

In the Matter of the Application of )  
Columbia Gas of Ohio, Inc. for Recovery ) Case No. 13-778-GA-UNC  
of Base Chip Transition Costs )

On April 1, 2013, Columbia filed its Application in this docket in which Columbia sought authorization to recover the base chip portion of the transition adjustment from Columbia's purchase gas adjustment ("PGA") mechanism to the gas cost recovery ("GCR") mechanism. On May 8, 2013, the Office of the Ohio Consumers' Counsel ("OCC") filed a Motion to Intervene. In its motion the OCC expressed concern about Columbia's Application and stated that the "application seems premature at this time."<sup>1</sup> For the reasons explained below, the Commission should deny the OCC's motion to intervene in this proceeding.

On October 7, 2009, a Joint Stipulation and Recommendation was filed in Case No. 08-1344-GA-EXM (“2009 Stipulation”). The Commission adopted the 2009 Stipulation by an Opinion and Order dated December 2, 2009. Pursuant to the 2009 Stipulation, Columbia’s GCR mechanism terminated on April 1, 2010, when Columbia began purchasing and selling gas by means of an auction process.

<sup>1</sup> OCC Motion to Intervene at 2.

assumption that the GCR mechanism would continue until that event occurs. In recognition of the fact that the GCR mechanism would be terminated April 1, 2010, the parties to the 2009 Stipulation agreed that:

At the end of the initial term of the Stipulation (March 31, 2013), if a pattern of auctions has taken place so that it appears that Columbia will not be returning to the GCR mechanism, then Columbia may apply for, and the signatory Parties will support, recovery of the base chip portion of the transition adjustment from the prior purchase gas adjustment ("PGA") mechanism to the GCR mechanism, which recovery the Parties agree would be in accordance with the Commission's Opinion and Order, at pages 5-11, in Case No. 80-212-GA-GCR (April 14, 1981). However, OCC reserves the right to oppose Columbia's base chip application in conjunction with its opposition of an SCO auction.<sup>2</sup>

In the three plus years since the Commission adopted the 2009 Stipulation a pattern of auctions has taken place and it appears that Columbia will not be returning to the GCR mechanism. Columbia has concluded three highly successful auctions during the initial term of the 2009 Stipulation. Columbia has also received Commission approval to extend the auction process for an additional five years. This extension of the auction process was approved by the Commission in Case No. 12-2637-GA-EXM by Opinion and Order dated January 9, 2013. Given the success of the auction process Columbia has no plans to return to the GCR mechanism. Therefore, it is now appropriate for Columbia to recover its deferred base chip transition costs.

As referenced in the quoted language above from the 2009 Stipulation, all of the signatory parties – with the exception of the OCC – agreed to support Columbia's recovery of the base chip transition obligation. The OCC alone reserved the right to oppose Columbia's recovery of the base chip transition adjustment, with the proviso that any OCC opposition was to be "in conjunction with its opposition of an SCO auction."

The OCC's Motion to Intervene in this case is premised upon the OCC's stated concern that Columbia's request to recover the base chip transition adjustment may be premature. However, any OCC attempt to raise concerns about recovery of the base chip transition adjustment in this proceeding is now improper.

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<sup>2</sup> Case No. 08-1344-GA-EXM, Joint Stipulation and Recommendation (October 7, 2009) at 16.

Under the terms of the 2009 Stipulation, the only way that the OCC could oppose Columbia's proposed recovery of the base chip transition adjustment was in conjunction with the OCC's opposition of an SCO auction. Because the OCC no longer opposes Columbia's SCO auction process OCC now lacks standing to object to recovery of the base chip transition adjustment and has no real and substantial interest in this proceeding.

The OCC initially opposed Columbia's transition to an SCO auction. The issue was tried before the Commission in a hearing held during July 2011, in Case No. 08-1344-GA-EXM. The Commission rejected the OCC's arguments and approved Columbia's transition to an SCO auction process.<sup>3</sup>

On October 4, 2012, Columbia, Commission Staff, the Ohio Gas Marketers Group, the Retail Energy Supply Association and Dominion Retail, Inc. filed a Joint Motion to Modify the Orders in Case No. 08-1344-GA-EXM. This Joint Motion was docketed in Case No. 12-2637-GA-EXM. Attached to the Joint Motion was a Stipulation and Recommendation. As part of the Stipulation, Columbia and the other signatory parties proposed that Columbia be permitted to continue its SCO auctions, and further proposed that Columbia be permitted to exit the merchant function if certain conditions were satisfied.

