

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbia : Case No. 12-3221-GA-UNC
Gas of Ohio, Inc., for Approval to Implement :
a Capital Expenditure Program. :

In the Matter of the Application of Columbia : Case No. 12-3222-GA-AAM
Gas of Ohio, Inc., for Approval to Change :
Accounting Methods. :

**COMMENTS
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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I. INTRODUCTION AND BACKGROUND

On December 24, 2012, Columbia Gas of Ohio (Columbia or Company) filed an application (Application) in the above captioned cases seeking authority from the Public Utilities Commission of Ohio (Commission) to continue its capital expenditure program (CEP) that was first approved last year in Case Nos. 11-5351-GA-UNC, *et al.*,¹ for calendar year 2013 and succeeding years. In addition, Columbia seeks authority to modify its accounting procedures to provide for: (1) capitalization of post-in-service carrying costs (PISCC) on those assets of the CEP that are placed into service but not reflected in the Company's rates as plant in service; and, (2) deferral of depreciation expense and prop-

¹ See *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a Capital Expenditure Program and for Approval to Change Accounting Methods*, Case No. 11-5351-GA-UNC, *et.al.* (Finding and Order) (August 29, 2012) (*Case No. 11-5351 Finding and Order*).

erty taxes directly attributable to the CEP assets that are placed into service but not reflected as plant in service in the Company's rates.²

Columbia filed its application pursuant to sections 4909.18 and 4929.111 of the Ohio Revised Code. Specifically, R.C. 4929.111(A) provides that a natural gas company may file an application with the Commission under R.C. 4909.18, 4929.05, or 4929.11 to implement a CEP for any of the following:

1. Any infrastructure expansion, infrastructure improvement, or infrastructure replacement program;
2. Any program to install, upgrade, or replace information technology systems;
3. Any program reasonably necessary to comply with any rules, regulations, or orders of the Commission or other governmental entity having jurisdiction.

R.C. 4929.111(C) provides that the Commission shall approve a natural gas company's application for a CEP if the Commission finds that the CEP is consistent with the natural gas company's obligation to furnish necessary and adequate services and facilities under R.C. 4905.22 and that the services and facilities are just and reasonable. Further, R.C. 4929.111(D) provides that, in approving an application for a CEP under Division (C), the Commission shall authorize the natural gas company to create regulatory assets for PISCC on that portion of the CEP assets that are placed into service but not reflected in base rates as plant-in-service and for incremental depreciation and property tax

² *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a Capital Expenditure Program and for Approval to Change Accounting Methods*, Case No. 12-3221-GA-UNC, *et al.* (Application at 1) (December 24, 2012) (*Columbia Gas Application*).

expense directly attributable to the CEP for recovery or deferral for future recovery in an application pursuant to R.C. 4909.18, 4905.05, or 4929.11. R.C. 4929.111(F) authorizes the natural gas company to make any accounting accruals necessary to establish the regulatory assets authorized under R.C. 4929.111(D) in addition to any allowance for funds used during construction (AFUDC). And, lastly, R.C. 4929.111(G) provides that any accrual for deferral or recovery under R.C. 4929.111(D) shall be calculated in accordance with the system of accounts established by the Commission under R.C. 4905.13.

In addition to authorizing Columbia to create its CEP, the Commission's Finding and Order in Case No. 11-5351-GA-UNC provided that Columbia may only accrue CEP deferrals up to the point where the accrued deferrals, if included in customer rates, would cause the rates charged to the SGS class of customers to increase more than \$1.50/month³ (hereafter the "Cap") and required Columbia to docket an annual informational filing by April 30 of each year that details the monthly CEP investments and calculations used to determine the associated deferrals.⁴ In addition, the annual informational filings are to include an estimate of the impact of proposed deferrals on customer rates and a capital budget for the upcoming year.⁵ On April 26, 2013, Columbia docketed an informational filing in the 11-5351 case in compliance with the Commission's Finding and Order.

On June 11, 2013, the Attorney Examiner assigned to these cases issued an Entry setting a procedural schedule for comments on Columbia's Application as follows:

³ *Case No. 11-5351 Finding and Order* at 12-13.

⁴ *Id.* at 12.

⁵ *Id.*

- July 3, 2013 – Deadline for filing of motions to intervene;
- July 11, 2013 – Deadline for the filing of comments on the Application by Staff and interveners; and,
- July 25, 2013 – Deadline for all parties to file reply comments.

