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 Second Opinion and Order in Case No. 08-1344-GA-EXM	)))))	Case No. 12-2637-GA-EXM

MEMORANDUM CONTRA OF COLUMBIA GAS OF OHIO, INC. TO APPLICATIONS FOR REHEARING OF OHIO PARTNERS FOR AFFORDABLE ENERGY AND HESS CORPORATION

INTRODUCTION

On December 2, 2009, in Case No. 08-1344-GA-EXM, the Commission issued an Opinion and Order ("First Opinion and Order") granting Columbia Gas of Ohio, Inc. ("Columbia") a general exemption of certain natural gas commodity sales services or ancillary services contained in Chapters 4905, 4909, and 4935, Revised Code. In that First Opinion and Order, the Commission adopted a Joint Stipulation and Recommendation ("2009 Stipulation") that, among other things, eliminated Columbia's gas cost recovery mechanism and replaced it with two annual Standard Service Offer ("SSO") auctions, followed by annual Standard Choice Offer ("SCO") auctions. (*See* First Opinion and Order at 7-8.) After a hearing, the Commission issued a Second Opinion and Order on September 7, 2011, in which it reaffirmed Columbia's transition to an SCO auction. Most provisions of the 2009 Stipulation were set to continue after the initial term of the 2009 Stipulation expires on March 31, 2013. (*See* First Opinion and Order at 11; 2009 Stipulation at 8.) Several provisions were set to expire on March 31, 2013, however.

Accordingly, Columbia's stakeholder group met for several months in 2012 to discuss these issues. Those discussions resulted in Columbia, Commission Staff, Ohio Gas Marketers Group ("OGMG"), Retail Energy Supply Association ("RESA"), and Dominion Retail, Inc. ("the Joint Movants") filing a Joint Motion to Modify Orders Granting Exemption ("Joint Motion") in this proceeding on October 4, 2012. The Joint Movants attached a Joint Stipulation and Recommendation ("Joint Stipulation"), which laid out their agreement to continue the 2009 Stipulation, with modifications, for a second, five-year term. Subsequently, after several weeks of additional negotiations and discussions with the Office of the Ohio Consumers' Counsel ("OCC"), the Joint Movants filed an Amended Joint Motion to Modify Orders Granting Exemption ("Amended Joint Motion") (Jt. Ex. 2). Attached to that Amended Joint Motion was an Amended Stipulation and Recommendation ("Amended Stipulation") (Jt. Ex. 1), which modified the Joint Stipulation to address several of OCC's concerns with the original filing. The Amended Stipulation proposed several modifications to the Commission's First Opinion and Order and Second Opinion and Order ("the Exemption Orders") for the period from April 1, 2013, through March 31, 2018, including:

- establishing a new $0.06/Mcf security deposit for winning SCO suppliers, to cover any expenses incurred by Columbia as the result of a supplier default;

- reducing the Balancing Fee to $0.27/Mcf and charging it directly to customers, while prohibiting CHOICE suppliers from including the prior $0.32/Mcf Balancing Fee in their rates after April 1, 2013;

- adjusting Columbia's firm city gate interstate and intrastate pipeline transportation and storage capacity and terminating certain capacity contracts;

- reducing the amount of revenue from off-system sales and capacity release that Columbia can recover each year from $20 million to $14 million and imposing a total recovery limit of $55 million for the next five-year term;

- authorizing Columbia to exit from the merchant function for CHOICE-eligible non-residential customers if at least 70% of those customers participate in Columbia's CHOICE program for at least three consecutive months;

- allowing Columbia to file an application to exit from the merchant function for CHOICE-eligible residential customers, if at least 70% of those customers participate in Columbia's CHOICE program for at least three consecutive months and Columbia has already exited the merchant function for non-residential customers at least twenty-two months earlier;

- establishing a Monthly Variable Rate ("MVR") program to provide commodity service, after an exit from the merchant function, for CHOICE-eligible customers who have not selected a CHOICE supplier and are not served through a government aggregation program; and,

- authorizing Columbia to recover, through the CSRR, IT programming expenses that Columbia will incur to expand its billing options for CHOICE customers.

On January 9, 2013, after a multi-day hearing on the Amended Joint Motion and Amended Stipulation and extensive briefing, the Commission issued an Opinion and Order granting the Amended Joint Motion and approving, in full, the Amended Stipulation of the parties.

Two of the intervenors in that proceeding, Ohio Partners for Affordable Energy ("OPAE") and Hess Corporation ("Hess") have filed applications for rehearing challenging the Commission's Opinion and Order in whole or in part. OPAE asserts, as it did unsuccessfully in its post-hearing brief, that the Amended Joint Motion fails to comply with the Ohio Revised Code's or the Ohio Administrative Code's requirements for exemption proceedings. OPAE argues, again, that allowing Columbia to exit the merchant function for non-residential customers and instituting a new security fee for SCO Suppliers would not advance the State's energy deregulation policies or serve the public interest. And, OPAE reasserts that the Amended Stipulation should not have been approved because the Joint Movants invited OPAE only to attend "collaborative meetings," not real "settlement meetings." Hess, on the other hand, accepts the Commission's authority to modify its prior Exemption Orders and the majority of the Commission's Opinion and Order. Hess challenges only the Commission's adoption of a $0.06/Mcf security requirement for SCO Suppliers.[1]

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[1] Hess also asks the Commission to modify the minimum MVR customer allocation and seeks clarification regarding various points of the allocation methodology. As Columbia has already, in its Application for Rehearing with OGMG and RESA, sought a modification to the minimum MVR allocation, and does not oppose added clarity regarding the Commission's chosen MVR allocation methodology, this Memorandum Contra focuses on the portion of Hess's application for rehearing that challenges Columbia's new security requirement for SCO Suppliers.

