BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

SECOND APPLICATION FOR REHEARING OF COLUMBIA GAS OF OHIO, INC.

Pursuant to Section 4903.10, Revised Code ("R.C."), and Rule 4901-1-35, Ohio Administrative Code ("O.A.C."), Columbia Gas of Ohio, Inc. ("Columbia") respectfully files this Second Application for Rehearing of the Commission's February 27, 2013 Entry on Rehearing issued in the above-captioned proceeding. The Commission's February 27, 2013 Entry on Rehearing is unreasonable and unlawful because the Commission's revisions to the first paragraph of Rule 4901:1-19-06(C), O.A.C., unlawfully add to the requirements of the statute, contradict the revisions to R.C. 4929.05 effected by Am. Sub. H.B. 95, impose procedural requirements that are contrary to law, and fail to give proper effect to both R.C. 4929.05 and R.C. 4909.18.

For these reasons, as explained in detail in the attached Memorandum in Support, the Commission should grant this Application for Rehearing and further modify amended Rule 4901:1-19-06(C) so that it comports with Ohio law.

Respectfully submitted by
COLUMBIA GAS OF OHIO, INC.

/s/ Stephen B. Seiple

Eric B. Gallon
Christen M. Blend
Porter Wright Morris & Arthur LLP
Huntington Center
41 South High Street
Columbus, Ohio 43215
Tel: (614) 227-2190/2086
Fax: (614) 227-2100
Email: egallon@porterwright.com
cblend@porterwright.com

Stephen B. Seiple, Assistant General Counsel
Brooke E. Leslie, Counsel
200 Civic Center Drive
Columbus, OH 43216-0117
Tel: (614) 460-4648
Fax: (614) 460-6986
Email: sseiple@nisource.com
bleslie@nisource.com
Attorneys for
COLUMBIA GAS OF OHIO, INC.

MEMORANDUM IN SUPPORT

1. INTRODUCTION

Columbia sincerely appreciates the Commission's reconsideration of the issues that Columbia identified in its application for rehearing of the Commission's December 12, 2012 Finding and Order in this proceeding ("First Application for Rehearing"). The Commission's additional revisions to Rules 4901:1-19-06(C) and 4901:1-19-07(C) and (D), O.A.C., address the majority of Columbia's concerns regarding the rule revisions that remained after the December 12, 2012 Finding and Order and meaningfully improve Chapter 4901:1-19, O.A.C. A portion of the Commission's February 27, 2013 Entry on Rehearing, however, continues to present legal concerns.

Specifically, the Commission's modifications to the first paragraph of amended Rule 4901:1-19-06(C), O.A.C. remain in conflict with the law that the rule implements. Rule 4901:1-19-06(C), O.A.C. continues to require a natural gas company essentially to prepare and file a base rate proceeding as a condition of filing any alternative rate plan application that "seek[s] an increase in amounts collected from ratepayers due to infrastructure investment." Entry on Rehearing at 4 (Feb. 27, 2013). Although Columbia appreciates the Commission's efforts to narrow the scope of the rule, the requirements that the rule continues to impose upon alternative rate plan applications for infrastructure investment are contrary to law and do not comport with the General Assembly's intent in enacting Am. Sub. H.B. 95. Moreover, compliance with the rule's requirements will impose substantial costs that will discourage natural gas companies from availing themselves of the alternative rate plan option that the General Assembly plainly afforded them through the recent changes to R.C. 4929.05. Columbia respectfully requests that the Commission grant rehearing and further revise Rule 4901:1-19-06(C), O.A.C. in order to correct these issues.

2. BACKGROUND

On December 12, 2012, the Commission issued its Finding and Order adopting amendments to Rules 4901:1-19-01 through 4901:1-19-13, O.A.C. Columbia and the Office of the Ohio Consumers' Counsel each filed applications for rehearing of the December 12, 2012 Finding and Order. In its First Application for Rehearing, Columbia explained that amended Rules 4901:1-19-06(C) and 4901:1-19-07(C) and (D), O.A.C., were unreasonable and unlawful because they (1) contradicted the revisions to R.C. 4929.05 effected by Am. Sub. H.B. 95,

(2) imposed procedural requirements that were contrary to law, and (3) failed to give proper effect to R.C. 4929.05 and 4909.18. (First Appl. for Rehearing at 4-9 (Jan. 11, 2013).) On February 27, 2013, the Commission issued its Entry on Rehearing, revising certain of the amended rules that it previously adopted.

