BEFORE
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.	)))	Case No. 16-2422-GA-ALT

REPLY BRIEF
BY
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I. INTRODUCTION

Columbia Gas of Ohio, Inc. ("Columbia" or "Utility") has filed a Settlement that could unjustly and unreasonably increase a single charge on Ohioans' natural gas utility bills from $8.96 to $16.20 over a five-year period.[1] Columbia has provided little if any supporting evidence to justify such significant increases to Ohio consumers' utility bills.

The Office of the Ohio Consumers' Counsel ("OCC") on the contrary provided substantial, and largely unrebutted, evidence demonstrating that the Settlement[2] is not just and reasonable, was not the product of serious bargaining, violates regulatory principles and practices, and will not benefit consumers or the public interest. OCC requests that the Public Utilities Commission of Ohio ("PUCO") exercise its discretion to find that the Settlement, as a package, is not just and reasonable and does not pass the PUCO's three-prong test for approving a settlement. Thus, the Settlement should be rejected or, at a minimum, materially modified to protect Ohio consumers from unjust and unreasonable increases to their utility bills.

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[1] OCC Ex. 2 (O'Neill Direct at Attach. DEO-4); Joint Ex. 1 (Settlement) ($8.96 is the actual Rider IRP rate for 2016. $16.20 is the proposed Rider IRP rate cap for 2022 in the Settlement. The costs for investment years 2018 to 2022 will be charged to customers in years 2019 to 2023).

[2] Joint Ex. 1 (August 18, 2017, Joint Stipulation and Recommendation) ("Settlement").

II. RECOMMENDATIONS

Columbia, the Ohio Partners for Affordable Energy ("OPAE"), and the PUCO Staff ("Signatory Parties") claim that the Infrastructure Replacement Program ("IRP") proposal in the Settlement meets both the criteria for evaluating a settlement and is just and reasonable as required by Ohio law.[3] But, as explained in OCC's Initial Brief, this is not the case. Columbia is seeking authority to significantly increase rates to 1.3 million residential consumers in a manner that is unnecessary, unjust, and unreasonable. The Settlement should be rejected.

A. The Signatory Parties do not demonstrate that the Settlement is just and reasonable, beneficial to customers and the public interest, or in compliance with regulatory principles and practices.

To be approved, the PUCO must find that, among other things, a proposed alternative rate plan is just and reasonable. The applicant (i.e., Columbia) bears the burden of proof in these proceedings.[4] Columbia has failed to satisfy this burden.

Further, when a settlement is filed it is generally reviewed under the following criteria or factors:[5]

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties, where there is diversity of interests among the stipulating parties?

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[3] The Industrial Energy Users of Ohio agreed not to oppose the Settlement.

[4] See R.C. 4929.05.

[5] *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992). The Commission also often takes into account the "diversity of interests" as part of the first part of the stipulation assessment. See *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer*, Case No. 10-388-ELSSO, Opinion and Order at 48 (August 25, 2010).

2. Does the settlement, as a package, benefit ratepayers and the public interest?

3. Does the settlement package violate any important regulatory principle or practice?

Notably, as the PUCO Staff stated in its Initial Brief:

> When the Commission reviews a contested stipulation, as is the case here, the Court has also been clear that **the requirement of evidentiary support remains operative**. While the Commission 'may place substantial weight on the terms of a stipulation,' it 'must determine, from the evidence, what is just and reasonable.' **The agreement of some parties is no substitute for the procedural protections reinforced by the evidentiary support requirement**.[6]

Here, there is an insufficient amount of evidence in the record to prove that the Settlement is just and reasonable. In addition, the evidence supplied by the OCC demonstrates that the Settlement is not just and reasonable. Instead, it is a bad deal for residential consumers.

In summation of their cases in chief, the Signatory Parties generally assert in their Initial Brief's that the Settlement should be approved for the following three reasons: (1) the PUCO has approved Columbia's past IRP proposals;[7] (2) the Settlement will promote safety;[8] and (3) the Settlement is the product of a "compromise," whereby certain terms in the Application or Staff Report were modified.[9] Not one of these arguments demonstrates that the Settlement is just and reasonable and should be approved.

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[6] PUCO Staff Initial Brief at 4-5 (citations omitted) (emphasis added) (citing *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992); *In re Application of Columbus S. Power Co.*, 129 Ohio St.3d 46 (2011)).