As this Commission held in its January 9th Opinion and Order, the Amended Joint Motion met the requirements of Section 4929.08, Revised Code, and Rule 4901:1-19-12, Ohio Admin. Code ("O.A.C."). The Amended Stipulation also met the Commission's requirements for approval of a stipulation. Neither the non-residential exit, should it occur, nor the new SCO security deposit would violate any important regulatory principle or practice, and both would benefit ratepayers and the general public. For the reasons provided below, OPAE and Hess's applications for rehearing should be denied.

ARGUMENT

1. The Commission Properly Exercised Its Authority To Modify Its Exemption Orders.

1.1. The 2009 Stipulation and inherent Commission authority permitted the Commission to grant the Joint Motion and approve the Amended Stipulation.

OPAE first argues, as it did in its post-hearing brief (*see* OPAE Brief at 11-14), that the only proper way for the Joint Movants to extend and modify the terms of the 2009 Stipulation was by filing an entirely new application for exemption under Section 4929.04, Revised Code. (OPAE Application at 6-9.) OPAE argues that "[t]he term of the 2009 Order expires on March 31, 2013" and that, accordingly, the Joint Movants' effort to set the terms and conditions for the next 5 years required the filing of an application for a new exemption under R.C. 4929.04. (*Id.* at 7.) These rehashed arguments mischaracterize the 2009 Stipulation, misinterpret the scope of Commission authority, and disregard Commission precedent.

OPAE's assertion that "[a] filing under R.C. Section 4929.04 is the only lawful way for the joint movants to achieve a new term" (*id.* at 8) is baseless – OPAE fails to provide a citation to any statute, regulation, or court or Commission opinion that supports its position. It also rests on a false premise. The term of the First Opinion and Order does not expire on March 31, 2013, as OPAE asserts. (*See id.* at 6.) Instead, the "*initial* term" of the 2009 Stipulation expires on March 31, 2013, "after which [most of] the provisions of the Stipulation" were set to "continue until modified by the Commission * * *." (First Opinion and Order at 11, *citing* 2009 Stipulation at 8 (emphasis added).) The Amended Stipulation, in other words, simply modified certain provisions of the 2009 Stipulation for the next five years (April 1, 2013, to March 31, 2018). (*See*

Amended Stipulation ¶5 (Jt. Ex. 1).) Those modifications did not extend the 2009 Stipulation for a new term and they did not require a new exemption application.

Instead, the Commission properly concluded that "joint movants appropriately filed this application and joint motion under Section 4929.08, Revised Code * * *." (Opinion and Order at 10.) The Commission's holding was consistent with other recent cases in which the Commission relied on Section 4929.08, Revised Code, in modifying prior exemption orders. *See In the Matter of the Application to Modify, in Accordance with Section 4929.08, Revised Code, the Exemption Granted to The East Ohio Gas Company d/b/a Dominion East Ohio in Case No. 07-1224-GA-EXM*, Case No. 11-6076-GA-EXM, Opinion and Order, at 5 (Feb. 14, 2012); *In the Matter of the Application and Joint Stipulation and Recommendation of Vectren Energy Delivery of Ohio, Inc., for Approval of its Exemption Authority Granted in Case No. 07-1285-GA-EXM*, Case No. 12-483-GA-EXM, Opinion and Order, at 5 (May 16, 2012). OPAE simply ignores these holdings.

OPAE similarly ignores the additional grounds the Commission could have relied upon for reconsidering the Exemption Orders. As a general matter, "the Commission retains the authority to modify a prior order adopting a stipulation," if there are "sufficient grounds" to do so. *In the Matter of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 12-1230-EL-SSO, Opinion and Order at 42 (July 18, 2012). *Cf. In the Matter of the Commission Review of the Capacity Charges of Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2929-EL-UNC, Entry on Rehearing, ¶39 (Oct. 17, 2012) (reaffirming the Commission's authority to modify a mechanism established in a prior Commission order). Indeed, the 2009 Stipulation specifically allowed the Commission to grant modifications to the exemption's terms for the period after the 2009 Stipulation's initial term. (*See* 2009 Stipulation at 8.) Thus, Section 4929.08(A), the Commission's general powers, and the Commission-approved 2009 Stipulation all gave the Commission the authority that it exercised to modify the 2009 Stipulation. OPAE's renewed attacks on the Commission's jurisdiction to consider the Joint Motion fall flat, as they did before.

1.2. The Joint Movants Fulfilled The Requirements of Section 4929.08(A), Revised Code, and Rule 4901:1-19-12, Ohio Admin. Code.

