

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
COLUMBIA GAS OF OHIO, INC. FOR
APPROVAL OF AN ALTERNATIVE FORM OF
REGULATION TO EXTEND AND INCREASE
ITS INFRASTRUCTURE REPLACEMENT
PROGRAM.

CASE NO. 16-2422-GA-ALT

ENTRY

Entered in the Journal on October 13, 2017

{¶ 1} Columbia Gas of Ohio, Inc. (Columbia or Company) is a natural gas company, as defined in R.C. 4905.03, and a public utility, as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of the Commission.

{¶ 2} On December 27, 2016, Columbia filed a notice of intent to file an application for approval of an alternative rate plan under R.C. 4929.05.

{¶ 3} On February 27, 2017, Columbia filed its alternative rate plan application, along with supporting exhibits and testimony, pursuant to R.C. 4929.05, 4929.051(B), 4929.11, and 4909.18. In its application, Columbia states it seeks approval to continue its Infrastructure Replacement Program (IRP) and the associated cost recovery mechanism, Rider IRP, for five years through December 31, 2022. Columbia's current IRP was approved for a five-year term to expire on December 31, 2017, in Case No. 11-5515-GA-ALT. *In re Columbia Gas of Ohio, Inc.*, Case No. 11-5515-GA-ALT, Opinion and Order (Nov. 28, 2012).

{¶ 4} On March 24, 2017, Staff filed a letter stating that Columbia's application is in compliance with Ohio Adm.Code 4901:1-19-06.

{¶ 5} By Entry issued on April 21, 2017, Industrial Energy Users-Ohio (IEU), Ohio Consumers' Counsel (OCC), and Ohio Partners for Affordable Energy (OPAE) were granted intervention.

{¶ 6} The Staff Report was filed on July 10, 2017. OCC and OPAE filed objections to the Staff Report or the application on August 14, 2017, and August 15, 2017, respectively.

{¶ 7} On August 18, 2017, a joint stipulation and recommendation (stipulation) was filed by Columbia, Staff, and OPAE. By Entry issued September 7, 2017, a procedural schedule was established to assist the Commission in its review of the stipulation, including a hearing to commence on October 11, 2017.

{¶ 8} Pursuant to the procedural schedule, Columbia filed testimony in support of the stipulation on September 8, 2017.

{¶ 9} On September 20, 2017, a joint motion was filed by Columbia, Staff, IEU, OCC, and OPAE to revise the procedural schedule. In the motion, the parties requested that the Commission reschedule the hearing to October 2, 2017, and, to expedite the Commission's consideration of Columbia's application, the parties agreed to admit specified documents and all pre-filed testimony into the evidentiary record at hearing and to waive cross-examination of witnesses. Further, the parties agreed to and proposed a post-hearing briefing schedule of initial briefs to be filed by October 23, 2017, and reply briefs due by November 7, 2017.

{¶ 10} By Entry issued September 22, 2017, the parties' joint motion was granted.

{¶ 11} On September 28, 2017, OCC filed testimony in opposition to the stipulation.

{¶ 12} At the hearing, Columbia requested that the attorney examiner take administrative notice of certain documents which were not part of the record in the case. OCC opposed the motion. The attorney examiner requested that Columbia file the motion in writing by October 3, 2017, and any party opposing the motion file its memorandum contra by October 6, 2017.