[7] See PUCO Staff Initial Brief at 9, 13; Columbia Initial Brief at 7; OPAE Initial Brief at 3.

[8] See PUCO Staff Initial Brief at 6; Columbia Initial Brief at 7-9.

[9] See PUCO Staff Initial Brief at 9-12; Columbia Initial Brief at 9; OPAE Initial Brief at 2-4.

First, the fact that past Columbia IRP applications or settlements have been approved by the PUCO has no relevance to the PUCO's decision here. As the PUCO has relevantly and aptly stated in the past: "the Commission emphasizes that the record in each proceeding stands on its own merits and our determinations within each docket, likewise, rest on the evidence presented therein."[10] This is especially true in this proceeding, where Columbia's motion to take administrative notice of all of Columbia's past IRP filings was denied.[11] Thus, the facts and evidence from Columbia's past IRP proceedings should be given no weight by the PUCO in making its decision in this proceeding. To do otherwise would be improper.

Second, requesting that the entire Settlement be approved because it will promote some marginal level of safety is a straw man argument and irrelevant to the main issues in this proceeding. Safety concerns may be relevant to approving the entire IRP for another five years, but that is not the central issue in this proceeding. The main issue is how much Columbia should be allowed to charge residential consumers under the IRP Rider (i.e., the rate cap for the IRP Rider). The amount of money the PUCO should approve for Columbia's specific IRP Rider rate cap is not contingent on whether the IRP promotes safety. Instead, determining a just and reasonable IRP Rider rate cap is contingent on a variety of cost drivers (e.g., the rate of return, the amount of pipe to be replaced, and the cost-per-mile of pipe replacement). It is determining what values to use for these Rider IRP-related cost drivers that is the main issue of contention in this

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[10] *In the Matter of the Application of Duke Energy Ohio, Inc., for the Establishment of a Charge Pursuant to Section 4909.18, Revised* Code, Case No. 12-2400-EL-UNC, et al., Opinion and Order at 49 (February 13, 2014); See also R.C. 4903.09.

[11] Case No. 16-2422-GA-ALT, Attorney Examiner Entry denying Columbia's motion for administrative notice (October 13, 2017).

proceeding. Thus, claiming that the Settlement should be approved because it promotes safety is not persuasive or relevant.

Third, the fact that a certain term or proposal has been changed from the Application or Staff Report (e.g., the amount of O&M savings being higher than was proposed in the Application) due to a "compromise" does not mean that the amended term or revised proposal is just and reasonable or that it satisfies the three-prong settlement test. The fact that a certain term or proposal has changed as result of a compromise only proves that the parties have come to an agreement on which term or proposal to proffer for the PUCO's review and consideration. Likewise, the fact that a certain term or proposal is lesser or greater in amount than the term or proposal was in the Application or PUCO Staff Report does mean that it is just and reasonable or that it satisfies the three-prong settlement test. Without evidence in support, a proposal, whether the product of compromise, must be denied.

Columbia is obligated to provide the requisite evidence to support its proposal. Columbia failed to do so. Further, the evidence that OCC provided demonstrates that the Settlement is not just and reasonable and that it does not satisfy the three-prong test. Therefore, the Settlement should be rejected or, at a minimum, materially modified.

B. The Hazardous Customer Service Line ("HCSL") program is not just, reasonable, or beneficial for residential consumers.

1. The simple fact that a customer service line leak can theoretically be hazardous does not justify approval of the Settlement.

In its Initial Brief, OCC stated that the HCSL program is not just and reasonable and should be rejected for a variety of reasons. In response, Columbia states in its Initial Brief that the Settlement should be approved because the PUCO has previously found

that it is possible for a customer service line leak to present a significant safety concern.[12] This argument has no merit.

OCC acknowledges that it is possible for a customer service line to leak and for that leak to present a significant safety concern. However, the possibility of that occurring is minute—1 in more than 11.9 million.[13] Further, there are already measures in place to mitigate these risks and any costs for customer service line repair or replacement that is conducted should be collected through base rates.[14] Thus, the argument that the HCSL should be approved because it is theoretically possible for a service line leak to be hazardous is missing the point. The world is not perfect. And it never will be, no matter how much money is spent to make it so. Managing the risks inherent in such imperfections is what Columbia and, ultimately, the PUCO is burdened with.