OPAE also argues again that the Joint Movants did not meet the standards for modifying an exemption order under Section 4929.08, Revised Code, and Rule 4901:1-19-12, O.A.C. (OPAE Application at 11; *compare* OPAE Brief at 15-16.) To the contrary, the Joint Movants met each of the requirements of the statute and the Commission rule, to the extent those requirements applied to this proceeding.

Section 4929.08(A), Revised Code, provides, in relevant part:

> The public utilities commission has jurisdiction over every natural gas company that has been granted an exemption or alternative rate regulation under section 4929.04 or 4929.05 of the Revised Code. As to any such company, the commission, upon its own motion or upon the motion of any person adversely affected by such exemption or alternative rate regulation authority, and after notice and hearing and subject to this division, may abrogate or modify any order granting such an exemption or authority only under both of the following conditions:
>
> (1) The commission determines that the findings upon which the order was based are no longer valid and that the abrogation or modification is in the public interest * * *.

Section 4929.08(A), Revised Code. The Commission's rules similarly provide that a "complainant" filing an "application to modify or abrogate an order granting an exemption" should explain:

> (a) Which portion(s) of the separation plan the applicant has failed to comply with and how the applicant has failed to comply.
>
> (b) Which portion(s) of the code of conduct the applicant has failed to comply with and how the applicant has failed to comply.
>
> (c) How the complainant has been adversely affected by such exemption.
>
> (d) Which findings of the order granting the exemption are no longer valid and why.

(e) How the modification or abrogation of the order granting the exemption is in the public interest.

Rule 4901:1-19-12(A)(1), O.A.C. Subparagraphs (a) and (b) of Rule 4901:1-19-12(A)(1) are inapplicable here, because the Joint Movants have not asserted that Columba failed to comply with its separation plan or code of conduct. Without those subparagraphs, the statute and the rule require the same basic information: a showing that the movants were "adversely affected" by the prior exemption orders, that the findings upon which the orders were based are no longer valid, and that the requested modification is in the public interest. As the Commission correctly concluded (*see* Opinion and Order at 10), the Joint Movants provided each of these categories of information.

1.2.1. The Joint Movants demonstrated that the findings underlying the First Opinion and Order were no longer valid And that they would be adversely affected by the continued operation of the First Opinion and Order.

As required, the Joint Movants demonstrated that some of the findings underlying the First Opinion and Order are out-of-date. In particular, the Joint Movants showed that when the Commission approved the 2009 Stipulation, the SSO and SCO auctions were new and the shale gas boom had not yet begun. As OPAE rightly points out, the First Opinion and Order did not even contemplate "the advent of shale gas production in Ohio and its impact on Columbia's capacity contracts[.]" (OPAE Application at 13.)

The Joint Movants also demonstrated that the approved 2009 Stipulation adversely affected them, particularly by locking Columbia into a peak day capacity portfolio not geared to meet Columbia's needs after the 2009 Stipulation's initial term and by preventing Columbia from exiting the merchant function if participation in Columbia's CHOICE program met sufficient levels to warrant such an exit. (*See* Opinion and Order at 8, 10.) Accordingly, the Joint Movants met the first two requirements for modifying an exemption order.

1.2.2. The Joint Movants demonstrated that modification of the First Opinion and Order was in the public interest.

The Joint Movants also demonstrated that modifying the Exemption Orders would be in the public interest. The Joint Movants presented testimony demonstrating that the Amended Stipulation would, among other benefits:

- extend Columbia's SCO program for up to five years;

- ensure that customers would not be double-billed for Columbia's balancing fee;

- provide greater off-system sales/capacity release revenue to ratepayers, thereby lowering the CSRR;

- direct net revenues from certain new billing services provided by Columbia to the CSRR, thereby further lowering that rider rate;

- create a new security deposit for SCO Suppliers that, if not needed for default, would even further lower the CSRR;

- allow marketers to bring new products to market; and,

- provide greater transparency in customer billing.

(*See* Opinion and Order at 42-43.) The Commission further concluded that the modification would allow for a "progression * * * toward market-based commodity supply." (Opinion and Order at 43.) Therefore, the Joint Movants met each of the requirements of Section 4929.08, Revised Code, and Rule 4901:1-19-12, O.A.C.

OPAE, however, asserts that the Amended Stipulation contradicts state policy positions and thus is not in the public interest because the Commission's Opinion and Order would eliminate the SCO for non-residential customers. (OPAE Application at 15.) This, OPAE argues, would violate the "fundamental public policy to ensure customers the lowest possible price." (*Id.* at 17.) OPAE asserts that the SSO and SCO have traditionally offered lower prices than those available through bilateral contracts with gas marketers. (*Id.* at 16-19.) Finally, OPAE argues that eliminating the SCO would violate the public policies expressed in Section 4929.02(A), Revised Code. (*Id.* at 19-22.)

These arguments are not new. OPAE copied them almost verbatim from its post-hearing brief. (*See* OPAE Brief at 34-39 and 49-52.) Nor are OPAE's arguments correct.