II. COLUMBIA’S APPLICATION AND PROPOSED DEFERRALS

In its Application, Columbia proposes to continue the CEP authorized in the 11-5351 case for calendar year 2013 and succeeding years until it reaches the point where the deferrals associated with the program would equate to \$1.50/month charge on the SGS class of customers if the deferrals were included in rates.⁶ Columbia maintains that its capital allocation policy governs the identification, prioritization, and allocations to capital projects and that its annual capital budget allocation, as approved by its parent company’s (NiSource, Inc.) Board of Directors, is consistent with its obligation to furnish necessary and adequate services and facilities under R.C. 4905.22.⁷

Columbia’s Application also proposes that its total net CEP investments in 2013 will be \$71,850,160. The Company indicates that its CEP investments will be broken out into four budget categories as shown below in Table 1.

⁶ *Columbia Gas Application* at 7.

⁷ *Id.* at 3.

Table 1 – Columbia’s Estimate of Net 2013 CEP Spending by Category⁸

Budget Category	Estimated 2013 (\$)
Replacement & Betterment	30,900,000
Growth	35,000,000
Support Services	3,100,000
Information Technology	<u>9,098,000</u>
Total Gross Plant Additions	78,098,000
Less: Retirements	- <u>6,247,840</u>
Total Net Plant Additions	71,850,160

Columbia notes that its estimates are not exactly precise due to the fact that investments are recorded when they are placed in-service as opposed to when expenditures were made. As a result, there could be year-to-year variance in the estimates it provided.⁹

Similarly, the Company indicates that it manages capital expenditure budgets in total and that there could be category to category variances based on operational needs.¹⁰ Lastly, the Company states that the capital expenditures in the CEP categories are exclusive of capital expenditures associated with its Infrastructure Replacement Program or CHOICE/SSO Reconciliation Rider.¹¹

⁸ *Columbia Gas Application* at Attachment A.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

III. STAFF'S REVIEW

The Staff has reviewed Columbia's Application and proposed CEP and the related request to create regulatory assets in order to defer for future recovery PISCC, depreciation expense, and property taxes directly attributable to CEP investments. The purpose of the Staff's review was to determine if, in the Staff's opinion, the proposed CEP and associated deferrals meet the just and reasonable standards established in R.C. 4929.111 and generally comport with sound ratemaking principals regarding deferring costs for potential future recovery by regulated utilities. In addition, the Staff also reviewed Columbia's Annual Information Filing that was filed pursuant to the Case No. 11-5351-GA-UNC Finding and Order because, in its Application, Columbia is seeking to continue its CEP and authority to continue to defer associated expenditures until the Cap is reached. In other words, this Application will be the final application seeking authority to continue the CEP and ongoing deferral authority until the Cap is reached. Columbia indicates that it will include in future annual information filings information similar to what was provided in the Application, including projected capital expenditure budgets for the current and next calendar years, in a similar manner to the information provided in Attachment A of the Application.¹² Columbia further proposes that projected current and next calendar year capital expenditure budgets provided in the annual update filings will serve as the maximum allowable level of investment eligible for deferral in accordance with R.C.

¹²

Columbia Gas Application at 3.

4929.111(B).¹³ In effect, Columbia's future April 30 information filings will contain basically the same information as and stand in place of future applications such as the instant one. Therefore, the Staff considered Columbia's annual information filing that was docketed in accordance with the Commission's Case No. 11-5351-GA-UNC Finding and Order in developing the comments and recommendations set forth below.

IV. STAFF'S COMMENTS AND RECOMMENDATIONS

After reviewing Columbia's Application and April 26, 2013 information filing pursuant to Case No. 11-5351-GA-UNC, the Staff makes the following comments and recommendations.

A. Subject to adoption of the other Staff recommendations, Columbia's Application should be approved.

After reviewing Columbia's Application and April 26, 2013 informational filing in Case No. 11-5351-GA-UNC, the Staff believes that the Application and the information filing comport with the Commission's Finding and Order in the 11-5351-GA-UNC case and, therefore, subject to adoption of the following Staff recommendations, the Application should be approved.

¹³

Columbia Gas Application at 3.

B. The Commission should establish a process to permit the Staff and intervening parties to object to continued authority for Columbia's CEP and related deferrals until the objections are resolved.

