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 Columbia Gas of Ohio, Inc., in Case No. 08-1344-GA-EXM.	))))	Case No. 12-2637-GA-EXM

REPLY COMMENTS OF THE OHIO GAS MARKETERS GROUP AND THE RETAIL ENERGY SUPPLY ASSOCIATION

November 13, 2012

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Pursuant to the Attorney Examiner's Entry, the Ohio Gas Marketers Group[1] ("OGMG") and the Retail Energy Supply Association[2] ("RESA") submit these Reply Comments to the two sets of comments that have been filed in this proceeding.

I. INTRODUCTION

The clear intent of the Entry establishing a comment period was to allow the parties to focus on the Joint Stipulation as a means to help crystalize the issues in this proceeding. The majority of the comments filed by the Ohio Consumers' Counsel ("OCC") though are a polemic against deregulation. The Commission should recognize the comments are outside the scope of the proceeding and meant for an audience beyond the Commission. The opening paragraph of the OCC's comments proclaim "... since the inception of customer choice for natural gas suppliers, Ohioans have paid marketers more than $865 million above Columbia's arranged default rate (Gas Cost Recovery/Standard Service Offer/ Standard Choice Offer)". This $865

[1] The Ohio Gas Marketers Group for purposes of this proceeding includes Constellation NewEnergy Gas Division, LLC, Direct Energy Services, LLC, Direct Energy Business, LLC, Interstate Gas Supply, Inc., Integrys Energy, Inc., Just Energy Group, Inc. and SouthStar Energy LLC. The positions taken by the OGMG are consensus positions of the group and do not necessarily reflect the positions or beliefs of any individual member.

[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; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; Next ERA Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The Reply Comments represent the

million number is based on a raw discovery response from Columbia in which 15 years of an internal "shadow billing" calculations are produced. The shadow billing system is not a commission or accounting system. No description or use of the shadow billing system has been produced. Most important, there is no evidence by Columbia that they believe it to be an accurate calculation of overpayments by Choice customers. A review of the discovery response reveals that of the $865 million dollars of supposed overpayments by Choice customers, $701,379,096 occurred under the Gas Cost Recovery ("GCR") during the time period 1997 to 2010 when taxes and system costs were higher for Choice vs. GCR customers. The numbers ignore these differences and ignore the fact that there were savings offers available regardless of whether customers took them during that time. The OCC implies that there were no products which saved customers money during the past 15 years and ignores that most customers chose fixed price products. It was only in April of 2011 that Columbia left regulated rates under the exit the merchant function program which was authorized by the General Assembly as part of Chapter 4929 and by this Commission in its two Opinions and Orders in Case No. 08-1344-GA-EXM. Although the OCC makes favorable comments about the Standard Choice Auction which permits the assignment of Choice eligible customers to Competitive Retail Natural Gas Suppliers, on page 2 of its comments, OCC states that the Joint Stipulation addresses one of the most significant issues in the natural gas industry "....Whether customers will continue to have the option of purchasing their natural gas through the Utility".

That issue was addressed in the 08-1344-GA-EXM case. Today customers are assigned to CRNG providers and are charged the New York Mercantile Exchange (NYMEX) closing monthly price per MCF of gas plus an adder derived by an auction among CRNG providers. Under the Joint Stipulation, a residential customer receiving default service will pay the same –

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position of RESA as an organization but may not represent the views of any particular member of RESA.

there is no change to the status quo for residential customers. Further, absent a new application, nothing in this Stipulation will authorize or commit the Commission to change the way that residential customers pay for default natural gas supplies. In fact, the Joint Stipulation assures that such an application cannot be made until shopping levels by residential customers almost double from current shopping levels and the commercial customers have already been switched to the monthly variable rate ("MVR") system. Finally, the new MVR system proposed for commercial customers is only a small change from the present as it retains the use of the NYMEX monthly variable price, and ensures available default gas.