In deciding which imperfections to manage and how to manage them, the additional costs and benefits of any proposed solution must be evaluated. In this case, the costs ($125 million) far outweigh any benefit that would be provided, especially considering there are already effective mitigation measures in place. It is not just and reasonable to hard-working Ohio residents to charge them $182.76[15] over the next five years to fix a problem that hasn't been proven to exist.

2. The fact that Columbia has the responsibility to repair, replace, and maintain hazardous customer service lines does not justify approval of the HCSL.

Columbia and the PUCO Staff both state that the HCSL program should be approved because the PUCO gave Columbia the responsibility for repairing, replacing,

[12] Columbia Initial Brief at 7-8.

[13] OCC Initial Brief at 18.

[14] OCC Initial Brief at 20-22.

[15] See OCC Initial Brief at 23.

and maintain hazardous customer service lines.[16] This decision, on its own, does not justify Columbia spending $125 million over five years and then receiving accelerated cost collection from customers through a rider. It only obligates Columbia to repair, replace, and maintain the service lines. How Columbia proposes to do that and whether it has chosen a prudent way to do that, is a separate decision that must be reviewed on its own merits. Thus, this argument has no merit.

3. The Duke customer service line replacement program is not distinguishable from Columbia's customer service line replacement program.

In its Initial Brief, OCC stated, for a variety of reasons, that the HCSL program should not be reauthorized. In doing so, the OCC referenced the PUCO's decision in the Duke accelerated service line replacement program proceeding where the PUCO denied a similar service line replacement program.[17] In response, the PUCO Staff stated in its Initial Brief that the two programs are distinguishable.[18] Notably, the PUCO Staff did not address the substantive arguments in OCC's direct testimony regarding the HCSL.

PUCO Staff states that the Columbia HCSL is different from the Duke service line program because Duke had proposed to only replace non-leaking service lines, while the HCSL program replaces only leaking service lines.[19] But, the PUCO Staff ignores the evidence OCC presented that Columbia **is** replacing non-leaking service lines[20] as well as

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[16] Columbia Initial Brief at 7-8; PUCO Staff Initial Brief at 13-14.

[17] OCC Initial Brief at 13-23.

[18] PUCO Staff Initial Brief at 13-14.

[19] PUCO Staff Initial Brief at 14.

[20] See OCC Ex. 3 (Harunuzzaman Direct at 15-16 citing Exhibit MH-6 and MH-7) (OCC asked in a discovery request that Columbia identify the amount of non-leaking lines that have been replaced under the HCSL. Columbia responded "There were 8,741 services that did not have a DPI associated with them." Columbia stated in another discovery request that "DPI" stands for "Distribution Plant Investigation" which refers to the investigation, classification and further action processes that are related to monitoring and repairing **leaking** mains and service lines).

grade-three leaks, which the PUCO pipeline safety rules deem "non-hazardous," under the HCSL.[21]

Nevertheless, approval of the HCSL program should not hinge on this single question. Narrowing the analysis to this single question misses the broader picture that the HCSL program is not just and reasonable for Columbia's residential customers and Columbia failed to rebut or provide evidence to the contrary. As OCC explained in its testimony and Initial Brief, the HCSL proposal should be rejected for the following reasons:[22]

- the minimal benefits that customers will realize from the program do not outweigh the $125 million cost;
- Columbia failed to quantify how the HCSL would increase safety;
- Columbia failed to quantify how the HCSL would increase reliability;
- Columbia failed to quantify how the HCSL would reduce leaks on customer service lines;
- Columbia failed to quantify the probability of harm to persons or property that could result from a leaking customer service line;
- Columbia failed to conduct a cost-benefit analysis of the HCSL;
- Columbia failed to explain why the HCSL is necessary given that there are already effective measures in place to mitigate any alleged risks to consumers from leaking service lines;

[21] See OCC Initial Brief at 21.

[22] See OCC Initial Brief at 13-23.

- Columbia failed to justify accelerated cost collection from consumers through a rider;
- Columbia failed to consider any other alternative programs that may be more just and reasonable for consumers; and
- Columbia failed to reevaluate the current program to determine if it could be improved for consumers.

There is scant evidence, if any, in the record to support the HCSL program. In addition, the evidence that OCC raised in opposition to the program went largely unrebutted. Therefore, the Settlement should be rejected or, at a minimum, modified with the HCSL program funding abandoned.

C. The amount of O&M savings that are proposed to be passed through to customers in the Settlement is not just and reasonable.