{¶ 13} On October 3, 2017, Columbia filed a motion for administrative notice of (a) documents cited in the Company's application and pre-filed testimony that are not otherwise part of the evidentiary record in this case; and (b) the applications, pre-filed testimony, and stipulations in *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of Tariffs to Recover, Through an Automatic Adjustment Clause, Costs Associated with the Establishment of an Infrastructure Replacement Program and for Approval of Certain Accounting Treatment*, Case No. 07-478-GA-UNC; *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of an Alternative Form of Regulation and for a Change in its Rates and Charges*, Case No. 08-73-GA-ALT, et al.; and *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of an Alternative Form of Regulation*, Case No. 11-5515-GA-ALT. Further, Columbia requests administrative notice of the Company's annual Rider IRP adjustment proceedings to the extent OCC intervened and participated in the proceedings or relied on filings from the cases in its pre-filed testimony, namely, *In the Matter of the Application of Columbia Gas of Ohio, Inc. for an Adjustment to Rider IRP and Rider DSM Rates*, Case No. 09-1036-GA-RDR; *In the Matter of the Annual Application of Columbia Gas of Ohio, Inc. for an Adjustment to Rider IRP and Rider DSM Rates to Recover Costs Incurred in 2010*, Case No. 10-2353-GA-RDR; *In the Matter of the Annual Application of Columbia Gas of Ohio, Inc. for an Adjustment to Rider IRP and Rider DSM Rates to Recover Costs Incurred in 2011*, Case No. 11-5803-GA-RDR; *In the Matter of the Annual Application of Columbia Gas of Ohio, Inc. for an Adjustment to Rider IRP and Rider DSM Rates*, Case No. 12-2923-GA-RDR; and *In the Matter of the Application of Columbia Gas of Ohio, Inc. for an Adjustment to Rider IRP and Rider DSM Rates*, Case No. 16-2236-GA-RDR. Columbia notes that OCC's testimony includes references to eight documents, including prior Columbia IRP extension proceedings and rider filings, among other documents, that are not part of the evidentiary record. Columbia contends excluding the documents would impede the other parties' ability to address arguments presented. Further, Columbia contends OCC has been active in many of the prior IRP proceedings, is familiar with the contents of those dockets, and would not be prejudiced by the Commission taking administrative notice of the documents.

{¶ 14} On October 6, 2017, OCC filed a memorandum contra Columbia's motion. In its memorandum contra, OCC states that while it does not oppose the Commission taking administrative notice of the documents cited in OCC's testimony, OCC objects to administrative notice of all the other documents Columbia seeks to add to the record at this late date. OCC points out that Ohio Evid. R. 201 permits judicial notice to be taken of any adjudicative fact that is not subject to reasonable dispute. OCC avers Columbia did not give OCC sufficient notice of the specific facts and evidence Columbia seeks to use and, therefore, OCC was not afforded an opportunity to explain or rebut the evidence. OCC reasons that the fact that OCC was an intervening party in some of the prior IRP proceedings does not allow Columbia to forego the obligatory step of including the evidence from the prior proceedings in its current application or pre-filed direct testimony or introducing the evidence through cross-examination at the evidentiary hearing.¹

{¶ 15} Further, OCC submits that granting Columbia's motion would cause OCC irreparable harm and prejudice, as the additional evidence would impact OCC's litigation strategy and OCC would have no opportunity to address a large amount of vaguely defined evidence that would be admitted into the record by administrative notice. OCC also notes that Columbia agreed, at its own risk, to waive cross-examination and to admit OCC's testimony in opposition to the stipulation before the testimony was filed. OCC asserts that if Columbia wished to rebut OCC's testimony, Columbia should have reserved the right to file rebuttal testimony. Accordingly, OCC requests that Columbia's motion to take administrative notice be denied.

{¶ 16} The attorney examiner notes that Columbia requests that the Commission take administrative notice of eight documents cited in the testimony of OCC witnesses, as well as the applications, stipulations, and pre-filed testimony in Columbia's prior IRP proceedings and Rider IRP filings. The attorney examiner finds the motion for

¹ OCC notes that OCC was not a party to Case No. 16-2236-GA-RDR.

administrative notice of such an extensive collection of documents should be denied, particularly at this late stage of the proceeding. The parties agreed to the admission of all testimony in this case before all parties had filed their testimony. The parties also agreed to waive cross-examination, with the intent of expediting the Commission's consideration of Columbia's application and the stipulation. While the agreement did not abdicate the right of any party to file a motion for administrative notice, Columbia's motion is unreasonable to the extent that it essentially requests substantial portions of prior Commission cases, as well as other documents, be taken into evidence in this proceeding. The attorney examiner finds the present request for administrative notice to be unreasonable and, therefore, Columbia's motion should be denied. However, Columbia or any other party may request, to the extent necessary, administrative notice of facts in its brief by filing a motion for administrative notice of those facts. Any such motion must clearly identify the specific facts cited in the movant's brief for which the movant is seeking administrative notice.

{¶ 17} It is, therefore,

{¶ 18} ORDERED, That Columbia's motion for administrative notice be denied. It is, further,

{¶ 19} ORDERED, That a copy of this Entry be served upon all persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Greta See

By: Greta See
Attorney Examiner

NW/dah

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in

Case No(s). 16-2422-GA-ALT

Summary: Attorney Examiner Entry denying Columbia's motion for administrative notice; electronically filed by Vesta R Miller on behalf of Greta See, Attorney Examiner, Public Utilities Commission of Ohio