First, the Commission's Opinion and Order does not "take[ ] away * * * a competitive option" (the SCO) from a "large number of customers," as OPAE asserts. (OPAE Application at 20.) Instead, the Commission's Opinion and Order will continue the SCO program for non-residential customers for another five years unless a substantial majority of them – 70% – choose for at least three consecutive months to enter into bilateral contracts with marketers instead. (Opinion and Order at 24.) According to OPAE's expert witness, CHOICE Suppliers "currently serve 26% of the industrial market [and] 52% of the commercial market[.]" (Harper Testimony at 21 (OPAE Ex. 2).) Thus, an exit would require a large increase in CHOICE participation among non-residential customers. If OPAE is correct that "[p]rice matters to * * * struggling small businesses" and industrial customers, "[b]ilateral contract prices are * * * higher than the SCO," and CHOICE Suppliers are not "offering their most innovative products now to attract [non-residential] customers" (OPAE Application at 17, 18, and 20), then OPAE has nothing to worry about. The non-residential exit will only occur if OPAE's arguments regarding the inherent attractiveness of the SCO are proven false.

Second, as Columbia explained in its post-hearing brief, OPAE's arguments regarding cost savings under the SCO program are misleading and ultimately irrelevant. OPAE's "shadow billing" figures include savings by residential customers (*see* Brown Testimony at 20 (Columbia Ex. 6)), which could not exit under the Commission's Opinion and Order without another application from Columbia and another full hearing. The figures compare dissimilar kinds of rates with dissimilar tax treatments. (*Id.*) And, the figures say nothing about future costs. (*Id.*) OPAE's testimony in this proceeding never established that the current state of successful competition would suffer or that prices would rise from discontinuance of the SCO.

Indeed, OPAE's own testimony suggests that the post-exit market will continue to be competitive. And this should be no surprise. To borrow a phrase from OPAE, the MVR Program "is simply a different approach to harnessing competition which obviates the need for regulation." (OPAE Application at 29 (describing the SCO).) Exiting the merchant function for non-residential customers would simply change the manner in which Columbia provides commodity gas service to CHOICE-eligible customers who do not choose a CHOICE Supplier or participate in a governmental aggregation. Under the SCO, those customers are assigned to an SCO Supplier, through an auction process. After an exit, those customers would be assigned instead to a Monthly Variable Rate (MVR) supplier, through the allocation methodology chosen by the

Commission. (*See* Opinion and Order at 36.)[2] Plus, any customer assigned to an MVR Supplier could switch to a CHOICE Supplier or join a government aggregation program – with no cancellation fee – if it were dissatisfied with the terms, conditions, or service the MVR Supplier provided. (*See id.* at 32.) This will lead to competition among the MVR Suppliers, as any MVR Suppliers with uncompetitive prices, terms, or conditions would stand to lose their assigned customers to their more-attractive CHOICE competitors. (*See*, *e.g.*, OGMG/RESA Brief at 4.) And, the MVR program retains one of the aspects of the SCO program that OPAE's expert witness credited most for keeping SCO rates low – the lack of customer acquisition (*i.e.*, marketing) costs. Stacia Harper explained that "there is no customer acquisition cost for marketers in the SCO process, so there is no need to build these costs into the bids." (Harper Testimony at 19 (OPAE Ex. 2).) Indeed, Ms. Harper testified that "[c]ustomer acquisition is one of the most significant costs CRNGS incur." (*Id.*) If this is true, then it follows that MVR Suppliers should offer low costs to MVR customers as well. MVR Suppliers will have no incremental customer acquisition costs; instead, Columbia will allocate customers to the MVR Suppliers based on the suppliers' existing CHOICE enrollment and historical SSO/SCO tranche ownership.

Regardless, OPAE's application for rehearing, like its prior, post-hearing brief, is based on the false premise that there is a state policy to "ensure customers the lowest possible price." In fact, "[i]t is the policy of this state to," among other things, "[p]romote the availability to consumers of adequate, reliable, and *reasonably* priced natural gas services and goods[.]" (Emphasis added.) R.C. 4929.02(A)(1). It is also state policy to "[p]romote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers"; "[r]ecognize the continuing emergence of competitive natural gas markets"; and "[p]romote 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" without the need for traditional regulation. R.C. 4929.02(A)(3), (6), and (7). Exiting the merchant function fulfills all of these policy goals. OPAE contends that an exit would violate these policies, but OPAE does not explain how the MVR Program would deprive "consumers of adequate, reliable, and reasonably priced natural gas services and goods" (Section 4929.02(A)(1)) or

[2] Consequently, the MVR Program would not "force unwilling customers to choose a supplier" and "allow a utility to choose a supplier for them" (OPAE Application at 22) any more than the SCO Program currently does.

prevent customers from finding "the supplier, price, terms, conditions, and quality options they elect to meet their respective needs" (Section 4929.02(A)(2)).

For all of these reasons, the Commission properly concluded that modifying its prior exemption orders to, among other things, allow for a potential future exit from the merchant function for non-residential customers was in the public interest.

2. The Commission Properly Concluded That The Amended Stipulation Met The Commission's Criteria For Evaluating Stipulations.

OPAE also argues, again, that the Amended Stipulation violated the Commission's three-part test for reviewing stipulations. (*Compare* OPAE Brief at 25-52.) OPAE is wrong again on this point as well.