The PUCO Staff Report concluded that the Application's proposed minimum amount of O&M savings to be passed back to customers and the methodology to calculate the O&M savings was not sufficient.[23] The PUCO Staff Report also stated that a formal review of the O&M savings should be conducted to determine why it is not producing sufficient results.[24] In the Settlement, the Signatory Parties agreed to increase the minimum amount of O&M savings from $1.25 million per year to $2.0 million rising to $2.5 million by 2022.[25] The Settlement did not change the methodology to calculate the O&M savings.

In its testimony and/or Initial Brief, the OCC argued that the O&M savings provision in the Settlement was not just and reasonable and did not benefit customers

[23] See PUCO Ex. 2 (PUCO Staff Report at 8-9).

[24] See PUCO Ex. 2 (PUCO Staff Report at 8-9).

[25] See Joint Ex. 1 (Settlement at 3).

because it was too low[26] and used a methodology that has produced insufficient results.[27] In their Initial Briefs, Columbia and PUCO Staff both state that the O&M savings amount in the Settlement should be approved because it is greater than the O&M savings amount Columbia proposed in its Application.[28] In addition, PUCO Staff stated that instead of having a formal review of the O&M savings mechanism, as was recommended in the PUCO Staff Report, the Signatory Parties agreed to increase the minimum O&M savings amount.[29] These arguments have no merit.

First, as stated earlier, the simple fact that the O&M savings amount in the Settlement is greater than the O&M savings amount in the Application does not prove that the amounts are just and reasonable or beneficial to customers. PUCO Staff states that the O&M savings amount was a "reasonable compromise." But that is not the standard of review in this proceeding. Instead, the proposal must be just and reasonable and also, as part of a package, satisfy the three-prong settlement test.

When the evidence in the record relating to O&M savings is analyzed there is only one decision that can be reached—that the current O&M savings methodology and the O&M savings amount are not sufficient. For its part, the Signatory Parties provided very little evidence on this issue. Columbia's evidence on the O&M savings issues was limited to just a few paragraphs in its testimony and application.[30] While, this little evidence explains what the proposal is, it does not demonstrate why the proposal is just

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[26] See OCC Initial Brief at 23-25; See OCC Ex. 2 (O'Neill Direct at 48).

[27] See OCC Initial Brief at 23-25.

[28] See Columbia Initial Brief at 9; PUCO Staff Initial Brief at 11-12.

[29] PUCO Staff Initial Brief at 12.

[30] See Columbia Ex. 1 (Application at 10); Columbia Ex. 3 (Beil Direct at 3-4); Joint Ex. 1 (Settlement at 3); Columbia Ex. 5 (Thompson Supplemental at 2-3).

and reasonable. The PUCO Staff stated in its Staff Report that the O&M savings proposal in the Application is insufficient for a variety of reasons.[31] Thus, the only pieces of evidence that the Signatory Parties offer on this issue to satisfy their burden of proof is that the O&M savings amount is a compromise and is higher than the amount proposed Application. This evidence is not sufficient for Columbia to satisfy its evidentiary burden or overcome the amount of evidence that OCC offered to the contrary.

Second, forgoing the formal review of the O&M savings methodology in lieu of increasing the minimum O&M savings amount is not beneficial to customers. Increasing the O&M savings amount will not change the underlying issue that the O&M savings methodology is not working properly. That is, the methodology will not give customers the ability to ever receive more than the minimum amount of O&M savings. This is because, as history has shown, the current methodology does not produce such results. Customers paid their hard-earned money for new main lines. They should now receive the full benefit of cost reductions that are a result of the program they financed.

D. The IRP rate cap in the Settlement is not just, reasonable, or beneficial for residential consumers.

In its Initial Briefs, both PUCO Staff and Columbia argue that the IRP Rider rate caps in the Settlement should be approved for two reasons: (1) Columbia demonstrated that the IRP program costs are rising and will continue to rise; and (2) the IRP Rider rate caps are lower than what was proposed in the Application.[32] These arguments are unfounded.

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[31] See Staff Ex. 2 (Staff Report at 8-9).

[32] Columbia Initial Brief at 9; PUCO Staff Initial Brief at 9-11.

As to the first argument, OCC provided persuasive and unrebutted evidence in its direct testimony demonstrating why the IRP Rider rate caps were higher than is just and reasonable. OCC will not restate all of its argument here because not one Signatory Party substantively addressed any of OCC's arguments in its Initial Brief.

