BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of Demand Side Management Program for its Residential and Commercial Customers.	Case No. 16-1309-GA-UNC
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Change Accounting Methods.	Case No. 16-1310-GA-AAM

MEMORANDUM CONTRA OF COLUMBIA GAS OF OHIO, INC. TO APPLICATIONS FOR REHEARING BY THE ENVIRONMENTAL LAW & POLICY CENTER, THE NORTHWEST OHIO AGGREGATION COALITION, THE NOAC COMMUNITIES, AND THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

Eric B. Gallon (0071465)
Porter Wright Morris & Arthur LLP
41 South High Street
Columbus, OH 43215
Telephone: (614) 227-2190
Facsimile: (614) 227-2100
Email: egallon@porterwright.com

(Willing to accept service by e-mail)

Stephen B. Seiple, Asst. General Counsel (0003809)
Joseph M. Clark, Senior Counsel (0080711)
P.O. Box 117
290 W. Nationwide Blvd.
Columbus, Ohio 43216-0117
Telephone: (614) 460-6988
E-mail: sseiple@nisource.com
josephclark@nisource.com

(Willing to accept service by e-mail)

Attorneys for
COLUMBIA GAS OF OHIO, INC

TABLE OF CONTENTS

1. INTRODUCTION

On December 21, 2016, the Public Utilities Commission of Ohio modified and adopted a Joint Stipulation and Recommendation to extend Columbia Gas of Ohio's award-winning[1] demand side management ("DSM") Program for another six years. The Stipulation clearly meets the Commission's three-prong criteria for approval of settlements. Applications for Rehearing were filed by the Office of the Ohio Consumers' Counsel ("OCC") as well as jointly by the Environmental Law and Policy Center ("ELPC"), the Northwest Ohio Aggregation Coalition ("NOAC"), and the NOAC Communities (collectively, "ELPC/NOAC"). For the reasons explained below, the Commission should affirm in its entirety its Opinion and Order.

2. LAW AND ARGUMENT

2.1. The Commission properly rejected the argument that a party's financial interest is sufficient to prove a lack of serious bargaining. (ELPC/NOAC AOE IV.)

With regard to the first criterion of the three-part test for stipulations, ELPC/NOAC contend the Stipulation was not the product of serious bargaining because several of the signatory parties have financial interests in its outcome. [2] As ELPC/NOAC recognize, however, OCC has already advanced this argument, and the Commission has already considered and rejected it.[3] Nonetheless, ELPC/NOAC vaguely assert, without citation to any authority, that the Commission erred by allegedly failing to "properly weigh[ ] the financial interests in favor of the Stipulation," which they say "must weigh heavily against any assertion that the Stipulation was meaningfully bargained for in a way that would adequately represent residential customers."[4]

As an initial matter, ELPC/NOAC have offered nothing new in support of their misguided position. The Commission should decline ELPC/NOAC's request for rehearing of this issue on that basis alone. Moreover, ELPC/NOAC misstate the Commission's standard for determining whether serious bargaining has occurred. That standard looks to whether the parties had the opportunity to par-

---

[1] *See* Columbia Ex. 1 at 6 and Appendix D (Application).

[2] ELPC/NOAC Application for Reh'g, Mem. Supp. at 5-6.

[3] *Id.* at 5; Opinion and Order at ¶ 58-63. *See also* OCC Initial Br. at 49-50.

[4] ELPC/NOAC Application for Reh'g, Mem. Supp. at 6.

ticipate in settlement negotiations, are proficient in the negotiation process, and sufficiently understand the matters at issue, not to whether a given party or class of customers agreed to the stipulation or will receive a financial benefit from it.[5] The test ELPC/NOAC seeks to impose can likely only be met by nonprofits and OCC, in practice providing a "veto" to certain parties. The Commission has routinely rejected giving any party a "veto" over settlements.[6]

As the Commission recently explained, the fact that a stipulation benefits signatory parties does not indicate a lack of serious bargaining because "[t]he Commission expects that each party will support its respective interest and bargain in support of that interest *** ."[7] Indeed, far from reflecting that the parties failed to "meaningfully bargain[ ]," the fact that all but three parties to this case resolved their differences and satisfied their own interests demonstrates that serious bargaining occurred here. The Commission should disregard ELPC/NOAC's unsupported argument to the contrary and decline to revisit its serious bargaining analysis on rehearing.

2.2. The Commission properly concluded that the Stipulation package benefits ratepayers and the public interest.

Next, OCC and ELPC/NOAC both claim the Stipulation does not benefit ratepayers and the public interest for a multitude of reasons. The Commission, after several pages of discussion, explicitly found the Stipulation package benefits ratepayers and the public interest.[8] The Commission should once again reject OCC's and ELPC/NOAC's unfounded and rehashed arguments.

---

[5] Opinion and Order at ¶¶ 52, 59.

[6] *See, e.g.*, *In the Matter of the Application 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 R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Opinion and Order, at 43 (March 31, 2016).

[7] *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter Into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, Second Entry on Reh'g, ¶ 46 (Nov. 3, 2016).

[8] Opinion and Order at ¶ 118.

2.2.1. The Commission properly rejected OCC's argument that an approvable DSM program must reduce average natural gas usage as compared to the *baseline period*. (OCC AOE 2.A.)

OCC's primary argument against Columbia's DSM Program is that a program that does not "reduce the average customers' natural gas usage" below current levels "won't save energy" and is, therefore, "objectively unsuccessful."[9] As an initial matter, OCC's Application for Rehearing raises no new issues that the Commission has not already considered and rejected.[10]

But Columbia's DSM Program will save energy. First-year natural gas savings for the DSM measures projected to be installed over the next 6 years are expected to exceed 4.4 million Mcf.[11] OCC's argument ignores the distinction between reducing natural gas usage below baseline, which Columbia's DSM Program is not projected to do, and reducing natural gas usage below what it would otherwise be without the program, which Columbia's Program *is* projected to do.

The General Assembly has directed the Commission to "initiate programs that will promote and encourage energy conservation and reduce the *growth rate* of energy consumption ***."[12] Columbia's DSM Program furthers these statutory goals. Because OCC ignores this state's statutory energy efficiency policy and the millions of Mcf of natural gas savings that Columbia's DSM Program is projected to achieve, the Commission should reject OCC Assignment of Error 2.A.

---

[9] OCC Application for Reh'g, Mem. Supp. at 6.

[10] *See* Opinion and Order at ¶ 109. The Commission found Columbia's DSM Program should not be discontinued just because average projected gas usage would not be reduced, noting that low natural gas prices adversely affect program participation rates and customers are less likely to be conscientious of their energy consumption when prices are low.

[11] *See* Columbia Ex. 1 (Application), Appendix B, Table 2 (Columbia DSM Program Natural Gas Savings Projections), at 24.

[12] *See* Opinion and Order at ¶ 3 (citing R.C. 4905.70).

2.2.2. Columbia properly permits large non-residential customers to participate in its energy efficiency programs because their energy savings provide system-wide benefits. (OCC AOE 2.C.)

Second, OCC argues, again,[13] that it is "unfair" to allow General Services or Large General Services customers to participate in Columbia's DSM Program without paying the DSM Rider.[14] But as Columbia explained in its Reply Brief, nonresidential customers' participation in Columbia's DSM Program provides substantial natural gas lifetime savings – over 3 million Mcf for the Innovative Energy Solutions programs in 2012-2015 alone.[15] And those natural gas savings provide numerous system-wide benefits, including avoided carbon dioxide emissions, jobs, lower customer arrearages and bad debt, increased local and state tax revenue, secondary economic (multiplier) benefits, reduced consumer exposure to gas price volatility, increased available natural gas capacity for use in electricity generation, and reductions in the price of natural gas.[16] OCC ignores the multitude of system-wide benefits that non-residential participation in the DSM Program provides.