In sum, the Joint Stipulation does not only fail to change how residential customers will receive default natural gas supplies, it assures it will not change that system for several years and then only after the Commission reviews and approves an application to do so. Thus, the comments by the OCC are simply outside the scope of this proceeding.

Aside from being irrelevant, what is more disturbing about the OCC's comments is the fact that the comments are based upon a discovery response in the pending case. Interrogatories are permitted to go beyond the scope of a hearing and if irrelevant are excluded from the record. By putting the discovery in the comments the OCC attempts to end run this protection and get the irrelevant shadow billing into the record for the Commission's decision. Further, the OCC while incorporating Interrogatory Response 65 fails to inform the Commission that the raw data contained in the four columns of Excel monthly numbers includes sales tax payments, the beneficial effect of the liquidation of the first in last out storage gas when Columbia stopped the GCR, and many, many other factors that make it unsuitable as a calculation of savings. The Commission should simply reject the OCC's arguments which are based on interrogatory 65.

II. PROCEDURAL HISTORY

By its Opinion and Order of 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, the Commission approved the terms of a Stipulation and Recommendation entered into by the parties in that proceeding. The Case No. 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.

On September 7, 2011, the Commission issued a second Opinion and Order in Case No. 08-1344, which, *inter alia*, authorized the continuation of the Case No. 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.

On October 4, 2012, Columbia, the OGMG, RESA, Dominion Retail, Inc., and the Staff ("Joint Movants") initiated the instant case and filed a joint motion to modify the December 2, 2009, and September 7, 2011, orders in Case No. 08-1344, in accordance with Section 4929.08(A), Revised Code, along with a Stipulation and Recommendation. The Joint Movants stated that the Stipulation would modify the details of Columbia's exemption granted in Case No. 08-1344 for a five-year term commencing on April 1, 2013 through March 31, 2018. As part of their October 4, 20120, filing, the Joint Movants also moved for bifurcation of the Commission's consideration of the issues addressed in the Stipulation. Section 4929.08 Revised Code, authorizes the Commission to modify any order granting such exemption upon motion of

any person adversely affected by an exemption and after notice and hearing.

By Entry of October 18, 2012, the attorney examiner granted motions to intervene of the Ohio Consumers' Counsel ("OCC"), Hess Corporation, and Ohio Partners for Affordable Energy ("OPAE"), and established a procedural schedule in this matter. The attorney examiner also denied the Joint Movants' motion for bifurcation. Pursuant to that procedural schedule, comments were filed by OCC and OPAE. These Reply Comments will address the OCC and OPAE comments filed on November 5, 2012.

III. SUMMARY OF THE JOINT MOTION TO MODIFY ORDERS

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

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

While there is now less uncertainty about the auction process, since the 2009 Stipulation was approved in December 2009, the introduction of Marcellus Shale Gas into the marketplace has created a greater uncertainty about Columbia's best use of interstate pipeline capacity. The introduction of Marcellus Shale Gas, and subsequently Utica Shale Gas, has created the potential for new gas supply opportunities in Ohio. How these opportunities will develop is unknown, but the opportunities could potentially impact Ohio utilities' use of interstate pipeline capacity. It may take several years to fully assess the full impacts of shale gas on Ohio markets. Until all market participants can assess these impacts, it makes sense not to make long-term interstate pipeline capacity contract decisions that could adversely impact Columbia's ability to make the

best use of all pipeline capacity available to it. Thus, the factual assumptions underlying Columbia's capacity contracts have changed since the Commission issued its Exemption Orders. The 2009 Stipulation approved by the Exemption Orders provides for a peak day capacity portfolio that is not geared to meet Columbia's needs during the period after the Stipulation's initial term.

Columbia has also begun to plan for a possible exiting of the merchant function. When the 2009 Stipulation was approved in December 2009, Columbia had not expressed a present intent to, and did not contemplate seeking to, exit the merchant function. Since then, the Joint Movants believe such an exit may be warranted, if participation in Columbia's CHOICE Program were to meet sufficient levels. The Exemption Orders do not, however, authorize Columbia to exit the merchant function.