2.1. The Amended Stipulation Was The Product Of Serious Bargaining.

OPAE argues, first, that the Amended Stipulation was "not the product of serious bargaining" because non-residential customers were "excluded from the settlement negotiations." (OPAE Application at 23.) The Commission has already rejected this argument, finding that "numerous and diverse interested and affected entities, including representatives of all customer classes, were invited to and participated in the meetings and negotiations leading up to the amended stipulation." (Opinion and Order at 41.) OPAE's application for rehearing offers nothing to contradict this finding. OPAE simply contends that the meetings it was invited to attend were not "real settlement negotiations" (OPAE Application at 25) and that the lack of serious bargaining is evident in the purportedly poor outcome achieved for non-residential customers. Noting that Columbia may exit from the merchant function for non-residential customers without filing another application with the Commission, OPAE opines, "There is no way a representative of non-residential customers would agree to this." (OPAE Application at 23-24.)

In writing its application for rehearing, OPAE apparently overlooked the comments submitted in the docket by the Council of Smaller Enterprises, which said:

> I am writing to you today on behalf of the Council of Smaller Enterprises ("COSE") a support organization for small businesses

> located in Northeast Ohio. COSE, on behalf of its 14,000 members, advocates on behalf of small business policies being discussed in the Congress, at the General Assembly, and in regulatory agencies as to matters that impact the small business community. * * *
>
> COSE would like to add its support to the Stipulation in the Columbia Case. COSE believes the MVR program would be a beneficial step towards bringing market pricing for natural gas to medium and small commercial customers in the Columbia Gas of Ohio service territory. Further, having both Columbia Gas of Ohio and Dominion East Ohio, the state's two largest natural gas utilities, using the same program for default natural gas supply would be a benefit especially to small businesses that have facilities in both service areas.

(COSE Statement of Support (Dec. 11, 2012).) COSE's declaration of support for the non-residential exit and the MVR Program simply confirms that OPAE's complaints about the settlement process in this proceeding, and the relative merits of the Amended Stipulation for non-residential customers, are groundless.

2.2. The Amended Stipulation, As A Package, Benefited Ratepayers And The Public.

OPAE next argues that the Amended Stipulation did not benefit ratepayers and the public interest. OPAE does not evaluate the settlement "as a package," as Commission precedent requires (*see* Opinion and Order at 40), and ignores the many public benefits listed in the Opinion and Order (*see id.* at 42-43). Instead, OPAE focuses on two aspects of the Amended Stipulation – Columbia's potential future exit from the merchant function for non-residential customers and the new security deposit for SCO Suppliers. Hess, too, in its application for rehearing, argues that the new security deposit for SCO Suppliers is contrary to law and unsupported by the evidence. None of these arguments warrants a reversal on rehearing.

2.2.1. The potential future exit from the merchant function for non-residential customers will benefit ratepayers and the public.

With regard to the potential future non-residential exit, OPAE argues that the exit would not benefit ratepayers and the public interest because it would eliminate a competitive option. (*See*, *e.g.*, OPAE Application at 30.) Taken to its logical conclusion, OPAE's argument would mean that an SSO or SCO program, once established, may never be dissolved. Needless to say, OPAE does not support that position with any citation to case law or Commission precedent. Instead, OPAE simply points to the declaration of state policy in Section 4929.02(A), Revised Code. OPAE argues that the SCO fulfills the state's policies – a point that no party is disputing – and summarily asserts that the MVR Program would violate the policy expressed in Section 4929.02(A)(3). (OPAE Application at 29.) But OPAE does not explain how ending the SCO Program and moving to an MVR Program would deprive "consumers [of] effective choices over the selection of [natural gas] supplies and suppliers[.]" (R.C. 4929.02(A)(3).) Instead, OPAE simply accuses the Joint Movants of trying to "squelch competition and harm commercial consumers." (*Id.* at 30.) OPAE's argument here is, again, undermined by COSE's declaration of support for the non-residential exit, which it says "would be a beneficial step towards bringing market pricing for natural gas to medium and small commercial customers in the Columbia Gas of Ohio service territory" and help standardize the programs for "the state's two largest natural gas utilities." (COSE Statement of Support (Dec. 11, 2012).) Absent any new explanation of the manner in which an exit for non-residential customers, following a sustained increase in CHOICE participation among such customers, would hurt ratepayers and the public, the Commission should disregard OPAE's arguments.

2.2.2. The SCO Supplier security requirement will benefit ratepayers and the public.

With regard to the $0.06/Mcf security deposit that Columbia will require for winning SCO Suppliers, OPAE argues that the deposit is unnecessary because "[t]here has never been a default by an SCO Supplier" and because Columbia has other means to obtain security from SCO Suppliers. (OPAE Application at 31-33; *see also* Hess Application at 8-9.)

The Commission has already rejected OPAE's first argument. As the Commission held, "The point that, to date, there has been no supplier default in

Columbia's service territory is not reason enough to ignore the need to ensure that, if such an event happens in the future, customers are protected and the public interest is preserved." (Opinion and Order at 15.)

