

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbia Gas)
of Ohio, Inc. for an Adjustment to Rider IRP &) Case No. 17-2374-GA-RDR
Rider DSM)

**COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION

The Public Utilities Commission of Ohio (“PUCO”) should not approve Columbia’s request to update its demand side management rider (“Rider DSM”) and infrastructure replacement program rider (“Rider IRP” and together, the “Riders”)¹ without additional consumer protections:

1. The Rider tariffs should include language guaranteeing customers a refund if any charges are later found unjust, unreasonable, or unlawful.
2. The PUCO should require Columbia to demonstrate that customers are not being double-charged for demand side management programs Columbia jointly administers with AEP Ohio.
3. Large commercial and industrial customers participate in Columbia’s demand side management programs, so they should pay their fair share of the costs.
4. Columbia should begin returning excess accumulated deferred income taxes (“ADIT”) to customers now instead of waiting until 2019.

Without these consumer protections, charges to consumers under the Riders would be unjust and unreasonable.

¹ Application to Adjust Rider IRP and Rider DSM Rates of Columbia Gas of Ohio, Inc. (Feb. 27, 2018) (the “Application”).

II. RECOMMENDATIONS

A. Tax Issues that Must be Addressed within the Riders' Rate Calculations to Protect Consumers

The Tax Cuts and Jobs Act of 2017² reduced the federal corporate income tax rate from 35% to 21%, effective January 1, 2018. As OCC explained in the PUCO's pending commission-ordered investigation,³ customers should receive all the benefits of the Tax Cut Act, as soon as possible, including all tax reductions as of January 1, 2018.⁴

Columbia's Application and supporting testimony propose some reductions in charges to customers based on the Tax Cut Act. OCC appreciates and generally supports utilities' efforts to proactively reduce their rates based on the Tax Cut Act. But OCC recommends further adjustments to Columbia's Riders to better protect customers from overpaying for utility income taxes that have been significantly reduced.

1. Columbia's proposed tax adjustments to Rider IRP for January to April 2018 should be subject to reconciliation.

Columbia's new Rider rates, if approved, will not go into effect until May 2018. The Tax Cut Act became effective January 1, 2018. Columbia proposes, therefore, that the Rider IRP revenue requirement include "an adjustment that provides for the pass back of an estimated IRP over-collection in federal taxes experienced by Columbia during the months of January 2018 through April 2018 resulting from the fact that the current IRP

² H.R. 1, 115th Cong. (2017) (the "Tax Cut Act").

³ *In re the Commission's Investigation of the Fin. Impact of the Tax Cuts & Jobs Act of 2017 on Regulated Ohio Utility Cos.*, Case No. 18-47-AU-COI.

⁴ *Id.*, Comments and Recommendations to Reduce Ohioans' Utility Bills as a Result of the Federal Tax Cuts and Jobs Act of 2017 by the Office of the Ohio Consumers' Counsel (Feb. 15, 2018); Reply Comments by the Office of the Ohio Consumers' Counsel (Mar. 7, 2018).

billing rates have not [been] adjusted to reflect the change in the federal tax rate.”⁵ OCC agrees that customers should receive the benefits of the reduction in tax rates effective January 1, 2018. OCC recommends, however, that because this revenue requirement adjustment is based on an estimate, it remain subject to reconciliation in Columbia’s 2019 Rider IRP filing. That is, Columbia should calculate the actual over-collection of taxes from January 1, 2018 through whatever date its new Rider IRP rates go into effect, and any over- or under-recovery should be reconciled when Columbia’s files its 2019 Rider IRP application. This will ensure that customers neither overpay nor underpay for Columbia’s tax obligations for early 2018.