Second, the simple fact that the IRP Rider rate caps in the Settlement are lower than what was proposed in the Application does not prove that the amounts are just and reasonable or beneficial to customers. If anything, it simply demonstrates that a compromise was reached. It does not demonstrate that that proposal is just and reasonable or, as part of the Settlement package, complies with the three-prong settlement test. The proposal must be supported by evidence. As stated previously, the evidence that was presented by the Signatory Parties was comprehensively rebutted by OCC.

E. The collaborative study or audit of the IRP that OCC recommended is not duplicative of the IRP annual filings.

In its Initial Brief, OCC recommended that the PUCO order a collaborative study or audit of the IRP program to determine if it is being implemented efficiently and effectively given the severe lack data that Columbia provided in the proceeding. In response, the PUCO Staff states in its Initial Brief that Columbia files annual applications each year for authority to recover the prior year IRP investments and that the collaborative study and/or audit that OCC recommended would be duplicative of these annual IRP proceedings.[33] OCC disagrees.

As the PUCO Staff acknowledges the annual IRP applications are investment/cost studies.[34] But, OCC's recommendation is much broader than that. As OCC witness

[33] PUCO Staff Initial Brief at 15.

[34] PUCO Initial Brief at 15.

O'Neill testified, the audit should focus on: (1) the leak history associated with mains replaced; (2) the leak history after replacement; (3) variance explanations;[35] as well as (4) cost effectiveness.[36] This is data that was largely not produced in this proceeding. As explained in OCC's testimony and Initial Brief, the data that were provided demonstrated that the IRP was not being implemented in a cost-effective manner. A study or audit is now necessary to determine why. Such a study should not be postponed to a later date while customers are made to pay more than is just and reasonable.

F. A decision on the rate of return for the IRP should not be postponed to an indeterminate future proceeding.

In the direct testimony of OCC witness Dr. Daniel J. Duann, OCC recommended that the pre-tax rate of return for the IRP Rider should be 10.17 percent, not 10.95 percent as Columbia proposes.[37] This evidence went unrebutted and neither OPAE nor Columbia addressed this evidence in their respective Initial Briefs. In its Initial Brief, the PUCO Staff did not agree or disagree that the rate of return is too high. Instead, the PUCO Staff stated that the rate of return should not be set in this proceeding. PUCO Staff stated that a determination on the rate of return should be set in a base rate case.[38] OCC disagrees. In fact, this "alternative regulation" proceeding is intended to function as an alternative to a full rate case. This is exactly the proceeding to address the appropriate return on these additional program expenditures.

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[35] OCC Ex. 2 (O'Neill Direct at 16-17) (i.e., provide an explanation of what factors might have led to the high cost or low leak rate for each Job Order under each Project ID in each year for which the cost per leak addressed [the ratio in the cost-effectiveness report described above] is higher than a threshold dollar amount [e.g., $1,000,000 per average leak]).

[36] OCC Ex. 2 (O'Neill Direct at 16-17).

[37] See OCC Initial Brief at 32-28.

[38] PUCO Staff Initial Brief at 15.

Denying OCC's recommendation on these grounds is not just and reasonable. Postponing the setting of the rate of return for this charge will force consumers to pay the IRP Rider charges that are calculated under the current rate of return until a new rate of return is set in Columbia's next base rate case. If a lower rate is set in that next base rate case then consumers will have been paying an inflated amount during the interim period. And, if a lower rate of return is set in this next base rate case, which would result in lower charges to customers, there is no assurance that customers would be credited back any money. Therefore, waiting to determine the rate of return on the IRP Rider to a date in the future is not just and reasonable and will harm customers.

III. CONCLUSION

The Settlement that Columbia, PUCO Staff, and OPAE filed in this case fails to meet the standards for PUCO approval. It is not just and reasonable and does not satisfy the three-prong test. The OCC provided a substantial amount of substantive evidence in this proceeding demonstrating that the Settlement does not satisfy these standards. The large majority of this evidence went unrebutted. Based on the evidence in the record the Settlement should be rejected or, at a minimum, materially modified in order to protect consumers from paying unjust and unreasonable IRP Rider rates to Columbia

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Reply Brief* has been served on the persons stated below via electronic transmission, this 7th day of November 2017.

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