OCC further argues that allowing non-residential customers to participate in Columbia's DSM Program would violate the principle of "cost-causation."[17] "The principle of cost-causation is an important regulatory principle that requires the *** utility to recover costs from those customers who caused the cost to be incurred on the *** utility."[18] However, the Commission does not apply the principle of cost-causation strictly. As the Commission held in one 2008 opinion:

> Before strictly applying cost causation, we must consider and balance other important public policy outcomes of rate design. *Would strict application of cost causation discourage conservation? Would it disproportionately impact economically vulnerable consumers, including both low-income customers and those on a fixed income?* *** On bal-

[13] *See* OCC Br. at 25.

[14] OCC Application for Reh'g, Mem. Supp. at 8.

[15] *See* Columbia Reply Br. at 47 (citing Columbia Ex. 1 (Application) at 4 (Table 1)).

[16] *See id.* at 13-14 (citing Columbia Ex. 1 at 5 (Application), and Columbia Ex. 3 (Laverty Testimony), Attachment A, at 5 and 24).

[17] OCC Application for Reh'g, Mem. Supp. at 8-9.

[18] *In the Matter of the Application of Ohio Power Company for Approval of an Advanced Meter Opt-Out Service Tariff*, Case No. 14-1158-EL-ATA, Finding and Order, at 11 (Apr. 27, 2016).

> ance, what style of rate design will result in the best package of possible public policy outcomes?[19]

Here, strictly applying the principle of cost-causation to the DSM Program would actually require recovering the costs of DSM Program only from the Program's participants. But imposing the DSM Rider only on program participants would discourage participation, particularly for low-income customers, which would defeat one of the program's purposes. And it would ignore the purpose of utility energy efficiency programs, which is to encourage energy conservation and reduce the growth rate of energy consumption.[20] Because applying cost-causation strictly would discourage the installation of energy efficiency measures, it should not be applied in this context. Judging the Stipulation as a package, as the Commission must,[21] OCC's "cost-causation" complaints provide no reason to revise its decision to adopt the Stipulation.

2.2.3. The Commission properly concluded Columbia demonstrated that its proposed energy efficiency programs are cost-effective. (OCC AOE 2.H.)

2.2.3.1. Columbia met its burden of proof to support the Stipulation and its cost-effectiveness calculations. (OCC AOE 2.H.1.-3.)

Third, OCC argues that Columbia failed to meet its burden of proof with regard to thef cost-effectiveness of its proposed DSM Program extension. In particular, OCC asserts that "Columbia presented to the PUCO only the final results of its cost-effectiveness analysis" and then presented a witness who did not "substantiate[ ] any calculations, assumptions, or methodology ***."[22] But OCC's description bears little resemblance to this proceeding.

In fact, Columbia provided not only the results of its cost-effectiveness calculations, but the calculations themselves, along with ample testimony, exhib-

---

[19] (Emphasis added.) I*n the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service*, Case No. 07-829-GA-AIR, Opinion and Order, at 25 (Oct. 15, 2008).

[20] *See* R.C. 4905.70.

[21] *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of an Alternative Form of Regulation to Extend and Increase Its Pipeline Infrastructure Replacement Program*, Case No. 15-362-GA-ALT, Opinion and Order, ¶ 25 (Sept. 14, 2016).

[22] OCC Application for Reh'g, Mem. Supp. at 14, 17.

its, and briefing that described the assumptions and data underlying those calculations. Columbia's Application set forth the results of its cost-effectiveness analyses.[23] Columbia witness Jack Laverty sponsored those results in his testimony.[24] In discovery, Columbia then produced a copy of its cost-effectiveness calculation spreadsheet to OCC, Staff, and any other party that entered into a confidentiality agreement with Columbia.[25] A hard copy of portions of that calculation was entered into evidence at hearing.[26] Mr. Laverty testified at hearing that he had originally created the spreadsheet template that was expanded upon to make the cost-effectiveness calculations.[27]

In response to OCC's voluminous discovery requests, Columbia explained the details of its cost-effectiveness calculations. Several of those discovery responses were entered into evidence as well.[28] Mr. Laverty then provided testimony at hearing regarding the basis for Columbia's natural gas cost projections (the Energy Information Administration's 2015 reference case projections) and why Columbia chose those projections.[29] Mr. Laverty further testified that Columbia made adjustments to the 2015 EIA reference case to reflect the costs that a Small General Service customer avoids when it implements a DSM measure, which he described.[30] Columbia's Reply Brief then described each of those adjustments in detail, relying on testimony and exhibits submitted at hearing, citations to Columbia's approved tariff, Commission entries, and Ohio statutes.[31]

Mr. Laverty also offered testimony describing Columbia's inclusion of non-energy benefits – carbon dioxide emission reductions, water savings, and jobs created – in its TRC cost-effectiveness calculation.[32] OCC argues the Commission failed to respond to its argument that it was improper to include those

---

[23] Columbia Ex. 1 (Application), Appendix B, Table 1.

[24] *See* Columbia Ex. 3 at 8 (Laverty Testimony).

[25] Tr. Vol. III at 394:24 – 395:7.

[26] *See* OCC Ex. 6 (confidential).

[27] Tr. Vol. II at 344:14 – 345:11.

[28] *See, e.g.* OCC Exhibits 4 – 8 (confidential).

[29] *See* Tr. Vol. II at 350-352.

[30] *See id.* at 353-354.

[31] *See* Columbia Reply Br. at 26-33.

[32] *See* Tr. Vol. II at 333.

benefits.[33] But OCC's primary argument on that point was that including those benefits in the cost-effectiveness calculation would violate the Commission's electric utility energy efficiency rules.[34] The Commission's Opinion and Order noted that those rules do not apply to natural gas DSM programs.[35] Finally, Columbia provided written and oral testimony from Mr. Laverty, supplemented in post-hearing briefing with citations to Commission orders and other sources in the record, which explained Columbia's application of discount rates in its cost-effectiveness calculations and supported Columbia's choice of discount rates.[36] OCC questions the use of those discount rates, but points to no Ohio statutes, regulations, or Commission precedent that would prohibit their use.[37]

Thus, Columbia did not simply provide "bare cost-effectiveness test results."[38] It provided the calculations themselves, and supplemented those calculations with written testimony, oral testimony, numerous exhibits, and lengthy citations to the Commission precedent, approved tariff sheets, Commission regulations, and other sources that supported Columbia's assumptions. The sum of this evidence, as summarized in Columbia's Reply Brief, easily met Columbia's burden of proof.

2.2.3.2. The Commission properly concluded that Columbia was not required to re-run its cost-effectiveness calculations before filing the Joint Stipulation. (OCC AOE 2.H.4.)

Among OCC's arguments against Columbia's cost-effectiveness calculations, the Commission focused primarily on OCC's arguments regarding the basis for Columbia's natural gas cost projections.[39] In its post-hearing brief, OCC argued that Columbia should have updated its cost-effectiveness calculations after the Stipulation was filed, to reflect the EIA's 2016 natural gas cost projections.[40] The Commission rejected this argument, finding that OCC had failed to

[33] *See* OCC Application for Reh'g, Mem. Supp. at 4.

[34] *See* OCC Br. at 17 (citing Ohio Adm.Code 4901:1-39-1(Q)).

[35] Opinion and Order at ¶ 111.

[36] *See* Columbia Reply Br. at 34-37.