For these reasons, the Joint Movants believe that the Exemption Orders are adversely affecting Columbia and the findings underlying the Commission's Exemption Orders are no longer valid. The Joint Movants seek to modify those Exemption Orders.

The Joint Movants believe that there are likely benefits to be derived from continuing the current exemption agreement, with modifications. Such a continuation would permit Columbia to retain flexibility in a rapidly evolving marketplace. The exact terms under which the exemption should continue to involve interrelationships among complicated issues, including uncertainty as to how best to contract for interstate pipeline capacity in a changing marketplace. These terms, including revisions to the Program outline, were set forth in the Joint Stipulation and Recommendation which was attached to the Joint Motion.

The Joint Movants believe that it is in the public interest for the Commission to permit Columbia and its stakeholders to maintain flexibility, particularly with regard to interstate

pipeline capacity, while the market for shale gas develops. The other substantive modifications to the Exemption Orders are also in the public interest. Modifying the Balancing Fee, which is currently charged to Suppliers (and factored into Suppliers' charged rates), to instead charge it directly to customers would improve transparency in the way marketers' rates are set. The proposed modifications would allow Columbia to upgrade its computer systems which will allow for more varied and diverse marketing services. The proposed modifications would also allow new Columbia customers to enroll in the CHOICE Program immediately, if they choose, and would enable Columbia to exit the merchant function entirely if certain levels of shopping are achieved. All of these modifications would further the state's policies as outlined in Section 4929.02, Revised Code.

The Joint Movants have respectfully requested that the Commission modify the Exemption Orders to continue the exemptions granted in those orders, but with the modifications described above.

IV. ARGUMENT

A. OCC's Comments

As noted above there are several reasons why OCC's comments should be rejected out of hand. The Consumers' Counsel has no authority on issues which affect non-residential customers. Tongren v. D&L Gas Mktg., 149 Ohio App. 3d 508, 778 N.E. 2d 76, 2002 Ohio 5006, (2002) To the extent that its comments go beyond the interests of residential consumers in this case, they should be disregarded.

OCC argues at pages 6-7 that the settlement fails the PUCO's test because it is not the product of serious bargaining and it lacks a sufficient diversity of interest. OCC's argument must be rejected. OCC was invited to all of the settlement meetings. Rule 4901-1-30 of the Ohio Administrative Code permits two or more parties to enter into a written or oral stipulation.

A written stipulation was signed by Columbia, OGMG, RESA and Dominion Retail, Inc. and was filed in this case. There is nothing in the rules or Commission precedent that requires that signatories to a stipulation must be of a different character or nature. This argument must be rejected.

OCC also claims that the proposed changes to the billing for system balancing are not in the public interest because the modification could result in customers paying twice for the same service. This is not true. Customers will not be billed twice for the same service. As mentioned above, suppliers were required to pay a balancing fee as part of the CHOICE Program of $0.48/Mcf for years, although no assets were provided and were required to deliver to a daily temperature sensitive curve up to peak usage and to revise deliveries based upon temperature variations. In other words, suppliers paid tens of millions of dollars for no assets or services. This same balancing fee today under the stipulation will be reduced to $0.27 and suppliers are balanced and their deliveries stop well before a peak day (services are beginning to match the cost).

Finally, OCC argues that the off-system sales revenue sharing mechanism is not an adequate benefit for customers and is not in the public interest. The off-system sales revenue sharing mechanism is in the public interest as it is a component of the stipulation that keeps the stipulation, as a package, in balance.