2. Customers should begin receiving refunds for excess ADIT now instead of having to wait until May 2019.

Columbia recognizes that the reduction in the corporate tax rate from 35% to 21% under the Tax Cut Act will result in excess ADIT.⁶ Columbia proposes that it return the excess ADIT to customers through Rider IRP—but not until May 2019 at the earliest.⁷ The PUCO should reject Columbia’s proposal to delay for 14 more months the return of excess ADIT to customers.

Columbia’s purported justification for the delay is that Columbia is not yet certain about how the Tax Cut Act should be interpreted with regard to excess ADIT. In particular, Columbia states that it is participating in the IRS’s “Compliance Assurance Program” to resolve this uncertainty, a process which Columbia states will not be

⁵ Prepared Direct Testimony of Diana M. Beil on Behalf of Columbia Gas of Ohio, Inc. at 8:15-19 (Feb. 27, 2018).

⁶ Prepared Direct Testimony of Michael D. McCuen on Behalf of Columbia Gas of Ohio, Inc. at 3:28-35 (Feb. 27, 2018).

⁷ *Id.* at 4:11-15-17.

complete until October 2018.⁸ Thus, Columbia proposes that it complete the Compliance Assurance Program process before returning any excess ADIT to customers.

Columbia's inability at this time to precisely calculate the amount of excess ADIT should not cause a delay in passing at least *some* of the excess ADIT back to customers now. According to Columbia, the only identified ambiguity in the Tax Cut Act pertains to whether Columbia qualifies for a certain tax deduction for the period September 27, 2017 through December 31, 2017.⁹ But as Columbia admits, this potential deduction gives rise only to a portion of excess ADIT. Additional excess ADIT is unrelated to this tax deduction. Columbia should therefore, at a minimum, begin returning the remaining excess ADIT (*i.e.*, that portion unrelated to the September 27-December 31, 2017 deduction) now, rather than continuing to hold on to it for another 14 months or more.¹⁰ This will allow customers to benefit from the Tax Cut Act sooner, with no risk to Columbia.

B. Non-Tax Issues that Must be Addressed in the Riders' Rate Calculations and Tariff Provisions to Protect Consumers

1. The Riders should include refund language to ensure that customers get their money back when charges are later found imprudent, unreasonable, or unlawful.

In a recent case involving FirstEnergy,¹¹ the PUCO audited a FirstEnergy rider and, based on the audit, ordered FirstEnergy to return more than \$43 million in

⁸ *Id.* at 4:23-5:16.

⁹ *Id.* at 4:4:4-7. *See also* Columbia's response to OCC INT-3-45 (attached hereto as Exhibit 1).

¹⁰ And if the PUCO does allow Columbia to delay these benefits to consumers until 2019, then consumers should receive carrying costs.

¹¹ *In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co.*, Slip Opinion No. 2018-Ohio-229 ("*FirstEnergy*").

imprudently-incurred charges to customers.¹² On appeal, the Supreme Court of Ohio found that because the rider tariff did not state that the rates were subject to refund, the PUCO could not require FirstEnergy to return the imprudent charges to customers.¹³

In reaching this decision, the court relied on the “filed rate doctrine” of R.C. 4905.32. The court stated that because FirstEnergy had collected costs from customers under a “filed” rate schedule, the PUCO was prohibited from later ordering a disallowance or refund of those costs.¹⁴ The court noted that although FirstEnergy was entitled to collect only prudently-incurred costs from customers, “there can be no remedy in this case because the costs were already recovered.”¹⁵

The court’s decision has far reaching and negative ramifications for consumers who pay charges through utility riders like Columbia’s Rider DSM and Rider IRP. Unless the PUCO takes action to conform these riders to the court’s decision, any subsequently-conducted review of the riders could be rendered meaningless.¹⁶ Consumers could be overcharged for utility service without any way to be reimbursed. This circumstance can result in an unfair windfall for utilities who are already benefiting (to the detriment of consumers) from an exception to traditional regulation that allows single-issue ratemaking for natural gas companies (R.C. Chapter 4929).¹⁷

¹² *Id.* ¶ 10.