[37] *See* OCC Application for Reh'g, Mem. Supp. at 19-20.

[38] *Id.* at 15.

[39] *See* Opinion and Order at ¶ 113.

[40] OCC Br. at 11.

demonstrate that the 2016 projections were more accurate than the 2015 projections.[41] That ruling was consistent with the Commission's other, recent ruling rejecting OCC's arguments that utilities must always use the most recent forecast.[42]

OCC now argues that the Commission should ignore whether EIA's 2016 projections "are conclusively more reliable" than the 2015 projections and focus, instead, on whether Columbia showed "its decision to use 2015 data *** was reasonable."[43] If that is the test, Columbia easily passes it. As Columbia has explained repeatedly, Columbia used EIA's 2015 projections because those were the most recent projections available when Columbia prepared and filed its Application in this case.[44] Using the most recent projections available at the time Columbia filed its Application was reasonable. OCC's position, on the other hand – that "*every time* EIA issues new information regarding its projections of natural gas prices, the Commission, in collaboration with Columbia, should recalculate the cost-effectiveness scores of its DSM portfolio"[45] – is unreasonable, and the Commission was right to reject it.

2.2.3.3. The Commission appropriately disregarded OCC's remaining adjustments to Columbia's cost-effectiveness calculations. (OCC AOE 2.H.5.)

OCC complains that the Commission should have given more consideration to its remaining arguments against Columbia's cost-effectiveness calculations. Under OCC Witness Michael Haugh's alternative cost-effectiveness calculation, Columbia's DSM Program would still be cost-effective even if OCC's arguments regarding Columbia's choice of discount rates, inclusion of non-energy benefits in its cost-effectiveness calculation, and projections of future CHOICE participation were correct.[46] Accordingly, the Commission declined to consider

[41] Opinion and Order at ¶ 113.

[42] *See In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter Into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider,* Case No. 14-1693-EL-RDR, Second Entry on Rehearing, ¶86 (Nov. 3, 2016).

[43] OCC Application for Reh'g, Mem. Supp. at 21.

[44] *See* Tr. Vol. II at 351:6 – 352:12.

[45] (Emphasis added.) Tr. Vol. IV at 736:24 – 737:8.

[46] *See* Opinion and Order at ¶¶ 112-113 (citing OCC. Ex. 12 at MPH Ex. 8).

those additional arguments.[47] OCC does not dispute Mr. Haugh's or the Commission's math.

OCC insists, nonetheless, that the Commission was required to examine Mr. Haugh's arguments to determine whether Columbia had met its burden of proof and whether Columbia's calculations were "reasonable and reliable."[48] According to OCC, because Columbia's cost-effectiveness analysis purportedly contained "material flaws," it "cannot be trusted" and the Commission cannot extend Columbia's DSM Program.[49] Columbia demonstrated that Mr. Haugh's critiques are unfounded.[50] Regardless, according to OCC's own calculation, the additional, purported flaws that Mr. Haugh identified were not material – accepting his purported corrections would not have disproved that Columbia's DSM Program is cost-effective.

As indicated above and in Columbia's prior briefing, the second factor in the Commission's standard for weighing stipulations requires the Commission to consider whether the stipulation, "as a package, benefit[s] ratepayers and the public interest ***."[51] OCC would apparently exchange that standard for a standard of perfection, under which any errors or misjudgments underlying a stipulation would render it unapprovable. Again, Columbia stands by its cost-effectiveness calculations. But the standard OCC applies is not the Commission's standard for judging stipulations. Because Columbia's DSM Program was cost-effective under its own calculations and under OCC's calculations, once the Commission rejected OCC's arguments about the EIA reference case projections, the Commission properly concluded that Columbia's DSM Program is cost-effective and did not need to address OCC's mooted points.

---

[47] *See id.*

[48] OCC Application for Reh'g, Mem. Supp. at 23.

[49] *Id.*

[50] *See* Columbia Reply Br. at 32-37.

[51] (Citation omitted). *Id*. at 3.

2.2.4. The Commission properly rejected ELPC/NOAC's proposal to shift funding from Columbia's HE HVAC Rebates and Home Performance Solutions programs to smart thermostats. (ELPC/NOAC AOE I.)

Fourth, ELPC/NOAC argue, again, that the Commission should order Columbia to shift $22 million away from its HE HVAC Rebates and Home Performance Solutions programs to expand its smart thermostat initiative above and beyond the level Columbia proposed and the Commission approved.[52] The Commission already considered and explicitly rejected each of ELPC/NOAC's arguments on this point, finding the $75 rebate proposed in the Stipulation to be sufficient, especially in light of existing rebates available from electric distribution utilities, for which customers will also be eligible.[53] ELPC/NOAC offer no reason for the Commission to depart from that ruling.

ELPC/NOAC's contention that the Commission inappropriately "shifted the burden of demonstrating the effectiveness of the DSM Plan *** onto ELPC/NOAC and other intervenors" is also without merit.[54] Columbia's burden is to satisfy the Commission's three-prong test to assess a stipulation package's reasonableness. The Commission correctly found Columbia satisfied its burden here.[55] And although Columbia believes that it has "presented its best plan" in this proceeding, it is not Columbia's burden to disprove each and every alternative proposal presented by intervenors.[56] To the extent ELPC/NOAC asked the Commission to substantively modify the DSM Program proposed in the Stipulation, ELPC/NOAC had the burden to demonstrate their proposed modifications would result in a cost-effective portfolio. ELPC/NOAC made no such effort. Columbia is not responsible for making a record to support an opposing party's proposal. Accordingly, the Commission should deny ELPC/NOAC's application for rehearing of this issue as well.

---

[52] ELPC/NOAC Application for Reh'g, Mem. Supp. at 2-4.

[53] Opinion and Order at ¶ 71.

[54] ELPC/NOAC Application for Reh'g, Mem. Supp. at 3.

[55] *See* Opinion and Order at ¶ 110 (finding that Columbia met its burden to demonstrate the results of its cost-benefit analysis for the DSM Program) and ¶ 127 (finding that the Stipulation satisfies the three-part test).

[56] *See id.*

2.2.5. ELPC/NOAC's request to extend the smart thermostat rebate to CRES providers and "all competitors" misconprehends Columbia's program. (ELPC/NOAC AOE II.)

Fifth, ELPC/NOAC question (and misunderstand) the nature of Columbia's partnership with RESA and IGS to help improve Columbia's smart thermostat rebate program. Columbia's Simple Energy Solutions program offers directly to customers an online store and rebates on programmable thermostats, energy efficient showerheads, and faucet aerators.[57] The Commission approved Columbia's proposal to increase the availability of smart thermostats through both channels.[58] To that end, Columbia has also committed to work with RESA, IGS, and Staff to streamline and/or enhance the rebate process.[59]

Apparently misunderstanding the nature of Columbia's rebate program, ELPC/NOAC request that the Commission order that Columbia "engage with all CRNG and CRES providers that want to participate in the smart thermostat rebate program[ ] and make the rebate available to all competitors."[60] All eligible CRNG suppliers may participate in the program, as Columbia partners with any interested CRNG Supplier certified for its service area. ELPC/NOAC's request for rehearing of this issue is misplaced and should be denied.

2.2.6. The Commission properly permitted Columbia to continue its comprehensive WarmChoice® program, with its current and historical network of community–based providers. (OCC AOE 2.D and F.)

Sixth, OCC challenges the Commission's ruling on WarmChoice®, a program that provides whole-house weatherization services to natural gas heating customers with household incomes at or below 150% of the federal poverty guidelines, on two grounds. OCC repeats[61] its argument that requiring the entities that implement WarmChoice® to submit competitive bids "could" lower program costs.[62] And OCC complains it was "unreasonable for the PUCO to dismiss

---

[57] *See* Columbia Reply Br. at 49.