Columbia's Application provides that, in-lieu of future applications for authority to continue its CEP and related deferral authority, approval of the current Application would grant it ongoing approval of its CEP and continuing deferral authority until the \$1.50/month Cap is reached. In the Application, Columbia also indicates that it will provide the same information contained in the Application in future annual update filings. The Staff believes that this proposal offers an efficient way to manage Columbia's CEP and deferral authority until the cap is reached. However, unlike the current process where Columbia files periodic applications, there is no provision for the Staff or any intervening parties to object to the Company's CEP and related deferrals. Columbia indicates that it will provide in the annual update filings all of the information specified in the Commission's Finding and Order in the 11-5351-GA-UNC case as well as the information that would have been included in future CEP applications. However, the Company's proposed process does not indicate what would happen if the Staff or an intervening party has issues with the information provided. To address this omission, the Staff recommends that the Commission approve Columbia's recommended process, but modify it to include a 30-day automatic approval process that provides the Staff and any intervening party an opportunity to object to the information contained in the Company's annual update filings. The Staff suggests that the Commission indicate that the Staff or any intervening party may file objections to the information (or lack thereof) contained in

Columbia's annual informational filings within 30 days of the date that the informational filing was docketed. If there are no objections within 30 days, then Columbia's CEP and ongoing deferral authority would be deemed approved. If the Staff or any intervening party files objections in the docket containing the informational filing within 30 days, then an attorney examiner appointed by the Commission should issue an entry soliciting comments on the matters raised in the objections. This modification to the process preserves the efficiency Columbia is seeking while allowing for the ongoing Staff and interested party review that was contemplated with the Commission's adoption of the annual information filing requirement in the 11-5351-GA-UNC case. In addition, the modification recommended by the Staff is very similar to the process that the Commission established in the annual review of Columbia's authority to defer certain expenses incurred to investigate and remediate former manufactured gas plant sites in Case No. 08-606-GA-AAM.¹⁴

C. The Commission should clearly state that approval of Columbia's CEP and authority to continue to defer the CEP-related expenditures does not guarantee recovery of the CEP expenditures or deferrals.

Traditionally, Commission entries and orders approving deferral requests include a provision indicating that, in accordance with the Ohio Supreme Court's ruling in *Elyria Foundry Co. v. Pub. Util. Comm.*, 114 Ohio St.3d 305, 2007-Ohio-4164, deferrals do not

¹⁴

See *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 08-606-GA-AAM (Entry) (September 24, 2008).

constitute ratemaking and that recovery of the deferred amounts will be addressed when the utility seeking the deferral seeks recovery in a base rate or other proceeding. The Staff has interpreted these provisions to mean, just as the words appear to indicate, that recovery of the deferred amounts will be addressed in a rate recovery proceeding. However, in a litigated case currently pending before the Commission, a natural gas company has argued that once the Commission grants deferral authority then the only thing that can be at issue during a recovery proceeding is the prudence of the expenditures and that the eligibility for recovery of the deferred expenditures cannot be questioned or challenged.¹⁵ The Staff recommends that the Commission make it clear in its finding and order approving Columbia's requested deferral in this case that that the only thing being approved is deferral authority and that the eligibility for recovery of the deferred amounts (as well as prudence, proper computation, proper recording, reasonableness, etc.) will be considered when Columbia applies to recover the authorized deferrals.

¹⁵

In the Matter of the Application of Duke Energy Ohio Inc., for an Increase in Gas Rates, Case No. 12-1685-GA-AIR, *et al.* (Initial Post Hearing Brief of Duke Energy Ohio, Inc. at 23) (June 6, 2013).

V. CONCLUSION

With adoption of the Staff's recommendations described above, the Staff would respectfully recommend that the Commission approve Columbia's Application.

Respectfully Submitted,

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/s/ Stephen A. Reilly _____

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VI. CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Comments** submitted on behalf of the Staff of the Public Utilities Commission of Ohio was served by electronic mail upon the following parties of record, this July 11, 2013.

/s/ Stephen A. Reilly

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Summary: Comments submitted by Assistant Attorney General Stephen Reilly on behalf of the Staff of the Public Utilities Commission of Ohio. electronically filed by Kimberly L Keeton on behalf of Public Utilities Commission of Ohio