After the Commission's 2011 Orders in Case No. 08-1344-GA-EXM the OCC decided to cease opposing the SCO auction process and instead began to support the SCO auction process. The OCC initially opposed the Joint Motion and Stipulation in Case No. 12-2637-GA-EXM, and part of that opposition was based upon the OCC's concerns about any movement away from an SCO process to an exit of the merchant function. The OCC stated:

[P]reserving the SCO is consistent with state policy. R.C. 4920.02(A)(1) states: "It is the policy of the state to, throughout this state 'promote the availability to consumers of adequate, reliable and **reasonably priced natural gas services and goods.**'" To take away what has generally been the low-cost option from customers ... cannot be reconciled with state policy and is not in the public interest.<sup>4</sup>

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<sup>3</sup> Case No. 08-1344-GA-EXM, Second Opinion and Order (September 7, 2011) and Entry on Rehearing (November 1, 2011).

<sup>4</sup> Case No. 12-2637-GA-EXM, Comments of the Office of the Ohio Consumers' Counsel (November 5, 2012) at 8-9 (emphasis in the original added by the OCC).

In Case No. 12-2637-GA-EXM an amended Joint Motion and Amended Stipulation were filed on November 27, 2012. OCC signed the Amended Stipulation after its concerns were addressed.<sup>5</sup> As part of the Amended Stipulation the signatory parties agreed that Columbia's SCO auction process should continue unless and until Columbia exited the merchant function under terms and conditions set forth in the Amended Stipulation. After hearing, in an Opinion and Order dated January 9, 2013, the Commission approved the Amended Joint Motion and Amended Stipulation.

It is therefore clear that the OCC now supports the continuation of Columbia's SCO auction process and no longer opposes Columbia's SCO auctions. That being the case, the OCC has failed to satisfy the condition precedent necessary to challenge Columbia's recovery of its base chip transition cost – a condition precedent to which the OCC agreed in the 2009 Stipulation.

Having failed to satisfy the condition precedent necessary to challenge Columbia's recovery of the base chip transition cost, the OCC cannot meet the standards for intervention in this case. The OCC lacks any real and substantial interest in this case.<sup>6</sup>

As discussed in the OCC's Comments, the standard for intervention in Commission cases is set forth in R.C. § 4903.221(B). The Commission is to consider:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

The OCC can only contest recovery of the base chip transition adjustment in conjunction with its opposition to the SCO, and because the OCC no longer opposes the SCO the OCC has no interest in this case under R.C. § 4903.221(B)(1). Similarly, under R.C. § 4903.221(B)(2) the legal position the OCC attempts to advance is contrary to the Stipulation agreed to by the OCC in Case No. 08-1344-

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<sup>5</sup> Case No. 12-2637-GA-EXM, Amended Joint Motion to Modify Orders Granting Exemption (November 27, 2012). The OCC did not sign the Amended Joint Motion, but did sign the Amended Stipulation and Recommendation attached to the Amended Joint Motion.

<sup>6</sup> See Ohio Admin. Code § 4901-1-11(A)(2).

GA-EXM. Given the above, if the OCC is permitted to intervene in this proceeding the OCC's participation will undoubtedly prolong the proceedings – a result the Commission should not countenance under R.C. § 4903.221(B)(3). Under R.C. § 4903.221(B)(4) the OCC cannot possibly contribute to an equitable resolution of the factual issues in the present case given that it has already agreed not to contest recovery of the base chip transition obligation unless it does so in conjunction with its opposition to the SCO, and as explained above the OCC no longer contests Columbia's SCO auction process. Thus, given the unique circumstances present here, this is a case in which the OCC has not stated grounds necessary to justify its intervention.

**WHEREFORE,** for the reasons stated herein Columbia requests that the Commission deny the OCC's Motion to Intervene.

Respectfully submitted,  
**COLUMBIA GAS OF OHIO, INC.**  
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**CERTIFICATE OF SERVICE**

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I hereby certify that a true copy of the foregoing Memorandum Contra of Columbia Gas of Ohio, Inc. was sent by electronic mail to the parties listed below on this 23rd day of May, 2013.

/s/ Stephen B. Seiple

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Summary: Memorandum Contra to OCC's Motion to Intervene electronically filed by Cheryl A MacDonald on behalf of Columbia Gas of Ohio, Inc.