[58] *See* Opinion and Order at ¶¶ 56, 67, and 71.

[59] *Id.* at ¶ 67.

[60] ELPC/NOAC Application for Reh'g, Mem. Supp. at 4.

[61] *See* OCC Br. at 44.

[62] *See* OCC Application for Reh'g, Mem. Supp. at 10-11.

all of OCC's recommendations" for changing the WarmChoice® program (*i.e.*, gathering the stakeholder group to find ways to provide significantly fewer services to more people[63]) "without any discussion or explanation."[64] Neither of these arguments warrants reconsideration of the Commission's Opinion and Order.

With regard to OCC's first argument, Columbia's reply brief noted that OCC had failed to identify any other companies providing the weatherization services that the four entities that implement WarmChoice® provide, with the three decades of experience these entities bring, and with access to the numerous additional low-income support programs and services those entities offer.[65] It further noted that the Ohio Development Services Agency's Home Weatherization Assistance Program selected these same organizations as providers for its program when it conducted its most recent competitive bidding process.[66] Absent any evidence that other qualified entities could provide the same quality and range of services as the existing implementers, much less provide those services at a reduced cost, the Commission justifiably declined to require Columbia to open these programs up to competitive bidding at this time.

With regard to OCC's second argument, OCC is asking the Commission to replace WarmChoice® with a different program that does less. OCC asserts many of its "suggestions *** could be implemented with little or no disruption to the program."[67] But at base, OCC wants Columbia to remove whole-home weatherization services from the DSM Program, remove "non-energy-efficiency repairs" (in other words, health and safety repairs that are necessary before Columbia can weatherize customers' homes[68]) from the DSM Program, and replace those services with unspecified, less-costly services that can be offered to more customers.[69] That would mean shutting down a comprehensive home weatherization program that is 30 years old and has received multiple awards from energy efficiency organizations.[70] And it wants the Commission to give Columbia (in con-

---

[63] *See* Opinion and Order at ¶ 90 (citing OCC Br. at 33-35).

[64] OCC Application for Reh'g, Mem. Supp. at 13.

[65] *See* Columbia Reply Br. at 43-44.

[66] *See id.* at 44 (citing Tr. Vol. II at 308:18 – 310:20).

[67] OCC Application for Reh'g, Mem. Supp. at 12.

[68] *See* Columbia Reply Br. at 41.

[69] OCC Application for Reh'g, Mem. Supp. at 12.

[70] *See* Columbia Reply Br. at 40.

junction with its stakeholder group) a year to come up with the plan for replacing the existing program.

The assumption underlying OCC's position is that it is better to do less for more customers than to do more for fewer customers. But there is no basis for that position,[71] other than OCC's preference. And such a change in focus would run contrary to the current nationwide trend towards whole-house energy-efficiency programs.[72] OCC suggests that charities might step up in Columbia's absence, but OCC's witnesses could not say whether Ohio's charities have sufficient funding to meet Columbia's customers' needs for health and safety repairs.[73] OCC also has not demonstrated, and cannot demonstrate, that ending WarmChoice® and replacing it with whatever plan the stakeholder group comes up with would result in a cost-effective program.[74]

Because OCC has offered the Commission no reason to end an award-winning program that Columbia has been offering for 30 years and no real program to replace it, the Commission should reject OCC's suggested "changes" to the WarmChoice® program.

2.2.7. The Commission properly authorized Columbia to continue its DSM educational programs. (OCC AOE 2.E.)

Seventh, OCC asserts the Commission should remove Columbia's On Line Audit, Energy Design Solutions, and EPA Portfolio Manager programs from Columbia's portfolio.[75] OCC asserts that it is unreasonable to include programs that will cost approximately $5.74 million over six years but not reduce natural gas usage.[76] OCC made this same argument in its post-hearing brief.[77] As Columbia explained in its reply brief, these are educational and rebate programs that encourage conservation and help to market Columbia's other DSM programs.[78] Co-

---

[71] *See id.* at 41 (citing Columbia Ex. 3 at 4:1-3 (Laverty Testimony)).

[72] *See id.* (citing Columbia Ex. 3 at 4:5-14 (Laverty Testimony)).

[73] *See id.* at 42 (citing Tr. Vol. III at 565:19-22 and 569:10-15).

[74] *See id.* at 54 (citing Tr. Vol. III at 579:7-21).

[75] *See* OCC Application for Reh'g, Mem. Supp. at 11.

[76] *See id.*

[77] *See* OCC Br. at 45-46.

[78] *See* Columbia Reply Br. at 48 (citing Columbia Ex. 3 at 5:6-20 (Laverty Testimony)).

lumbia's DSM Program is cost-effective, even including these programs.[79] And the cost of educating Columbia's customers about energy efficiency represents less than 3% of the funding for the DSM Program as a whole – in other words, less than a nickel per month for the average Columbia customer.[80] Educating builders and consumers about opportunities to conserve energy as part of a well-rounded DSM Program is in customers' and the public interest, and well worth those programs' minimal relative cost. OCC offers no reason to disturb the Stipulation package and abolish these programs.

2.2.8. The Commission properly authorized Columbia to continue providing incentives to construct energy-efficient homes. (OCC AOE 2.G.)

Eighth, OCC challenges Columbia's EfficiencyCrafted® Homes program, arguing that Columbia failed to prove "that builders would stop installing energy efficiency and conservation measures in new homes if they stopped receiv[ing] subsidies from utility customers."[81] Given this Commission's precedent, however, Columbia was not required to provide direct evidence that builders require financial incentives to undertake expensive energy efficiency and conservation measures.

As a general matter, ELPC witness John Paul Jewell testified at hearing that natural gas utilities' customers tend not to implement energy efficiency and DSM measures unless their natural gas utility "offers rebates, incentives, customer education, and other encouragement to implement those measures."[82] With regard to new home construction more specifically, the Commission has repeatedly encouraged natural gas utilities in Ohio to offer programs directed toward improving the energy efficiency of new buildings.[83] Columbia also ex-

---

[79] *See id.* (citing Columbia Ex. 3 at 5:33-34 (Laverty Testimony)).

[80] *See id.* (citing Columbia Ex. 1 (Application), Appendix B, Table 3, at 25 (Columbia DSM Program Projected Budgets)).

[81] OCC Application for Reh'g, Mem. Supp. at 13.

[82] Tr. Vol. II at 209:17-23.

[83] *See* Columbia Reply Br. at 44 (citing I*n the Matter of the Application of The East Ohio Gas Company d / b / a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service*, Case No. 07-829-GA-AIR, Opinion and Order, at 23 (Oct. 15, 2008); *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters*, Case No. 07-1080-GA-AIR, Opinion and Order, at 13 (Jan. 7, 2009)).

plained, at hearing, that the Commission's Technical Reference Manual ("TRM") assumes, measures, and verifies savings from new home energy efficiency programs by comparing the as-built home to a user-defined reference home.[84] Under Commission precedent, "[a]ny utility that elects to adhere to the guidance in the TRM will benefit from a presumption of reasonableness, which any other party not in agreement would have the burden to rebut in any applicable proceeding."[85]

Thus, if OCC believed new home builders in Columbia's territory would construct just as many energy efficient homes without the incentives offered by Columbia's EfficiencyCrafted® Homes program, OCC had the burden to come forward with evidence to support that theory. It did not do so. Based on its precedent and the guidance in the Commission's TRM, the Commission properly affirmed Columbia's continuation of its EfficiencyCrafted® Homes program.