¹³ *Id.* ¶ 8.

¹⁴ *Id.* ¶ 18.

¹⁵ *Id.*

¹⁶ *Id.* ¶ 85 (French, J., dissenting).

¹⁷ *Id.* ¶ 18.

The Riders do not contain language stating that the charges are subject to refund.¹⁸ Thus, if the PUCO were to audit either of these riders and determine that costs were imprudently incurred, customers might have no remedy because *FirstEnergy* could prohibit any refund. The same goes for any future Ohio Supreme Court ruling that charges under the Riders were unlawful. To protect consumers from this unjust result, the PUCO should require Columbia to add the following language to each of the Riders:

“Any charge collected from customers under this tariff that is later determined to be unlawful, imprudent, or unreasonable by the PUCO or the Supreme Court of Ohio is refundable to customers.”

2. Customers should not be double-charged for demand side management programs that Columbia jointly administers with AEP.

Columbia jointly administers at least four of its demand side management programs with AEP: school education, new homes, simple energy solutions, and EPA portfolio manager.¹⁹ According to Columbia, joint administration of programs can benefit customers because they will “save on program implementation and marketing costs.”²⁰ But joint administration can also cause customers to be double-charged for programs if adequate safeguards are not in place.

First, there is the risk that consumers will be overcharged for programs if Columbia and AEP do not closely coordinate their efforts. For example, if a program

¹⁸ See Application at Attachment B.

¹⁹ See *In re Application of Columbia Gas of Ohio, Inc. for Approval of Demand Side Management Program for its Residential & Commercial Customers*, Case No. 16-1309-GA-UNC, Application at 6, 10, 12, 13, 15 (June 10, 2016) (the “DSM Portfolio Application”).

²⁰ DSM Portfolio Application at 6, 12. Despite this claim, Columbia has not demonstrated any actual savings for consumers as a result of jointly administering these programs with AEP.

costs \$1 million, but each of Columbia and AEP charges its customers \$750,000, then customers would pay \$1.5 million for a \$1 million program. Yet when OCC served discovery on Columbia to determine what share of program costs were allocated to Columbia and what share to AEP, Columbia responded that it did not know how much AEP's customers were paying for jointly-administered programs.²¹ There is no way to know if customers are being overcharged for programs if Columbia and AEP are not working together to coordinate costs—as apparently, they are not.

Second, the PUCO must ensure that costs for these jointly-administered programs are fairly allocated between Columbia's and AEP's customers. Some programs might be more focused on electric issues with less prominent natural gas impact, and vice versa. The allocation of costs should reflect this. But again—Columbia does not know what AEP customers are paying for these jointly-administered programs, so there is no way to know whether the allocation of costs is just and reasonable.

If Columbia cannot demonstrate that its customers are being fairly charged for these programs, then it should not be permitted to recover the costs of these programs from customers. The revenue requirement for Rider DSM should be reduced by the full amount of the charges for these programs unless Columbia provides evidence that its customers are not being overcharged as a result of Columbia's partnership with AEP.

²¹ See Columbia's response to OCC INT-4 (attached hereto as Exhibit 2)("Columbia responds that it does not know the exact costs allocated to AEP Ohio"); Columbia's response to OCC INT-5 (attached hereto as Exhibit 3)("Columbia responds that it does not know the respective costs allocated to AEP Ohio"); Columbia's response to OCC INT-6 (attached hereto as Exhibit 4)("Columbia responds that it does not know the respective costs allocated to AEP Ohio");

3. Large commercial and industrial customers received over \$685,000 in rebates under Columbia's demand side management programs but paid \$0 for the programs. This is neither just nor reasonable.

In 2017, Columbia's large commercial and industrial customers received over \$685,000 in rebates under Columbia's demand side management programs.²² Yet they paid \$0 for these programs because Columbia's demand side management rider is charged only to residential and small business customers.²³ This subsidy is unjust and unreasonable and should not continue. If GS and LGS customers can participate in Columbia's demand side management programs, then they should pay for the programs.