At pages 12-15 of its comments, OCC argues that the settlement fails the PUCO's test because the Stipulation violates state policy and the security charged to SCO suppliers only is discriminatory. Quite the contrary, it would be in the public interest for the Commission to permit customers who do not take the SCO price to have the possibility of receiving a credit through the CSRR for auction related costs and to permit Columbia and its stakeholders to

maintain flexibility, particularly with regard to interstate pipeline capacity, while the market for shale gas develops. The other substantive modifications to the Exemption Orders are also in the public interest. Modifying the balancing fee, which is currently charged to Suppliers (and factored into Suppliers' charged rates), to instead charge it directly to customers would improve transparency to customers by providing clarity on utility versus marketer charges. The proposed modifications would allow Columbia to upgrade its computer systems to allow for more varied and diverse marketing services. The proposed modifications would also eventually permit new Columbia customers to enroll in the CHOICE Program immediately, and would enable Columbia to exit the merchant function entirely if certain levels of shopping are achieved. All of these modifications would further the state's policies as set forth in Section 4929.02(A), Revised Code as follows:

> (4) Encourage innovation and market access for cost-effective supply-and-demand-side natural gas services and goods;
> (6) Recognize the continuing immergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment;
> (7) Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905, and 4909 of the Revised Code.

Contrary to OCC's argument, the joint motion and the stipulation would promote the state's energy policy, not violate it.

With respect to the security charged to SCO suppliers, this charge is not discriminatory. The market does not automatically recover all costs. The $0.10/Mcf will be a cost to suppliers that win SCO tranches. The SCO suppliers present a risk of default that is not covered by the cross-collateral requirement and is not covered by the supplier credit review. If an SCO supplier

defaults, the utility must step quickly into the shoes of the supplier and provide services. The utility must then engage in activities to revise all the delivery requirements, manage the flow, and make arrangements for ongoing services that is not contemplated in the other collateral requirements. If a default does not occur, SCO service will regardless incur costs through use of utility resources, auction costs and significant expenses for educational efforts required by the stipulation. Neither the risk of default nor the costs of educational efforts are something that the shopping customers cause, would benefit from, or should be required to pay. Requiring shopping customers to contribute to these costs would further subsidize default service, to the benefit of only default service customers. Contrary to OCC's contention, the real inequity would be to transfer the costs of these educational and supplier default costs through the CSRR.

Finally, OCC argues that expediting the procedural schedule would compromise the benefit of conducting the study that the PUCO ordered. It goes on to argue at pages 16-18 that the capacity contract issues no longer appear to be time sensitive and that the benefits of the Commission ordered study would be compromised under an expedited procedural schedule. If the Staff needed more time to conduct its study, it can certainly ask for more time. It did not. The fact of the matter is the Staff will be able to conduct the study within the existing timeframe.

B. <u>OPAE's Comments</u>

OPAE advanced eight arguments in its November 5, 2012 comments.

First, OPAE argues that the procedural schedule is unreasonable. This is virtually the same argument that was advanced in its interlocutory appeal. The attorney examiner found that the parties had ample time for discovery and the filing of testimony and even went so far as to require Columbia to provide same-day transcripts. The attorney examiner also noted that pursuant to Rule 4901-1-31 of the Ohio Administrative Code, briefs are optional and in Case No.

08-1344 in an Entry dated June 1, 2011, briefs were not even permitted as the examiner found that oral arguments were appropriate. This argument should be rejected.

At pages 4-7 of its comments, OPAE argues that the bill impacts are an important consideration when reviewing the joint motion.

But OPAE has also cited the "Shadow billing data" and has alleged that customers served through bilateral contracts have been paying hundreds of millions of dollars more for service than those on the SSO or SCO. But these raw data numbers cannot be accepted because they are flawed. The Direct Testimony of Vincent Parisi on behalf of RESA and OGMG describes the flaws in accepting this data on its face. The Commission should reject this argument out of hand.

