

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Commission’s Review of the)
Alternative Rate Plan and Exemption Rules) Case No. 11-5590-GA-ORD
Contained in Chapter 4901:1-19 of the Ohio)
Administrative Code.)

**MEMORANDUM CONTRA COLUMBIA GAS OF OHIO, INC.’S
APPLICATION FOR REHEARING
BY
THE OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

I. INTRODUCTION

The Public Utilities Commission of Ohio (“Commission” or “PUCO”) is reviewing existing rules¹ and considering initial rules² that include addressing one of the most significant issues affecting Ohio utility consumers—that issue being the potential applications by natural gas utilities to eliminate their standard offers for the sale of natural gas to customers. Columbia Gas of Ohio, Inc. (“Columbia” or “Utility”) is seeking a rehearing to change the PUCO’s recent Finding and Order, by claiming that the filing requirements included in the Commission’s Amended Rules are in conflict with Ohio law.³ Columbia is wrong, and for the reasons outlined in the arguments below, the Commission should deny the Utility’s Application for Rehearing.

¹ Amended Rules involving filing requirements and procedures for Exemption Cases, and Amended Rules involving filing requirements and procedures for Alternative Regulation Cases.

² Amended Rules involving filing requirements and procedures for Exit the Merchant Function Cases.

³ Columbia Application for Rehearing at 4.

II. PROCEDURAL HISTORY

The Procedural History presented in the Office of the Ohio Consumers' Counsel's ("OCC") Application for Rehearing, filed on January 11, 2013, is incorporated by reference herein. OCC hereby files to recommend denial of Columbia's Application for Rehearing on January 11, 2013.

III. ARGUMENT

A. The Filing Requirements in the Commission's Amended Rules are not in Conflict with Ohio Law.

The Utility took exception to the following rules of the PUCO Amended Rules: 4901:1-19-06(C)(1), 4901:1-19-06(C)(2), 4901:1-19-06(C)(3) , 4901:1-19-07(C) and 4901-1-19-07(D). The reason given by the Utility is that the Amended Rules conflict with the law. The Utility states:

In particular, [Amended] Rules 4901:1-19-06(C)(1), (C)(2), and (C)(3) O.A.C., as well as, [Amended] Rules 4901-1-19-07(C) and (D), O.A.C., impose numerous burdensome and inappropriate obligations on an alternative rate plan applicant. By adopting each of those rules, the Commission has impermissibly reinstated requirements that the General Assembly eliminated by statute through the enactment of Am. Sub. H.B. 95.⁴

The Commission has appropriately drafted the Amended Rules. The Utility claims that the Commission has adopted rules that are in conflict with the law. But such a conflict does not exist.

The Commission's Amended Rule 4901:1-19-06 pertains to "[f]iling requirements for alternative rate plan applications filed pursuant to section 4929.05 of the revised code." R.C. 4929.05 (A) states: "A natural gas company **may** request approval of an

⁴ Columbia Application for Rehearing at 4 (January 11, 2013).

alternative rate plan **by filing an application under section 4909.18 of the revised code** regardless of whether the application is for an increase in rates.”⁵

R.C. 4929.051(B) codifies the only circumstance in which an alternative rate plan is considered an application not for an increase in rates. R.C. 4929.051(B) states: “An alternative rate plan filed by a natural gas company under section 4929.05 of the Revised Code and seeking authorization to continue a previously approved alternative rate plan shall be considered an application not for an increase in rates.” Under that circumstance, and only that circumstance, should a utility be able to avoid the filing of an application for an increase in rates under R.C. 4909.18. and avoid the accompanying requirement to submit as part of its application the contemplated materials under R.C. 4909.18 (A) through (D) as mandated by Amended Rule 4901:1-19-06(C)(1).

In all other circumstances, when a utility files an alternative rate plan, under R.C. 4909.18, as required by R.C. 4929.05, that filing is considered to be an application for an increase in rates. Furthermore, the Amended Rule 4901:1-19-06(C)(1) appropriately establishes the necessary filing requirements for Staff and other interested parties to review such an application. The Staff Comments defend the Amended Rule by stating: “Alternative rate applications filed pursuant to Section 4929.05, Revised Code, must be filed pursuant to Section 4909.18, Revised Code, and the applicant must show that the plan is just and reasonable. Therefore, the information set forth in the rule is appropriate * * *.”⁶

⁵ Emphasis added.

⁶ Finding and Order at 33 (December 12, 2012).