III. CONCLUSION

For all the foregoing reasons, OCC respectfully asks the PUCO to protect consumers being charged through the IRP and DSM Riders by (a) requiring Columbia to begin passing excess ADIT to customers now instead of waiting 14 more months, (b) finding that Columbia's tax adjustments for January-April 2018 be subject to reconciliation because they are currently only estimates, (c) ensuring that adequate refund language is added to the Rider tariffs, (d) requiring Columbia to prove that customers are not being double-charged for demand side management programs as a result of Columbia's partnership with AEP, and (e) requiring Columbia's General Service and Large General Service customers to pay Rider DSM.

²² See Columbia's Response to OCC INT-1-12 (attached hereto as Exhibit 5) (showing \$494,004.13 in rebates to GS customers and \$135,631.43 in rebates to LGS customers); Columbia's Response to OCC INT-1-13 (attached hereto as Exhibit 6) (showing \$55,977.15 in rebates to GS customers).

²³ See Application, Attachment B, Demand Side Management Rider (showing that Small General Service attorneys pay for Rider DSM but General Service and Large General Service customers do not).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via electric transmission this 23rd day of March 2018.

/s/ Christopher Healey

Christopher Healey
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PUCO Case No. 17-2374-GA-RDR
OCC Interrogatories Set 3 No. 45
Respondent: Michael McCuen

COLUMBIA GAS OF OHIO, INC.
RESPONSE TO THE OFFICE OF THE OHIO CONSUMERS'
COUNSEL INTERROGATORIES, THIRD SET DATED
MARCH 7, 2018

INT-3-45. Regarding the McCuen Testimony, on page 5, line 8-11, Mr. McCuen states that through the IRS's Compliance Assurance Program ("CAP"), "Columbia will formally request an Issue Resolution Agreement to definitely resolve the uncertainty associated with Columbia's deduction under the 100% expensing provisions of the Tax Act." Is Columbia seeking to resolve any other issues related to the TCJA through the IRS's CAP? If so, please identify and describe any other such issues that Columbia is attempting to resolve through the CAP.

Response: The only issue that Columbia is seeking an Issue Resolution Agreement from the IRS on is related to the 100% expensing provisions.

PUCO Case No. 17-2374-GA-RDR
OCC Interrogatories Set 1 No. 4
As to Objections: Joseph M. Clark
Respondent: Andrew S. Metz

COLUMBIA GAS OF OHIO, INC.
RESPONSE TO THE OFFICE OF THE OHIO CONSUMERS'
COUNSEL INTERROGATORIES DATED JANUARY 12,
2018

INT-4. Regarding Schedule DSM-1, please provide a breakdown of total costs incurred for the Residential Energy Efficiency Education for Students program in 2017 for the following. Include a breakdown of the respective costs allocated to Columbia and AEP Ohio.

- a) Program implementation, marketing, and training.
- b) Energy efficiency kits.
- c) Water-saving measures.
- d) Heating measures.
- e) Other general kit costs.
- f) Teacher sample kits.

Response:

Columbia objects to this Interrogatory to the extent that information about respective costs allocated to AEP-Ohio are not relevant to this proceeding, nor is discovery of that information reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving this objection, Columbia responds that it does not know the exact costs allocated to AEP Ohio. Further, for the 2017-2018 program year, Columbia pays a flat fee for its Residential Energy Efficiency Education program, which includes the administration, kits, education and training. From January 2017 through September 2017, Columbia paid \$249,257.06.

Supplemental Response on February 27, 2018:

From January 2017 through December 2017, Columbia paid \$268,583.20.