2.2.9. The Commission properly rejected ELPC/NOAC and OCC's request to shrink the next term of Columbia's DSM program to three years. (ELPC/NOAC AOE III; OCC AOE 2.B.)

Ninth, both ELPC/NOAC and OCC argue, again, that the term of Columbia's DSM Program is too lengthy. The Commission properly approved Columbia's DSM program for a six-year term. As Columbia has demonstrated, the six-year term benefits ratepayers and is in the public interest because it provides program stability for customers and subcontractors, creates other administrative synergies and efficiencies, and may result in cost savings.[86] It is also consistent with the term of Columbia's current, Commission-approved DSM Program.[87]

OCC and ELPC/NOAC reiterate on rehearing that they would prefer a three-year term.[88] In support of that position, however, OCC and ELPC/NOAC repeat the very same arguments that they advanced in their post-hearing briefs

---

[84] Tr. Vol. II at 371:9 – 372:1. *See also* State of Ohio Energy Efficiency Technical Reference Manual at 136 (Draft, Aug. 6, 2010) (available in the docket for Case No. 09-512-GE-UNC).

[85] *In the Matter of Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures,* Case No. 09-512-GE-UNC, Entry on Rehearing, at 11 (July 31, 2013).

[86] Opinion and Order at ¶ 94. *See also* Columbia Reply Br. at 55-56.

[87] Columbia Reply Br. at 56.

[88] *See* OCC Application for Reh'g, Mem. Supp. at 7-8; ELPC/NOAC Application for Reh'g, Mem. Supp. at 4-5.

on this point.[89] The Commission has already considered and disregarded those arguments, which fail to demonstrate that a six-year term would render the Stipulation, as a package, contrary to ratepayers' or the public interest. Accordingly, the Commission should deny OCC and ELPC/NOAC's request for rehearing of this issue.

2.2.10. The Commission did not err in failing to impose a DSM Rider cap that OCC never requested. (OCC AOE 2.H.6.)

Tenth, and finally, OCC argues that Columbia's DSM Program does not benefit consumers because it "fails to include a limit on costs similar to the one provided in AEP Ohio's recent energy efficiency case."[90] Before OCC filed its Application for Rehearing, OCC had not requested a cap. And even now, OCC has not recommended any particular cap. OCC simply points to an Opinion and Order issued one month after the Opinion in this case, notes the Commission's comments about the importance of cost-containment in that Opinion and Order, and (apparently) faults the Commission for not applying that holding retroactively to this proceeding.[91]

The Commission's failure to apply a cap on Columbia's DSM Rider that no party requested is not grounds for revising the Commission's ruling. Nor has OCC shown that a "cost cap" is necessary here. Columbia's projected annual spending for its DSM Program ($32.3 to $35.7 million, *including* WarmChoice® base funding) is less than one-third of AEP Ohio's annual cost cap ($110 million).[92] And the DSM Program's expected cost to the average Small General Service customer is only $1.60 per month through 2022.[93] Notwithstanding the limited rate impact, Columbia included the total DSM Programmatic budget as Appendix B of its Application. By definition, the budget amount for the term would

---

[89] *Compare* OCC Application for Reh'g, Mem. Supp. at 7-8, *with* OCC Br. at 40-42; *compare* ELPC/NOAC Application for Reh'g, Mem. Supp. at 4-5, *with* ELPC/NOAC Br. at 13.

[90] OCC Application for Reh'g, Mem. Supp. at 24.

[91] *See id.* (citing *In re Application of Ohio Power Co. for Approval of its Energy Efficiency & Peak Demand Reduction Program Portfolio Plan for 2017 through 2020*, Case No. 16-574-EL-POR, Opinion and Order, at ¶ 32 (Jan. 18, 2017)).

[92] *Compare* Columbia Ex. 1 (Application), Appendix B, Table 3, at 25 (Columbia DSM Program Projected Budgets), *with In re Application of Ohio Power Co. for Approval of its Energy Efficiency & Peak Demand Reduction Program Portfolio Plan for 2017 through 2020*, Case No. 16-574-EL-POR, Opinion and Order, at ¶ 32 (Jan. 18, 2017).

[93] *See* Columbia Ex. 2 at 9:3-4 (Thompson Testimony).

provide a limit on the rate Columbia charges, which the Commission reviews annually for reasonableness and prudence.

Given the minimal cost that Columbia's DSM Program has imposed and is projected to impose on residential customers, and the Commission's annual review of the DSM Rider charge, there is no need to impose a cost or rider cap on Columbia's DSM Program.

2.3. The Commission properly concluded that the Stipulation, as a package, did not violate any important regulatory principle or practice because it provides system-wide benefits and minimizes the impact on non-participants, as required by this Commission's precedent. (OCC AOE 3.)

OCC also argues the Commission improperly concluded that the Stipulation did not violate any important regulatory principle or practice. The Commission's Opinion and Order reiterated its prior holding that "DSM program designs that are cost-effective, produce demonstrable benefits, and produce a reasonable balance between reducing total costs and minimizing impacts on non-participants are consistent with Ohio's economic and energy policy objectives."[94] The Commission concluded the Stipulation met that standard.[95] OCC now argues the Commission reached the wrong conclusion, for two reasons. Neither of those reasons justifies any revision to the Commission's Opinion and Order.

First, OCC suggests the requirement to "minimiz[e] impacts on non-participants" means the Commission must accept any modification to the DSM Program that would shrink its scope, reduce Columbia's cost recovery, or increase the number of customers paying the DSM Rider.[96] This cannot be the proper interpretation of the Commission's test. Such an interpretation would give OCC and other intervenors a veto over any stipulation, effectively making them an indispensable party to any stipulation. The Commission has repeatedly

[94] Opinion and Order at ¶¶ 126-127 (citing *In re Dominion East Ohio*, Case No. 07-829-GA-AIR, et al., Opinion and Order, at 22-23 (Oct. 15, 2008)).

[95] *See id.* at ¶ 132 (concluding that the Stipulation "meets the criteria used by the Commission to evaluate stipulations").

[96] *See* OCC Application for Reh'g, Mem. Supp. at 25-26.

declined to "require any single party, including OCC, *** to agree to a stipulation" in order to let it pass the Commission's three-part test.[97]

And while minimizing costs to non-participants is important, a DSM program must also "produce demonstrable benefits." Ending the WarmChoice® program and replacing it with a narrower program might reduce overall costs, for example,[98] but it would also deprive thousands of Columbia's low-income customers of economically valuable and potentially life-saving repairs.[99] Elevating cost-minimization over the actual effectiveness of the program would skew the test in ways that contradict the public policies underlying the adoption of such programs.

The requirement to "minimiz[e] impacts on non-participants" simply means that any proposed DSM rider charges must be reasonable. Columbia's DSM Rider charges are indisputably reasonable. OCC focuses on the overall cost of the DSM Program over six years,[100] but the "impact[ ] on non-participants" of Columbia's DSM Program is better measured by the small monthly DSM Rider charge those customers will pay – again, only $1.60 per month.[101] A DSM Rider that costs less than $20/year clearly minimizes impacts on non-participants.

Second, OCC argues that requiring a majority of Columbia's customers to pay for a DSM Program that "only 3% of Columbia's customers are projected to actively participate in *** each year" violates the prohibition on "unreasonable intra-class subsid[ies]."[102] This argument fails on several levels. As Columbia explained in its Reply Brief, OCC's 3% figure excludes the roughly 30% of Columbia's customers who participate *each year* in Columbia's Home Energy Reports program.[103] The Commission properly found that the "Home Energy Reports program is a cost-effective means to provide customers energy efficiency and conservation information and to facilitate the customer's informed choice to install energy efficiency devices."[104] Additionally, OCC's interpretation of the pro-

[97] (Citations omitted.) Opinion and Order at ¶ 59.