Moreover, the Amended Rules are not inflexible. In the event the Utility is seeking reauthorization of an existing alternative rate plan pursuant to R.C. 4929.051, and the application is deemed to be not for an increase in rates, Staff's Comments accurately point out that "if an applicant believes the information is not necessary for a particular filing, the applicant may file a request for waiver of the requirement pursuant to Rule 4901:1-19-02(D), O.A.C."⁷ For these reasons, the Commission should deny the Utility's rehearing request.

The Commission's Amended Rules 4901:1-19-06(C)(2) and 4901:1-19-06(C)(3) are not impacted by the law, and should not be modified as the Utility suggests. The requirements of the Commission's Amended Rule 4901:1-19-06(C)(2) are specific filing requirements that the Staff proposes for an alternative rate plan recognizing that the applicant has the burden of proof to "document, justify, and support its plan."⁸ The Amended Rules require the following filing requirements for an alternative regulation plan:

(a) The applicant shall provide a detailed alternative rate plan, which states the facts and grounds upon which the application is based, and which sets forth the plan's elements, transition plans, and other matters as required by these rules. This exhibit shall also state and support the rationale for the initial proposed tariff changes for all impacted natural gas services.

(b) The applicant shall fully justify any proposal to deviate from traditional rate of return regulation. Such justification shall include the applicant's rationale for its proposed alternative rate plan, including how it better matches actual experience or performance of the company in terms of costs and quality of service to its regulated customers.

⁷ Finding and Order at 33 (December 12, 2012).

⁸ Finding and Order at Attachment A at 10 (December 12, 2012).

(c) If the alternative rate plan proposes a severing of costs and rates, the applicant shall compare how its proposed alternative rate plan would have impacted actual performance measures (operating and financial) during the most recent five calendar years. Include comparisons of the results during the previous five years if the alternative rate plan had been in effect with the rate or provision that otherwise was in effect.

(d) If the applicant has been authorized to exempt any services, the applicant shall provide a listing of the services which have been exempted, the case number authorizing such exemption, a copy of the approved separation plan(s), and a copy of the approved code(s) of conduct.

(e) The applicant shall provide a detailed discussion of how potential issues concerning cross-subsidization of services have been addressed in the plan.

(f) The applicant shall provide a detailed discussion of how the applicant is in compliance with section 4905.35 of the Revised Code, and is in substantial compliance with the policies of the state of Ohio specified in section 4929.02 of the Revised Code. In addition, the applicant shall also provide a detailed discussion of how it expects to continue to be in substantial compliance with the policies of the state specified in section 4929.02 of the Revised Code, after implementation of the alternative rate plan. Finally, the applicant shall demonstrate that the alternative rate plan is just and reasonable.

(g) The applicant shall submit a list of witnesses sponsoring each of the exhibits in its application.⁹

There is nothing in the Amended Rules that imposes rate case filing requirements or filing requirements that could be considered to have been eliminated by the statute (R.C. 4929.05) as the Utility argues.¹⁰ Therefore, the Commission should reject the Utility's recommended changes to the Commission's Amended Rule 4901:1-19-06(C)(2).

⁹ Finding and Order at Attachment A at 10-11 (December 12, 2012).

¹⁰ Columbia Application for Rehearing at 4 (January 11, 2012).

The same argument holds true for Amended Rule 4901:1-19-06(C)(3). This rule states:

To the extent the applicant is seeking alternative forms of rate setting than that found in section 4909.15 of the Revised Code, the applicant should detail those commitments to customers it is willing to make to promote the policy of the state specified in section 4929.02 of the Revised Code. **The extent of commitments specified should be dependent upon the degree of freedom from section 4909.15 of the Revised Code requested by the applicant.**¹¹

There is nothing in the Amended Rules that imposes rate case filing requirements or filing requirements that could be considered to have been eliminated by the statute (R.C. 4929.05) as the Utility argues.¹²

The Commission is insisting upon commitments from the utility that will benefit customers in exchange for the utility's relief from regulations that Columbia in its rehearing request deems to be: "numerous, burdensome and inappropriate."¹³ Per the Amended Rules, the extent of the commitment is dependent upon the extent to which the utility is free from the regulations under R.C. 4909.15.¹⁴ The Commission should not allow the Utility out from under the required regulations of R.C. 4909.15 without understanding the commitments that the utility is making to customers. Those commitments will be made by the utility on a case by case basis, and as such the relief from regulation under R.C. 4909.15 should also be determined by the Commission on a

¹¹ Finding and Order at Attachment A at 11 (December 12, 2012) (emphasis added).