The Commission has already rejected OPAE's second argument as well. OPAE made the same points in its post-hearing brief, almost word for word. (*See* OPAE Brief at 43-45.) As explained in Columbia's post-hearing brief, the purpose of the security is to provide Columbia with a liquid account to meet any supply default expenses it incurs other than compensation to the non-defaulting SCO Suppliers. (Amended Stipulation at 4, §9 (Jt. Ex. 1).) Columbia's other, primary form of security, the $0.50/Mcf Letter of Credit that Columbia requires from each SCO Supplier, is "for the benefit of the other SCO Suppliers who receive an allocation of additional SCO supply requirements as a result of the default of the SCO Supplier that provided the security * * *." (Am. Rev. Program Outline § 15.5 at 19 (Columbia Ex. 2).) Columbia also "may make reasonable alternative credit arrangements with an SCO Supplier that is unable to meet the [regular creditworthiness] criteria and with those SCO Suppliers whose security requirements exceed their allowed unsecured credit limit." (*Id.* § 15.2 at 18.) Neither of these latter forms of security, however, serves the same purpose as the new $0.06/Mcf fee. And, as noted in Columbia's pre-filed testimony, "any unused portion of that liquid deposit account at the end of each Program Year becomes a credit to the CSRR," thereby decreasing costs for other customers. (Brown Testimony at 8 (Columbia Ex. 6).) For all of these reasons, the new security deposit for SCO suppliers that the Commission has approved will benefit Columbia, ratepayers, and the public.

2.3. The Amended Stipulation Did Not Violate Any Important Regulatory Principle or Practice.

Lastly, OPAE argues that the stipulation violates the state policies enunciated at Section 4929.02(A), Revised Code, and ignores the statutory and regulatory procedural requirements for modifying exemption orders. (*See* OPAE Application at 33.) Columbia has already explained above why the Commission was correct to conclude that the Joint Movants' Amended Joint Motion satisfied the requirements of Section 4929.08(A), Revised Code, and Rule 4901:1-19-12, O.A.C. Columbia has also explained why the Commission's Opinion and Order furthers, not hinders, the policies in Section 4929.02(A). OPAE's legal arguments warrant no further reconsideration here.

Hess, separately, argues that the SCO security deposit violates the code of conduct in Columbia's tariff and various public policies listed in Section 4929.02(A). (Hess Application at 13-16.) Hess asserts that charging a $0.06/Mcf security deposit to SCO Suppliers, but not CHOICE Suppliers, violates paragraph 22.1(3) of the code of conduct in Section VII of Columbia's tariff. (*Id.* at 13-14.) Hess then argues that the deposit "provides undue preferences to Choice Suppliers and customers, and undue disadvantages to SCO Suppliers and their customers[,] in violation of * * * the pro-competitive policies of * * * Sections 4929.02(A)(1), (2), (3), (7), and (8)." (*Id.* at 14.)

The most immediate fault with Hess's argument is that Columbia's code of conduct does not apply to any alleged discrimination between SCO Suppliers and CHOICE Suppliers. The portion of Columbia's tariff that governs its SCO Program is Section VIII. The code of conduct that Hess quotes is in Section VII, and applies only to Columbia's "Marketing Affiliates and Internal Merchant Operations" in the "operation of [Columbia's] Customer CHOICE[sm] Program[.]" (Tariff, P.U.C.O. No. 2, First Revised Sheet No. 22, ¶22.1.) The paragraph from the tariff that Hess quotes specifically prohibits Columbia from giving any CHOICE Supplier or governmental aggregator (or their customers) "preference in matters, rates, information, or charges relating to transportation service[.]" (*Id.* ¶22.1(3).) Hess argues that Columbia is discriminating against its SCO Suppliers, in preference to its CHOICE Suppliers, but Hess has not argued that Columbia is discriminating *between* its CHOICE Suppliers. In other words, Hess has not argued that Columbia has provided a preference to any CHOICE Supplier (or its customers) over any other CHOICE Supplier. Accordingly, Columbia's code of conduct for its CHOICE Program is irrelevant.

Hess also offers no support for its argument that the SCO security deposit violates the state policies expressed in Section 4929.02(A), Revised Code. Hess asserts that the SCO security deposit is not "pro-competitive" or "is * * * inconsistent with prevailing state policy to 'achieve effective competition' in Ohio's retail natural gas market[.]" (Hess Application at 5, 14.) But, Hess fails to explain what it means by "pro-competitive" or "effective competition." Hess also fails to point to any evidence in the record that supports its interpretation of Section 4929.02, Revised Code, or that demonstrates that competition after the imposition of the security deposit would not be "effective."

Instead, Hess simply argues that imposing a security requirement on SCO Suppliers will "force[ ]" them to "build the $0.06 per Mcf charge into their SCO bids each year," thereby "making Choice suppliers' offers more competitive * * * vis-à-vis SCO supply" and "penaliz[ing] SCO customers by subjecting them to higher prices." (*Id.* at 14.) Yet, this argument is based on a number of assumptions, the most central of which was contested in the record.

SCO Suppliers will not be "forced to increase their SCO bids by $0.06 per Mcf * * *." (*Id.*) OGMG/RESA's expert witness, Vincent Parisi, testified that "any [SCO] supplier could make the election * * * to * * * not include the [security charge] in its bid price." (Parisi Testimony at 21 (OGMG/RESA Ex. 3).) If the SCO Suppliers do not increase their bids, then the SCO customers will not pay higher prices.