3. ARGUMENT

In its February 27, 2013 Entry on Rehearing, the Commission agreed, *inter alia*, that "Columbia's application for rehearing concerning amended Rule 4901:1-19-06(C), O.A.C. is reasonable and should be granted, in part." Entry on Rehearing at 4 (Feb. 27, 2013). The Commission declined, however, to grant Columbia's request to delete Rule 4901:1-19-06(C)(1) and (2) in their entirety. Instead, the Commission found that "a more appropriate solution is to modify Rule 4901:1-19-06(C), O.A.C. to clarify which portion applies to alternative rate plan applications that seek an increase in amounts collected from ratepayers due to infrastructure investment." *Id.*

Columbia appreciates the Commission's consideration of and agreement with many of the issues that Columbia identified in its First Application for Rehearing. The February 27, 2013 Entry on Rehearing's revision to Rule 4901:1-19-06(C), O.A.C., however, is unreasonable and unlawful for many of the reasons that Columbia identified in its First Application for Rehearing. The revised rule continues to subject alternative rate plan applications seeking an increase in amounts collected due to infrastructure investment to the filing requirements applicable to a base rate case.

Columbia explained in its First Application for Rehearing why it is unreasonable and unlawful for the Commission to impose base rate case filing requirements and other requirements that are not applicable to alternative rate plans under existing statute. (*See* First Appl. for Rehearing at 4-8 (Jan. 11, 2013).)[1] As Columbia previously noted, Am. Sub. H.B. 95 deleted R.C. 4929.05's prior requirement that the Commission determine just and reasonable rates "pursuant to" R.C. 4909.15 when considering an alternative rate plan application. *See* Am. Sub. H.B. 95 at 19.[2] Instead, an alternative rate plan need only be "just and reasonable." *Id.* at 20; R.C. 4929.05(B)(3). The Commission's Entry on Rehearing rec-

[1] Columbia incorporates by reference its First Application for Rehearing, to the extent applicable to the February 27, 2013 Entry on Rehearing's revision to the first paragraph of Rule 4901:1-19-06(C), O.A.C., as if fully rewritten herein.

[2] A copy of Am. Sub. H.B. 95, as enacted, is available at http://www.legislature.state.oh.us/BillText129/129_HB_95_EN_N.pdf.

ognized this change in the statute, deleting the requirement that alternative rate plans be determined to be just and reasonable pursuant to R.C. 4909.15 and narrowing the scope of alternative rate plan applications that must satisfy the requirements in Rule 4901:1-19-06(C). *See* Entry on Rehearing at 4-5 (Feb. 27, 2013). Yet, the latest revision to Rule 4901:1-19-06(C) still does not fully reflect the changes to R.C. 4929.05.

As Columbia discussed in its First Application for Rehearing, the latest revisions to Rule 4901:1-19-06(C) still fail to give proper effect to both R.C. 4929.05 and R.C. 4909.18 because the rule continues to impose the substantive standards applicable to base rate plan applications upon alternative rate plan applications. (*See* First Appl. for Rehearing at 8-9 (Jan. 11, 2011).) Those requirements are inconsistent with the specific substantive standards governing alternative rate plan applications set forth in R.C. 4929.05. *See* R.C. 4929.05(A)(1)-(3) (stating that the Commission "shall" approve an alternative rate plan if three specific showings – none of which require a base rate determination – are made). Where two statutes appear to impose inconsistent requirements, the Commission should apply the more specific provision rather than the more general rule. *Summerville v. Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, ¶ 26-27; R.C. 1.51. The base ratemaking requirements of R.C. 4909.18, therefore, should apply to alternative rate plan applications only to the extent that it is consistent with R.C. 4929.05. It should not be construed to impose additional, inconsistent requirements upon applicants, particularly when Am. Sub. H.B. 95 expressly eliminated such requirements.

Finally, the rule still requires all alternative rate plan applications for infrastructure investment to include "the exhibits described in divisions (A) to (D) of [R.C.] 4909.18" and "standard filing requirements pursuant to rule 4901-7-01 of the Administrative Code." *See* Entry on Rehearing, Attach. A at 9 (Feb. 27, 2013). These requirements contradict Am. Sub. H.B. 95 because they impose the filing requirements applicable to an application for an increase in rates to alternative rate plan applications for infrastructure investment that are statutorily considered to be applications "not for an increase in rates." *See* R.C. 4929.051 (amended in Am. Sub. H.B. 95 at 20). These filing requirements, as Columbia explained previously, are costly, time-consuming, and burdensome to comply with.