¹² Columbia Application for Rehearing at 5 (January 11, 2013).

¹³ Columbia Application for Rehearing at 2 (December 12, 2012).

¹⁴ Finding and Order at Attachment A at 11 (December 12, 2012).

case by case basis. Therefore, the Commission should reject the Utility's rehearing request to modify to Amended Rule 4901:1-19-06(C)(3).

B. The Procedural Requirements in the Commission's Amended Rules are not in Conflict with Ohio Law.

The Commission's Amended Rules include procedural requirements that pertain to alternative regulation filings. The Amended Rule 4901-1-19(07) (C) and (D) states:

(C) The commission staff will file a written report which addresses, at a minimum, the reasonableness of the current rates. If the application is for an increase in rates, the written report shall also address section 4909.15 of the Revised Code.

(D) At its discretion, the Commission may require a hearing to consider the application. If the commission, at its discretion, requires local public hearings, such hearings shall be held in accordance with the procedural parameters set.¹⁵

The Utility is opposed to the procedural requirements contained in the Commission's Amended Rules, for alternative regulation plans. Columbia makes the same arguments as were made in opposition to the alternative regulation filing requirements. Columbia argues:

Similarly, [Amended] Rule 4901:1-19-07(C), O.A.C. requires the Commission Staff to file a written report that addresses "at a minimum, the reasonableness of current rates" * * *. Subpart (D) of that rule permits the Commission to hold a **full blown evidentiary hearing** for an application for an alternative rate plan, **as well as local public hearings** to be conducted following the procedures set forth in R.C. 4903.083 (which, by its heading, the General Assembly intended to be applicable only to applications for an increase in rates).¹⁶

¹⁵ Finding and Order at Attachment A at 12 (December 12, 2012).

¹⁶ Columbia Application for Rehearing at 6 (January 11, 2013) (emphasis added).

As previously argued, given the possibility that an alternative regulation application can be for an increase in rates,¹⁷ it is imperative that the rules include appropriate due process protections for consumers, such as evidentiary hearings and local public hearings that provide an opportunity for interested parties to be heard. The Utility's suggestion that such protections are in conflict with Ohio law is misplaced and should not be seriously considered by the Commission.

The Amended Rules were reviewed by the Commission in conjunction with Executive Order 2011-01K, entitled "Establishing the Common Sense Initiative."¹⁸ The Common Sense Initiative sets forth several factors to be considered in the promulgation of rules and the review of existing rules.¹⁹ The Common Sense Initiative provides the following:

WHEREAS, regulations play an important role in promoting fair competition, protecting the public health, and implementing the intent of the General Assembly. All of Ohio benefits from regulations that are in the public interest and are enforced properly. Protecting the public is always first and foremost, * * *.²⁰

WHEREAS, Ohio's regulatory process should be built on the foundations of transparency, accountability, and performance. * * *
*. Agencies should develop regulations in the full light of public scrutiny, and the public should have an opportunity to help shape those regulations and to challenge any that are unfair, overly burdensome, or ineffective.²¹

The Utility's proposal to diminish due process protections in alternative regulation cases is contrary to protecting the public, will not promote transparency or accountability in the

¹⁷ See also Finding and Order at 34-35 (December 12, 2012).

¹⁸ Finding and Order at 1 (December 12, 2012).

¹⁹ Id. at 1-2.

²⁰ <http://www.governor.ohio.gov/Portals/0/pdf/CSI/011011%20-%20Executive%20Order%202011-01K%20Establishing%20the%20Common%20Sense%20Initiative.pdf>. See Executive Order 2011-01K at 1.

²¹ Id.

performance of the PUCO's legal process. The Utility's proposal is inconsistent with the Common Sense Initiative included in Executive Order 2011-01K.

IV. CONCLUSION

The Commission's Amended Rules establish the filing requirements and procedures for alternative regulation cases that will enable the PUCO to assess whether the alternative regulation plan is just and reasonable. The Amended Rules do not conflict with Ohio law. Therefore, the Commission should reject the Utility's recommended changes to the Commission's Amended Rules, and deny Columbia's Application for Rehearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing *Memorandum Contra* has been served upon the below-named counsel via electronic service this 22nd day of January 2013.

/s/ Larry S. Sauer _____

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