[98] *See* OCC Application for Reh'g, Mem. Supp. at 25.

[99] *See* Columbia Reply Br. at 41.

[100] *See* OCC Application for Reh'g, Mem. Supp. at 25.

[101] *See* Columbia Ex. 2 at 9:3-4 (Thompson Testimony).

[102] OCC Application for Reh'g, Mem. Supp. at 27.

[103] *See* Columbia Reply Br. at 17 (citing, *inter alia*, Tr. Vol. I at 62:19 – 63:1).

[104] Opinion and Order at ¶ 109.

hibition on intra-class subsidies would effectively end Ohio's natural gas DSM programs. "The Commission has long-recognized that conservation and energy efficiency should be an integral part of natural gas policy," as the Commission recognized in its Opinion and Order.[105] Yet OCC witness James Williams could not identify a single DSM portfolio in the state of Ohio that would meet the "majority participation" standard OCC asks the Commission to adopt.[106] Any interpretation of agency policy that would retroactively invalidate more than 20 years of DSM programs[107] and current programs across Ohio must be rejected.

Columbia's DSM Program is projected to save millions of Mcf of natural gas, providing numerous benefits to program participants and non-participants, for a minimal charge. For all of these reasons, the Commission should affirm its prior holding that Columbia's DSM Program does not violate any important regulatory principle or practice.

2.4. The Commission's Opinion and Order set forth and explained the Commission's findings in sufficient detail to satisfy the requirements of R.C. 4903.09. (OCC AOE 1.)

The merits aside, OCC asserts the Commission's Opinion and Order does not sufficiently explain how the Commission came to its decision.[108] OCC specifically laments the Commission's decision not to address every single one of OCC's arguments. Yet the Ohio Supreme Court precedent to which OCC points to defend its position—a recent decision involving an AEP Ohio proceeding[109] -- does not demonstrate that the Opinion and Order did not comply with R.C. 4903.09.

The purpose of R.C. 4903.09 is to enable the Ohio Supreme Court to "review the action of the commission without reading the voluminous records in Public Utilities Commission cases."[110] Strict compliance with R.C. 4903.09 is not required.[111] The Commission need provide only enough detail to allow the Ohio

---

[105] Opinion and Order at ¶ 126.

[106] *See* Columbia Reply Br. at 20 (citing Tr. Vol. III at 536:23 – 537:18).

[107] *See* Opinion and Order at ¶ 125.

[108] OCC Application for Reh'g, Mem. Supp. at 2-5.

[109] *In re Application of Columbus Southern Power Company*, Slip Op. 2016-Ohio-1608.

[110] *Payphone Assoc. of Ohio v. Pub. Util. Comm.*, 109 Ohio St.3d 453, 2006-Ohio-2988, at ¶ 32.

[111] *Id*. (citing *Tongren v. Pub. Util. Comm.*, 85 Ohio St.3d 87, 89 (1999)).

Supreme Court to determine the basis of the Commission's reasoning.[112] The Commission is required only to set forth "some factual basis and reasoning based thereon in reaching its conclusion."[113]

The recent precedent cited by OCC is distinguishable. The Court faulted the Commission for not addressing AEP Ohio's arguments about a very specific statutory section applicable to the significantly excessive earnings test ("SEET").[114] The SEET test is very specific and explicitly set forth in the Ohio Revised Code. However, no statutes exist for natural gas DSM programs approaching the specificity of the SEET test statute and in this instance no analogous application of facts to a specific statute. Moreover, the AEP Ohio case on appeal was not a settled case. In the AEP Ohio case, the Commission dealt with a series of discrete issues in order to approve an electric security plan ("ESP") for AEP Ohio outside of a settlement context. The SEET issue was one of those discreet issues taken up on appeal. In comparison, the Commission's obligation in this case was only to explain how the Stipulation package met the three-pronged test for approving settlements. The Commission met its obligation to explain how the Stipulation met the Commission's settlement criteria.

Notably, OCC fails to provide any precedent supporting its assertion that the Commission was required to respond to more of its arguments. That is because none exists. Further, the logical outgrowth of OCC's advocacy is a redefinition of the burden of proof. Adopting OCC's position would turn cases into exercises whereby refuting other parties' points takes priority over the party with the burden of proof affirmatively proving its own case. In other words, OCC asks the Commission to turn R.C. 4903.09 into a requirement to disprove intervenors' cases rather than proving the applicant's case. The Commission should not incent this tyranny of the minority.

The 65-page Opinion and Order goes into great detail to describe the issues raised by all the parties and its decision. The Commission spends approximately 10 pages of its 65-page Opinion and Order explaining its decision, including refuting many OCC arguments, that the Stipulation meets the Commission's settlement criteria. The Commission discusses the facts it relied upon as well as the rationale for its decision that the Stipulation meets the required criteria. To

---

[112] *Id*. (citing *Allnet Communications Serv., Inc. v. Pub. Util. Comm*., 70 Ohio St.3d 202, 209 (1994)).

[113] *Id*. (citing *Allnet* and *Ohio Domestic Violence Network v. Pub. Util. Comm*., 70 Ohio St.3d 311, 323 (1994)).

[114] *In re Application of Columbus Southern Power Company*, 2016-Ohio-1608, at ¶¶ 64-66.

the extent the Commission believes any further explanation of its holding would be helpful, it can provide that explanation in its ruling on the applications for rehearing. But the Commission satisfied its obligation under R.C. 4903.09, and the Commission should reject OCC's assignment of error.

2.5. The Commission properly held that references to Columbia's tariff were admissible in post-hearing briefing because Columbia's tariff sheets have the force and effect of law. (OCC AOE 5.)

OCC also challenges the Commission's decision not to strike references to Columbia's approved and publicly filed tariff sheets in Columbia's post-hearing reply brief.[115] OCC suggests, again, that it should have been given the opportunity to "test" Columbia's tariff sheets and "subject [them] to cross-examination."[116] Yet OCC makes no effort to distinguish the binding precedent holding that "a tariff has the same binding effect as a law."[117] Nor does it explain why law should be subject to cross-examination or how it would have "tested" Columbia's tariff sheets had it been given the chance to do so.

OCC also re-argues that Columbia contradicted its prior discovery responses regarding the derivation of its cost-effectiveness calculations when Columbia cited to its tariff sheets, in its reply brief, to support the reasonableness of its adjustments to its natural gas cost projections.[118] But OCC's Application for Rehearing does not cite the discovery responses that OCC believes Columbia contradicted. And, as Columbia has explained repeatedly, Columbia has never claimed that it derived the natural gas cost projection adjustments in its cost-effectiveness calculations from information in its tariff sheets. Most of the information OCC sought to strike simply helped describe the riders and charges that Columbia took into consideration when it adjusted its gas cost projections.[119] The remaining information simply shows, for comparative purposes, that the adjustments to Columbia's projected natural gas costs were in line with its recent tariff charges.[120]

---

[115] *See generally* OCC Assignment of Error 5.

[116] OCC Application for Reh'g, Mem. Supp. at 40.

[117] Opinion and Order at ¶ 37 (citing *In re Complaint of Reynoldsburg*, 134 Ohio St. 3d 29, 38, 2012-Ohio-5270, 979 N.E.2d 1229, ¶ 41).

[118] *See* OCC Application for Reh'g, Mem. Supp. at 40-42.

[119] *See* Columbia Memo. Contra OCC Motion to Strike at 7.