If the SCO Suppliers *do* increase their bids to make up for the security deposit, on the other hand, the record suggests that an SCO customer using 85 Mcf/year of natural gas would pay an additional $5.10 per year (Vol. II, p. 118), or approximately 43¢ more per month. Moreover, as Hess acknowledges, "a portion of the unused funds [generated from the SCO security deposit] would be returned to SCO customers [through the CSRR rider]." (Hess Application at 14.) It is probably safe to assume that a price increase for SCO customers of less than 43¢/month will not have an undue impact on competition generally, or on SCO Suppliers or customers specifically. Regardless, without any information regarding the price advantage that SCO Suppliers currently have over the average CHOICE Supplier, or any countervailing estimate of the SCO security deposit's likely impact on SCO enrollment or SCO rates, Hess cannot demonstrate that the SCO security deposit is anti-competitive.

Hess also fails to disprove Columbia's justification for imposing the security requirement on SCO Suppliers but not CHOICE Suppliers. Hess argues that the potential costs of an SCO Supplier default are not significantly greater than for a CHOICE supplier default. Hess's only support for that proposition, however, is that "one extremely large" CHOICE supplier defaulted in the past, and "at least one" CHOICE supplier is currently "serving more load than SCO suppliers serving four tranches[.]" (Hess Application at 15.) Although there are exceptions to any rule, the existence of outliers does not disprove the general rule. By negative implication, Hess's argument acknowledges that the vast majority of CHOICE Suppliers are serving less load than the majority of SCO Suppliers.

Hess then goes on to argue that the risk to Columbia associated with an SCO supplier default is not more immediate than the risk associated with a CHOICE supplier default, because "[t]he Second Revised Program Outline calls for Columbia to supply *all* customers (Choice and SCO) if a supplier that has SCO and Choice load defaults." (*Id.* at 16.) It is unclear what Hess's point here is. Under Columbia's Tariff, if a CHOICE Supplier defaults, the SCO Suppliers are required to take on up to 50% of their initial annual delivery requirements established in the SCO Auction, in the event that the defaulting Supplier's customers and their requirements are not absorbed by other CHOICE Suppliers. (Tariff, P.U.C.O. No. 2, Section VIII, Second Revised Sheet No. 7, Page 1 of 2, § 7.1(5)(A).) In other words, a CHOICE Supplier default would be absorbed in the first instance by the SCO Suppliers. (Brown Testimony at 9 (Columbia Ex. 6).) Thus, SCO Suppliers provide a buffer that absorbs supply obligations of the defaulting CHOICE Suppliers. Columbia remains the provider of last resort for unmet delivery requirements. There is no similar, additional layer of protection standing between defaulting SCO Suppliers and Columbia. An SCO Supplier default would be absorbed in the first instance by the *remaining* SCO Suppliers, up to an amount not to exceed 150% of each SCO Supplier's initial annual delivery requirement. (Amd. Rev. Program Outline § 16.5.i. (Columbia Ex. 2).) If, due to the 150% limit, the allocation described above did not result in all of the unassigned demand being assigned to nondefaulting SCO Suppliers, then Columbia would supply the remaining demand. (*Id.* § 16.5.ii.) In short, an SCO Supplier default would leave fewer other suppliers to absorb that Supplier's demand than a default by a CHOICE Supplier. The $0.06/Mcf deposit gives Columbia some security to mitigate the risk of SCO Supplier default and the costs to Columbia that result. (Brown Testimony at 8.) The evidence demonstrates that there is a sound basis for treating the SCO Suppliers differently with regard to the security deposit.

3. The Commission Adequately Explained Its Conclusions.

Finally, Hess argues that the Commission's ruling on the $0.06/Mcf security deposit for SCO Suppliers failed to satisfy Section 4903.09, Revised Code. (Hess Application at 5-7.) Section 4903.09 states, in its entirety:

> In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

Section 4903.09, Revised Code.

To demonstrate that the Commission failed to meet the standard set forth in this statute, Hess would have to demonstrate that "the commission * * * failed to explain a material matter[.]" *In re Application of Columbus Southern Power Co. et al.*, 128 Ohio St.3d 512, 2011-Ohio-1788, ¶ 71. The Supreme Court of Ohio has held that "strict compliance with the terms of [Section 4903.09] is not required." *Payphone Assn. v. Pub. Util. Comm.*, 109 Ohio St.3d 453, 2006-Ohio-2988, 849 N.E.2d 4, ¶ 32, *citing Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 89, 706 N.E.2d 1255 (1999). Instead, "[t]he detail need be sufficient only for [the Supreme Court] to determine the basis of the PUCO's reasoning." *Id.*, *citing Allnet Communications Serv., Inc. v. Pub. Util. Comm.*, 70 Ohio St.3d 202, 209, 638 N.E.2d 516 (1994). "The PUCO is required only to set forth 'some factual basis and reasoning based thereon in reaching its conclusion.'" *Id.*, *quoting Allnet Communications* at 209.