4. CONCLUSION

For the reasons set forth above, Columbia respectfully requests that the Commission grant rehearing and revise the first paragraph of Rule 4901:1-19-06(C). Columbia continues to believe and assert that the first two, unnumbered paragraphs of Rule 4901:1-19-06(C)(1) are legally improper and inconsistent with the General Assembly's intent in promulgating Am. Sub. H.B. 95, and thus should be deleted. Nonetheless, Columbia believes the following minor revisions to the first paragraph of Rule 4901:1-19-06(C) should suffice to resolve the legal concerns presented by the Commission's most recent revisions to that rule:

> **Rule 4901:1-19-06**
>
> (C) *Exhibits to an alternative rate plan application.* To determine just and reasonable rates pursuant to section 4929.05 of the Revised Code, ~~F~~for alternative rate plan applications that are for an increase in any rate ~~amounts collected from ratepayers due to infrastructure investment, pursuant to section 4929.05 of the Revised Code, to determine just and reasonable rates~~, applicants shall submit the exhibits described in divisions (A) to (D) of section 4909.18 of the Revised Code, and standard filing requirements pursuant to rule 4901-7-01 of the Administrative Code (SFRs) when filing an alternative rate case unless otherwise waived by rule 4901:1-19-02(D) of the Administrative Code. An alternative rate plan application that proposes infrastructure investment shall be considered to be for an increase in any rate if the proposed rates, joint rates, tolls, classifications, charges, or rentals are not based upon the billing determinants and cost allocation methodology utilized by the public utilities commission in the applicant's most recent rate case proceeding.

By properly identifying and delimiting those alternative rate plan applications that the Commission determines to be an application for "an increase in any rate," the Commission can ensure that the filing requirements for base rate plan applications are not applied to alternative rate plan applications in a manner inconsistent with legislative intent.

Respectfully submitted by
COLUMBIA GAS OF OHIO, INC.

/s/ Stephen B. Seiple

Eric B. Gallon
Christen M. Blend
Porter Wright Morris & Arthur LLP
Huntington Center
41 South High Street
Columbus, Ohio 43215
Tel: (614) 227-2190/2086
Fax: (614) 227-2100
Email: egallon@porterwright.com
cblend@porterwright.com

Stephen B. Seiple, Assistant General Counsel
Brooke E. Leslie, Counsel
200 Civic Center Drive
Columbus, OH 43216-0117
Tel: (614) 460-4648
Fax: (614) 460-6986
Email: sseiple@nisource.com
bleslie@nisource.com

Attorneys for
COLUMBIA GAS OF OHIO, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of March, 2013, true and accurate copies of the foregoing Application for Rehearing of Columbia Gas of Ohio, Inc. were served via electronic mail upon the following parties:

William L. Wright
Section Chief
Devin D. Parram
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215
william.wright@puc.state.oh.us
devin.parram@puc.state.oh.us

Counsel for Staff of the Public Utilities Commission of Ohio

Mark A. Whitt
Andrew J. Campbell
Whitt Sturtevant LLP
The KeyBank Building
88 East Broad Street, Suite 1590
Columbus, Ohio 43215
whitt@whitt-sturtevant com
campbell@whitt-sturtevant.com

Counsel for The East Ohio Gas Company d/b/a Dominion East Ohio

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

Counsel for the Office of the Ohio Consumers' Counsel

Amy B. Spiller
Jeanne W. Kingery
Duke Energy Ohio, Inc.
139 E. Fourth Street, 1303-Main
P.O. Box 960
Cincinnati, Ohio 45201
amy.spiller@duke-energy.com
jeanne.kingery@duke-energy.com

Counsel for Duke Energy Ohio, Inc.

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

Counsel for the Ohio Gas Marketers Group and the Retail Energy Supply Association

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
Findlay, Ohio 45840
cmooney2@columbus.rr.com

Counsel for Ohio Partners for Affordable Energy

/s/ Eric B. Gallon

Summary: App for Rehearing Second Application for Rehearing electronically filed by Mr. Eric B. Gallon on behalf of Columbia Gas of Ohio, Inc.