers under the GCR or SSO programs. The SCO is the program OCC and OPAE want to keep, and Columbia has offered that program only since April 2012. Fifth, Columbia’s “shadow billing” data is, at best, a crude measure of the cost differences between GCR, SSO, or SCO rates and CHOICE rates. The programs offer different kinds of rates – for example, many CHOICE contracts offer long-term, fixed rates, whereas the SCO rates are short-term, variable rates – with different tax treatments. It is not an apples-to-apples comparison. Finally, the “shadow billing” data is irrelevant because it says nothing about future costs. If Columbia exits the merchant function for non-residential customers, it will replace the SCO for those customers with the MVR program. Stating that SSO and SCO customers have sometimes paid more than CHOICE customers in the past tells the Commission nothing about the likely relative costs of the CHOICE and MVR programs in the future. The “shadow billing” figure simply does not tell the Commission anything about whether moving to an MVR program for non-residential customers is a good idea.

1 **FURTHERENCE OF STATE ENERGY POLICY BY THE MODIFICATIONS TO**
2 **COLUMBIA'S EXEMPTION ORDERS IN THE JOINT STIPULATION**

3
4 **Q: What are the State energy policies that the Stipulation furthers?**

5 A: The modifications would further the state's policies, as outlined in R.C. §
6 4929.02, to "promote the availability of unbundled and comparable natural
7 gas services and goods that provide wholesale and retail consumers with
8 the supplier, price, terms, conditions, and quality options they elect to
9 meet their respective needs[.]" "[e]ncourage innovation and market access
10 for cost-effective supply- * * * side natural gas services and goods[.]"
11 "[r]ecognize the continuing emergence of competitive natural gas markets
12 through the development and implementation of flexible regulatory
13 treatment[.]" and "[p]romote an expeditious transition to the provision of
14 natural gas services and goods in a manner that achieves effective compe-
15 tition and transactions between willing buyers and willing sellers to re-
16 duce or eliminate the need for regulation of natural gas services and
17 goods under Chapters 4905. and 4909. of the Revised Code[.]" R.C.
18 4929.02(A)(2), (4), (6), and (7). These have been state policy for over four
19 years, since Governor Strickland signed S.B. 221 into law in May 2008. Of
20 course, more generally, the Ohio General Assembly has supported cus-
21 tomer choice since 2001, when it passed Sub. H.B. 9 and provided a statu-
22 tory basis for Customer Choice for natural gas customers.

23
24 **Q. Please describe how the proposed modifications of the Joint Stipulation**
25 **advance the State of Ohio's policies set forth in R.C. § 4929.02.**

26 A. The enhanced billing options for competitive retail natural gas suppliers
27 (see Joint Motion at 10-11) further the state policy of providing consumers
28 with "the price, terms, conditions, and quality options they elect" and "en-
29 courage innovation and market access for cost-effective supply- * * * side
30 natural gas services and goods"(R.C. § 4929.02(A)(2) and (4)) by enabling
31 customers to enter into new kinds of contracts with CHOICE suppliers,
32 including flat fee contracts and contracts in which the supplier charges the
33 monthly NYMEX (New York Mercantile Exchange) rate, plus or minus a
34 set value. Customers will also be able to transfer their CHOICE contracts
35 to new addresses within Columbia's service area and prepay the commod-
36 ity portions of their bills.

37 In addition, if 70% of Columbia's CHOICE-eligible non-residential cus-
38 tomers migrate to CHOICE, Columbia will exit the merchant function for

1 those customers, thereby "[r]ecogniz[ing] the continuing emergence of
2 competitive natural gas markets through the development and implemen-
3 tation of flexible regulatory treatment[.]" and effecting "an expeditious
4 transition to the provision of natural gas services and goods in a manner
5 that achieves effective competition and transactions between willing buy-
6 ers and willing sellers [without] the need for regulation of natural gas
7 [commodity] services and goods[.]" Section 4929.02(A)(7), Revised Code.