[120] *See id.*

As noted in Columbia's Memorandum Contra to OCC's Motion to Strike, the Commission has previously held that it may take administrative notice of a public utility's tariff sheets, and it has done so on more than half-a-dozen occasions before.[121] The Commission's ruling was consistent with tariff sheets' status as law and the Commission's precedent and should be reaffirmed.

2.6. The Commission properly granted Columbia's Motion for Protective Treatment to protect Columbia's trade secret information. (OCC AOE 4.)

Finally, OCC again recites its incorrect arguments opposing Columbia's request for protective treatment. While OCC cites the portions of Ohio law relating to the public nature of documents, OCC conveniently omits and ignores the well-established exceptions to Ohio's public records law the Commission correctly applied. The Commission should once again reject OCC's arguments and affirm its Opinion and Order.

As a threshold matter, the Commission should consider that customers are not clamoring for public disclosure of the information contained in the confidential information at issue. As OCC disclosed in discovery in this case, in the twenty-four months preceding the date of that response, it had not received a single complaint or inquiry about Columbia's DSM Program through the OCC's e-mail or toll free number.[122] Moreover, except for the limited number of confidential exhibits OCC put into the record in this case, the vast majority of the confidential trade secret information is not even part of the record.

Finally, Columbia's Application and the non-confidential record evidence and docket in this case provide the public ample information about what customers are paying for in Columbia's DSM Program. Protecting the confidential information from public disclosure properly balances the disclosure of DSM Program information to customers with the value Columbia and customers would stand to lose from disclosing this economically valuable information to competitors that offer energy efficiency services and to those who might bid to implement or evaluate Columbia's individual programs.

---

[121] *See* Columbia Memo. Contra OCC Motion to Strike at 5 n.19-22.

[122] *See* Columbia Reply Memo. Supp. Motion for Prot. Order at 1 (Sept. 27, 2016).

2.6.1. Customer participation rates and energy efficiency program costs are trade secrets properly protected by the Commission.

In its Application for Rehearing, OCC again cites to a distinguishable Duke energy efficiency rider case and argument that the Commission rejected. Specifically, OCC points to an Attorney Examiner Entry that denied Duke protective treatment of high-level program information.[123] The Commission explicitly rejected OCC's argument, noting that the Duke case is not directly on point because Columbia had already provided the total utility budget costs per DSM program in its Application.[124] Columbia agrees with the Commission's decision.

But the Duke case is not just distinguishable on that ground. The Duke entry noted the information did not qualify as trade secrets "merely because" the information would provide per-participant pricing information (and therefore reveal Duke's pricing information to bidders).[125] As Columbia demonstrated in its Motion and its Reply, the information at issue here is not a trade secret just because it would reveal information to bidders. The information would also be valuable to potential competitors of Columbia in the energy efficiency marketplace (such as Empower). While OCC discounts this fact, the information clearly has independent economic value, both actual and potential, from not being known to competitors. It therefore qualifies as a trade secret.

Moreover, the confidential information at issue here is exponentially more voluminous, detailed, and revealing than the information in the Duke entry. In particular, the spreadsheets in Columbia's responses to OCC RPD Set 4, No. 22 and Staff Set 1, No. 6 (A and B) are essentially the "keys to the kingdom," revealing virtually every financial and cost-effectiveness aspect of Columbia's entire DSM Program. This information is the culmination of Columbia's business experience over the past 8 years (and almost 30 years as it relates to WarmChoice®). While Columbia acknowledges customers pay rider rates that fund the DSM Program, this consideration should not override Columbia's interest in keeping this core information confidential, especially in light of its trade-secret status.

---

[123] OCC Application for Reh'g, Mem. Supp. at 30-31; *In the Matter of the Application of Duke Energy Ohio, Inc. for an Energy Efficiency Cost Recovery Mechanism and for Approval of Additional Programs for Inclusion in its Existing Portfolio*, Case No. 11-4393-EL-RDR ("*Duke Case*"), Entry at 2-3 (Oct. 3, 2011).

[124] Opinion and Order at ¶ 25.

[125] *Duke Case*¸ Entry at 2.

2.6.2. The Commission properly rejected OCC's claim that previous, limited disclosures of program rebates and incentives should not dictate that similar, but much more detailed, information cannot now be properly protected.

Next, OCC challenges Columbia's designation of confidential materials related to individual projected program participation and rebate amounts, asserting that Columbia previously put this information into its public filings.[126] OCC also criticizes Columbia for selectively guarding the secrecy of certain information, but allowing the $75 rebate for smart thermostats to be made public. The Commission rejected OCC's arguments, saying it "is not convinced that Columbia's disclosure of similar customer participation rates, rebates, and incentive levels in Columbia's previous DSM proceedings justifies the public disclosure of current DSM program details."[127]

The Commission should affirm its correct decision. As it did previously, Columbia concedes it previously put somewhat similar information, in more summary form, into its past public filings. However, the information at issue here is much more detailed than the information previously provided by Columbia and included in the charts compiled by OCC. The projected participation rates OCC cited are more generic, high-level program participation rates that Columbia voluntarily disclosed in its filings. In contrast, Columbia's response to OCC Interrogatory Set 2, No. 1 contains a year–by-year breakdown of expected participation rates. Columbia's response to OCC Interrogatory Set 2, No. 5 includes all proposed rebates for the entire six-year DSM Program period. The spreadsheets provide even more detailed information on the expected adoption rate of various measures within the various individual programs noted in Columbia's response to OCC Interrogatory Set 2, Nos. 1 and 5. Simply put, the rudimentary charts compiled by OCC cannot be equated with the voluminous and detailed information included in the confidential discovery responses at issue here. Columbia demonstrated the program participation rates and rebate amounts are trade secrets under Ohio law, and those trade secrets should be protected.

OCC's criticism of allowing the $75 amount to be made public is equally unfounded. The $75 amount will be made public regardless as marketers promote the program, especially as Columbia works with other utilities to maximize

[126] OCC Application for Reh'g, Mem. Supp. at 32-33.

[127] Opinion and Order at ¶ 25.

the combination of rebates for customers for these thermostats.[128] The dollar amounts contained in the spreadsheets Columbia seeks to protect, on the other hand, include projected amounts subject to bid results; revealing that information would harm the bidding process.

OCC attempts to put Columbia in a "no win" box. Columbia attempted to put as much as possible into the public record in this case while maintaining the appropriate protection of its trade secret information. Columbia appreciates the need to keep confidential information to a minimum and the selective disclosures criticism is both untrue as well as unfortunate. These criticisms, if given credence, will only incent future requests for broader protective treatment of company information.

2.6.3. Columbia's cost-effectiveness model meets the test for trade secret protection.

OCC next challenges whether Columbia's cost-effectiveness model, spreadsheets, and other confidential information meet the definition of a trade secret.[129] OCC also contends that Columbia's disclosure of this information to Ohio Partners for Affordable Energy ("OPAE") in discovery undercuts Columbia's claims that the cost-effectiveness spreadsheets could be used by competitors when OPAE members may bid on certain Columbia programs. OCC also suggests that OPAE members should be disqualified from bidding on any of Columbia's programs because they would have an unfair advantage against other bidders.

The Commission already correctly rejected these arguments. OCC's Application for Rehearing provides no reason to reverse course. The Commission correctly found:

> [W]hile OCC requests public disclosure of all the information for which Columbia requests protective treatment, OCC also encourages competitive bidding for WarmChoice® service providers and all the other DSM program contractors, to ensure the best contract price for vendor services. The Commission finds the disclosure of participation rates and detailed DSM program cost information at odds with the encouragement of competitive bidding. Columbia has a duty, as the administrator of the DSM programs, to facilitate,

[128] Opinion and Order at ¶ 71.