The Commission met that standard. The Commission's Opinion and Order explains the provisions of the Amended Stipulation that proposed the SCO Supplier security deposit; described the arguments of Columbia, OGMG, and RESA in support of the deposit, with citations to the record; described the arguments of OPAE and Hess in opposition to the deposit, with citations to the record; and then explained that it agreed with OGMG and RESA's arguments. (Opinion and Order at 12-15.) The Commission further explained that it concluded that a security deposit is necessary to "ensur[e] that there are adequate liquid accounts available, in the event of a default." (*Id.* at 15.) To the extent that the Commission feels a fuller explanation is warranted for its conclusion that "the transfer of any remaining funds to the CSRR is acceptable and a reasonable compromise," it can provide such an explanation in its entry on rehearing. *See*, *e.g.*, *In re Application of Columbus Southern Power Co.*, 2011-Ohio-1788, ¶ 71. The purported lack of an explanation in the Commission's Opinion and Order is not, however, any basis for reversing the Commission's conclusions on the security deposit.

CONCLUSION

OPAE and Hess's applications for rehearing provide this Commission with no new grounds to reconsider its prior conclusions. For all of the reasons expressed above, Columbia Gas of Ohio, Inc. respectfully requests that the Commission reject the Applications for Rehearing of Ohio Partners for Affordable Energy and Hess Corporation and affirm the Commission's prior approval of the Amended Stipulation (along with the Revised Program Outline and tariffs) modifying the Commission's prior exemption orders.

Respectfully submitted,

/s/ Stephen B. Seiple

Stephen B. Seiple (Counsel of Record),
Assistant General Counsel
Brooke E. Leslie, Counsel
200 Civic Center Drive
P. O. Box 117
Columbus, Ohio 43216-0117
Telephone: (614) 460-4648
(614) 460-5558
Fax: (614) 460-6986
Email: sseiple@nisource.com
bleslie@nisource.com

Daniel R. Conway
Mark S. Stemm
Eric B. Gallon
Porter Wright Morris & Arthur LLP
Huntington Center
41 South High Street
Columbus, Ohio 43215
Telephone: (614) 227-2270
(614) 227-2092
(614) 227-2190
Fax: (614) 227-2100
Email: dconway@porterwright.com
mstemm@porterwright.com
egallon@porterwright.com

Attorneys for Movant
COLUMBIA GAS OF OHIO, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Memorandum Contra of Columbia Gas of Ohio, Inc. was served by electronic mail upon the following parties this 19th day of February, 2013:

Stephen Reilly
Assistant Attorney General,
Public Utilities Section
Ohio Attorney General Mike DeWine
180 East Broad Street, 6th Floor
Columbus, Ohio 43215-3793
stephen.reilly@puc.state.oh.us

Attorney for
STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

M. Howard Petricoff
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street
P.O. Box 1008
Columbus, OH 43216-1008
mhpetricoff@vorys.com

Attorney for
OHIO GAS MARKETERS GROUP, RETAIL ENERGY SUPPLY ASSOCIATION

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
BarthRoyer@aol.com

Attorney for
DOMINION RETAIL, INC.

Dane Stinson, Esq.
Bailey Cavalieri LLC
10 West Broad Street, Suite 2100
Columbus, Ohio 43215
Dane.Stinson@BaileyCavalieri.com

Attorney for
HESS CORPORATION

A. Brian McIntosh
McIntosh & McIntosh
1136 Saint Gregory Street, Suite 100
Cincinnati, Ohio 45202
brian@mcintoshlaw.com

Attorney for
STAND ENERGY CORPORATION

Colleen Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
cmooney@ohiopartners.org

Attorney for
OHIO PARTNERS FOR AFFORDABLE ENERGY

Larry S. Sauer
Joseph P. Serio
Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
sauer@occ.state.oh.us
serio@occ.state.oh.us

Attorneys for
OFFICE OF THE OHIO CONSUMERS' COUNSEL

Glenn S. Krassen
Bricker & Eckler LLP
1001 Lakeside Ave. East, Suite 1350
Cleveland, Ohio 44114
gkrassen@bricker.com

Matthew W. Warnock
Bricker & Eckler LLP
100 S. Third Street
Columbus, Ohio 43215
mwarnock@bricker.com

Attorneys for
NORTHEAST OHIO PUBLIC ENERGY COUNCIL and
OHIO SCHOOLS COUNCIL

John L. Einstein, IV
790 Windmiller Drive
Pickerington, Ohio 43147
jeinstein@volunteerenergy.com

Attorney for
VOLUNTEER ENERGY SERVICES, INC.

Joseph M. Clark
6641 North High Street, Suite 200
Worthington, Ohio 43085
joseph.clark@directenergy.com

ATTORNEY FOR DIRECT ENERGY SERVICES, LLC AND DIRECT ENERGY BUSINESS, LLC

Matthew White
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, Ohio 43016
mswhite@igsenergy.com

Attorney for
INTERSTATE GAS SUPPLY, INC.

M. Anthony Long
Senior Assistant Counsel
Honda of America Mfg., Inc.
24000 Honda Parkway
Marysville, OH 43040
Tony_Long@ham.honda.com

Attorney for
HONDA OF AMERICA MFG., INC.

/s/ Eric B. Gallon
Eric B. Gallon