At pages 7-9 of its comments, the OPAE argues that this case is not the appropriate one for considering an exit from the merchant function. OPAE argues that the Commission should dismiss this joint motion as none of the triggers required by the statute have been met. OPAE is wrong. As explained in the October 4 Joint Motion, the introduction of Marcellus Shale gas and Utica Shale gas has created the potential for new gas supply opportunities in Ohio which could impact Ohio utilities' use of interstate pipeline capacity. Factual assumptions underlying Columbia's capacity contracts have changed since the Commission issued the Exemption Orders. The stipulation approved by the Exemption Order in 2009 provided for a peak day capacity portfolio that is not geared to meet Columbia's needs during the period after the stipulation's initial term. Further, when the 2009 stipulation was approved in December of 2009, Columbia had not expressed a present intent to, and did not contemplate seeking to, exit the merchant function. Since that time, the Joint Movants believe that such an exit may be warranted, if participation in the CHOICE Program were to meet sufficient levels. But the Exemption Orders

did not authorize Columbia to exit the merchant function. These are the facts that have changed since the Exemption Orders were issued and they adversely affect Columbia. The criteria of Section 4929.08(A) have been met. This argument should be rejected.

At pages 9-10 of its comments, the OPAE argues that the Commission should not artificially limit competitive options available to customers. OPAE believes that the Joint Movants are eliminating a competitive option that customers obviously prefer and that is not promoting competition. To have effective competition, no subsidies can exist. Indeed, Section 4929.02(A)(8), Revised Code provides that "Promote effective competition in the provision of natural gas service and goods by avoiding subsidies flowing to or from regulated natural gas services and goods." SCO service is a regulated service and is subsidized. Examples of costs that are not recovered in the SCO pricing structure include hard costs of performing the auction; employee/payroll costs for all Columbia employees engaged in creating, structuring, defining, administering and providing the SCO service; all outsourced legal and related expenses associated with providing SCO service; all IT programming costs associated with providing and maintaining a default service; IT enhancements beyond those that exist today to try to provide more dynamic products for customers that have not yet elected a supplier; and avoided administrative costs SCO suppliers do not have to meet to serve retail customers. The subsidies need to be eliminated as long as the SCO exists. At 70% migration of non-residential customers, the vast majority of customers will have elected a supplier. Default service for non-residential customers should then transition to MVR service.

The OPAE argues at pages 10-11 of its comments that the Commission should not approve extensions of the pipeline contracts and the extension of provisions related to the sharing of off-system sales ("OSS") revenues. With respect to the off system sales, it must be

remembered that like the 2009 joint stipulation in Case No. 08-1344, this off system sales revenue mechanism is a component of a compromise and settlement and is part of the balance of the compromise.

At pages 11-13 of its comments, OPAE argues that the extension of pipeline contracts is anti-competitive. It claims that the Stipulation erects significant barriers to competition by preventing marketers from competing on balancing costs and transportation pricing. It must be remembered suppliers were required to pay a balancing fee as part of the CHOICE Program of $0.48/Mcf for years, although no assets were provided and were required to deliver to a daily temperature sensitive curve up to peak usage and revised deliveries based upon temperature variations. That same fee today will be reduced to $0.27 and suppliers are balanced and their deliveries stop well before a peak day (services are beginning to match the cost).

At pages 13-15 of its comments, OPAE argues that the new fee of $0.10/Mcf proposed for SSO/SCO suppliers undermines competition. OPAE maintains that the $0.10/Mcf proposed charge will be a cost to suppliers that win SCO tranches. As pointed out above in response to OCC's argument at pages 12-15 of its comments, the market does not automatically recover all costs and the SCO suppliers present a risk of default and significant expenses for educational efforts. See the reply comments responding to OCC's argument at pages 12-15 above.

Finally, at page 15 of its comments, OPAE argues that educating customers on Choice and exiting the merchant function benefits only marketers and that these expenses should be borne by marketers and not by customers. The OGMG and RESA disagree. Educating default customers benefits default customers only, not shopping customers.

V. CONCLUSION

The comments of the OCC and OPAE are not well made and should be rejected for the reasons set forth above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document has been served on the following persons below via electronic mail this 13th day of November, 2012.

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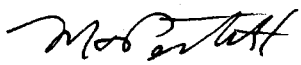

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