[129] OCC Application for Reh'g, Mem. Supp. at 33-34.

> administer, and carry out the DSM programs, which includes assuring that the costs incurred are reasonable.[130]

Columbia clearly explained in its Motions for Protective Order how the confidential information derives independent economic value to both Columbia and to possible competitors. Specifically, the obvious expected program participation numbers, rebate levels, and cost-effectiveness analyses have both actual and potential economic value to others who provide energy efficiency services and could use this information to copy Columbia's program for their own economic benefit. Again, Empower, which attempted to intervene in this case, is a prime example of other entities that offer energy efficiency services and could compete with Columbia.

Moreover, potential bidders could use cost-effectiveness information to bid up to the levels that Columbia has budgeted for in its respective programs, thereby possibly leading to higher bids and lower customer participation under Columbia's program budgets. As for Columbia itself, there is value in customers continuing to receive a program that so many are utilizing, reinforcing customer appreciation of an award-winning utility-offered program.

As for OCC's claims about OPAE, Columbia did share the cost-effectiveness sheets with OPAE's attorney pursuant to the protective agreement signed by OPAE's attorney. Columbia confirmed the information was not shared with any OPAE members.[131] While the OCC may raise a valid concern about potential sharing of information with potential bidders, Columbia will properly address that issue at the appropriate time. Importantly, no OPAE members received the information and there is no reason to keep any OPAE member from bidding on Columbia programs. The Commission should again reject OCC's assertions for the reasons described above.

---

[130] (Citation omitted). Opinion and Order at ¶ 25.

[131] Columbia again spoke with OPAE's attorney on January 24, 2017, to confirm no confidential information had been shared with any OPAE members. In fact, OPAE's attorney has not even opened or accessed any of the confidential information. Columbia will ensure OPAE members do not receive any confidential information that might provide an advantage during bidding on any Columbia DSM programs.

2.6.4. Columbia's business interest in its DSM Program is evident and disclosure will also harm the competitive bidding process.

OCC asserts Columbia does not have an independent business interest in the confidential information discussed in the Motion.[132] OCC also claims customers have a right to all the information about Columbia's DSM Program because they pay for the DSM Program. OCC further equates the Commission's decision to grant Columbia's Motion for Protective Treatment as giving Columbia a monopoly on providing energy efficiency services and programs to customers and further avers that Columbia is suppressing the market for energy efficiency services so that it may continue to collect shared savings from customers.[133]

As an initial matter, adopting OCC's position would logically mean that no information of any public utility could be confidential, because the services or programs are paid for with revenues generated by customer payments. The Commission has never adopted such a broad view, likely because it is obviously at odds with Ohio law and the Commission's precedent. The Commission should again reject this misguided thinking.

Columbia demonstrated that it does in fact have a business interest, showing that the confidential information has value to both Columbia and to potential competitors. Unlike the electric utilities, which are mandated by statute to achieve certain energy efficiency targets and therefore enjoy a protected status as energy efficiency providers, Columbia has no such mandate. Therefore, Columbia should be protected like any other competitor in the market from being forced to reveal its confidential, trade secrets.

2.6.5. Inputs and data into the cost-effectiveness model are the very types of trade secrets that are properly protected by the Commission.

Finally, OCC protests protecting from disclosure the various inputs into the cost-effectiveness model. Specifically, OCC cites an alleged dearth of information to actually explain how the inputs have independent economic value. OCC also points to a Columbia non-confidential discovery request that identified the names of the inputs, but not the actual numbers associated with those inputs.

---

[132] OCC Application for Rehearing, Mem. Supp. at 35-36.

[133] *Id*. at 36.

As an initial matter, Columbia acknowledges it inadvertently revealed the names of the inputs into the avoided gas cost portion of the cost-effectiveness calculation in an initial discovery response (OCC Information Request Set 1, No. 8) that was not marked confidential. That information should and did come into the public domain.[134] However, the actual numbers associated with those various inputs should remain protected.

A cost-effectiveness calculation is an important tool to review and evaluate any energy efficiency program. The numerical inputs into the cost-effectiveness evaluation are the very type of information competitors would like to have in order to compare their program to Columbia's. The information carries its own independent economic value – both to the holder of the information as well as to competitors. Competitors of Columbia's DSM Program could easily use the numerical inputs and their concomitant effect on Columbia's program to benchmark their own programs or perhaps model their own review using Columbia's inputs as a guide. This free information would save a potential competitor a significant amount of time and financial resources that it would otherwise expend to independently obtain the same information. For all of these reasons, the Commission properly protected the inputs and data in the cost-effectiveness model.

3. CONCLUSION

For the reasons provided above, in Columbia's initial post-hearing Brief and Reply Brief, and in Columbia's Memorandum Contra OCC's Motion to Strike, Columbia Gas of Ohio, Inc. respectfully requests that the Commission deny OCC's and ELPC/NOAC's Applications for Rehearing and reaffirm the extension of Columbia's DSM Program for another six years, pursuant to the terms of the August 2016 Stipulation, as modified by the Commission's Opinion and Order.

[134] *See* Columbia filing on January 12, 2017 in compliance with the Opinion and Order, to provide redacted copies of documents filed under seal with only confidential trade secret information redacted so as to minimize the amount of information protected from public disclosure.

Respectfully submitted by,

COLUMBIA GAS OF OHIO, INC.

/s/ Joseph M. Clark
Joseph M. Clark, Counsel of Record

Eric B. Gallon (0071465)
Porter Wright Morris & Arthur LLP
41 South High Street
Columbus, OH 43215
Telephone: (614) 227-2190
Facsimile: (614) 227-2100
Email: egallon@porterwright.com

(Willing to accept service by e-mail)

Stephen B. Seiple, Asst. General Counsel (0003809)
Joseph M. Clark, Senior Counsel (0080711)
P.O. Box 117
290 W. Nationwide Blvd.
Columbus, Ohio 43216-0117
Telephone: (614) 460-6988
E-mail: sseiple@nisource.com
josephclark@nisource.com

(Willing to accept service by e-mail)

Attorneys for
COLUMBIA GAS OF OHIO, INC

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 30th day of January, 2017, upon the parties and movant listed below:

Ohio Attorney General's Office	thomas.lindgren@ohioattorneygeneral.gov john.jones@ohioattorneygeneral.gov
Ohio Partners for Affordable Energy	cmooney@ohiopartners.org
Ohio Consumers' Counsel	christopher.healey@occ.ohio.gov bojko@carpenterlipps.com
Ohio Farm Bureau Federation	amilam@ofbf.org cendsley@ofbf.org lcurtis@ofbf.org
Mid-Ohio Regional Planning Commission	callwein@keglerbrown.com
Ohio Hospital Association	dborchers@bricker.com mwarnock@bricker.com rick.sites@ohiohospitals.org
Retail Energy Supply Association	glpetrucci@vorys.com ibatikov@vorys.com mjsettineri@vorys.com
Interstate Gas Supply, Inc.	joliker@igsenergy.com
Northwest Ohio Aggregation Coalition	trhayslaw@gmail.com lesliekovacik@toledo.oh.gov
Empower Gas and Electric, LLC	gpiacentino@wp-lawgroup.com

Environmental Law & Policy Center mfleisher@elpc.org

/s/ Joseph M. Clark
Joseph M. Clark

Attorney for
COLUMBIA GAS OF OHIO, INC.

Summary: Memorandum Contra to Applications for Rehearing electronically filed by Cheryl A MacDonald on behalf of Columbia Gas of Ohio, Inc.