8 **CRITERIA FOR APPROVAL OF A STIPULATION**
9

10 **Q: Does the Stipulation satisfy the Commission's criteria for evaluating the**
11 **reasonableness of a stipulation?**

12 A: Yes. The Stipulation satisfies each of the Commission's criteria for evaluat-
13 ing the reasonableness of a stipulation: the Stipulation is the result of seri-
14 ous bargaining among capable, knowledgeable parties; the Stipulation
15 benefits ratepayers and the public interest; and, the Stipulation does not
16 violate any important regulatory principle or practice.
17

18 **Q: Do you believe the Stipulation filed in this case is the product of seri-**
19 **ous bargaining among knowledgeable parties?**

20 A: Yes. The Stipulation is the product of an open process in which all parties
21 were represented by able counsel and technical experts. Beginning in
22 March, 2012, Columbia conducted a series of open meetings with its
23 stakeholder group to discuss the status of its marketplace and the need for
24 modification of the Exemption Order. Columbia's Stakeholder Group is
25 comprised of a large and diverse group of suppliers servicing Columbia's
26 Gas Transportation Service customers, Competitive Retail Natural Gas
27 Suppliers servicing Columbia's CHOICE customers, SSO/SCO Suppliers,
28 numerous municipalities, industrial and commercial customer groups,
29 representatives of residential customers and the Staff of the Public Utilities
30 Commission of Ohio. During the course of the spring and summer there
31 were extensive discussions and negotiations and the Stipulation is the re-
32 sult of those deliberations.
33

34 The Stipulation is a comprehensive compromise of the issues raised by
35 parties with diverse interests. The signatory parties have adopted it as a
36 reasonable resolution of all of the issues. The Stipulation recommended by
37 the Parties for adoption and approval by the Commission is a fair, bal-
38 anced and reasonable resolution of this proceeding. Even though not all

1 Parties agreed to the Stipulation, all those parties had ample opportunity
2 to participate in the stakeholder meetings and negotiations that eventually
3 resulted in the Stipulation.
4

5 Each party to the Stipulation regularly participates in rate proceedings
6 and other regulatory matters before the Commission, and each party was
7 represented by similarly experienced and competent counsel.
8

9 **Q. Does the fact that OCC and OPAE have declined to join the Stipulation**
10 **support rejection by the Commission?**
11

12 A. No. Both parties participated in negotiations and discussions in Stake-
13 holder meetings. At Stakeholder meetings held on May 29, 2011, June 4,
14 2012, and September 5, 2012, Columbia asked each stakeholder to respond
15 to the most recent settlement proposals that Columbia had distributed.
16 Notwithstanding those opportunities, and other opportunities to join in a
17 number of negotiation sessions during the summer, OCC waited until Oc-
18 tober 3, 2102, to respond to Columbia's settlement proposal made on June
19 4, 2012. By October 3, Columbia, the marketers and others had concluded
20 negotiations and reached a stipulation filed by joint motion the next day.
21 The fact that the OCC disengaged from the process for four months has no
22 bearing on the reasonableness of the process or the substantive terms of
23 the agreement.
24

25 **Q: In your opinion, does the Stipulation benefit ratepayers and promote**
26 **the public interest?**

27 A: Yes. As I discussed earlier, approval of the Stipulation will advance Ohio's
28 state energy policy. It provides for an up-to-five-year extension of Colum-
29 bia's SCO Program. At the same time it provides a structure for Columbia
30 to make a careful, gradual transition and potential exit from the commodi-
31 ty merchant function if certain market conditions are met.
32

33 **Q: Does the Stipulation violate any important regulatory principle or prac-**
34 **tice?**

35 A: No. The Stipulation does not violate any important regulatory principle or
36 practice.
37

38 **Q: Is the Stipulation consistent with recent Commission decisions involv-**
39 **ing similar applications of other Ohio gas utilities?**

1 A: Yes. The Stipulation is consistent with Commission precedent and specifi-
2 cally with the Commission's actions with respect to Dominion East Ohio in
3 Commission Case No.12-1842-GA-EXM.
4

5 **Q. Are you sponsoring the Program Outline and Revised Tariffs that have**
6 **been submitted in this proceeding?**
7

8 A: Yes. The proposed Revised Tariffs and Program Outline are consistent with
9 the Joint Stipulation.
10

11 CONCLUSION

12

13 **Q: Are you recommending that the Commission approve the Stipulation?**

14 A: Yes. I believe the Stipulation represents a fair, balanced and reasonable
15 compromise of diverse interests and provides a fair result for customers. I
16 believe that the Stipulation meets all of the Commission's criteria for adop-
17 tion of settlements and that the Commission should promptly issue an or-
18 der approving the settlement.
19

20 **Q: Does this conclude your Prepared Direct Testimony?**

21 A: Yes, it does.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Prepared Direct Testimony of Thomas J. Brown, Jr. was served upon all parties of record by electronic mail this 12th day of November, 2012.

/s/ Stephen B. Seiple _____

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