PUCO Case No. 17-2374-GA-RDR
OCC Interrogatories Set 1 No. 5
Respondent: Andrew S. Metz
As to Objections: Joseph M. Clark

COLUMBIA GAS OF OHIO, INC.
RESPONSE TO THE OFFICE OF THE OHIO CONSUMERS'
COUNSEL INTERROGATORIES DATED JANUARY 12,
2018

INT-5. Regarding Schedule DSM-1:

a) Is “New Home Solutions” on this schedule the same as “Energy Efficient New Homes” and “Efficiency Crafted Homes” as identified in the application from Case No. 16-1309? If not, please explain the difference.

b) For the Energy Efficient New Homes program, please provide a breakdown of AEP Ohio's share of 2017 costs by category (marketing, training, etc.).

Response:

(a) Yes.

(b) Columbia objects to this Interrogatory to the extent that information about AEP-Ohio's share of 2017 costs are not relevant to this proceeding, nor is discovery of that information reasonably calculated to lead to the discovery of admissible evidence. Subject to, and without waiving this objection, Columbia responds that it does not know the respective costs allocated to AEP Ohio.

PUCO Case No. 17-2374-GA-RDR
OCC Interrogatories Set 1 No. 6
As to Objections: Joseph M. Clark
Respondent: Andrew S. Metz

COLUMBIA GAS OF OHIO, INC.
RESPONSE TO THE OFFICE OF THE OHIO CONSUMERS'
COUNSEL INTERROGATORIES DATED JANUARY 12,
2018

INT-6. Regarding Schedule DSM-1, for the Home Performance Solutions program, please provide a breakdown of AEP Ohio's share of 2017 costs by category (marking, training, lighting program, etc.).

Response:

Columbia objects to this Interrogatory to the extent that information about AEP-Ohio's share of 2017 costs are not relevant to this proceeding, nor is discovery of that information reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving this objection, Columbia responds that it does not know the respective costs allocated to AEP Ohio.

PUCO Case No. 17-2374-GA-RDR
OCC Interrogatories Set 1 No. 12
Respondent: Andrew S. Metz

COLUMBIA GAS OF OHIO, INC.
RESPONSE TO THE OFFICE OF THE OHIO CONSUMERS'
COUNSEL INTERROGATORIES DATED JANUARY 12,
2018

INT-12. Regarding the Innovative Energy Solutions program, please provide the following information:

- a) Total number of customers that participated in 2017.
- b) Number of General Service customers that participated.
- c) Number of Large General Service customers that participated.
- d) Total dollar value of rebates/incentives received by General Service customers.
- e) Total dollar value of rebates/incentives received by Large General Service customers.
- f) Without identifying specific customers, the total dollar value of rebates/incentives received by each General Service customer (e.g., "Customer A - \$1,000; Customer B - \$5,000; etc.").
- g) Without identifying specific customers, the total dollar value of rebates/incentives received by each Large General Service customer (e.g., "Customer A - \$1,000; Customer B - \$5,000; etc.").
- h) Total MCF saved by this program in 2017, with a breakdown by customer class.

Response:

The data provided in response to this interrogatory is based on customer rate class data as of December 31, 2017 and does not reflect changes in rate classes during the calendar year.

- a) From January – September 2017, 17 customers participated in the Innovative Energy Solutions program.
- b) From January – September 2017, 12 General Service customers participated in the Innovative Energy Solutions program.

- c) From January – September 2017, 2 Large General Service customers participated in the Innovative Energy Solutions program.
- d) From January – September 2017, \$148,484.43 in incentives were received by General Service customers through the Innovative Energy Solutions program.
- e) From January – September 2017, \$120,681.43 in incentives were received by Large General Service customers through the Innovative Energy Solutions program.
- f) Please see Columbia's Response to OCC Request for Production of Documents Set 1, No. 10.
- g) Please see Columbia's Response to OCC Request for Production of Documents Set 1, No. 10.
- h) The total Mcf saved from January – September 2017 through the Innovative Energy Solutions program, by customer class, is as follows:
 Small General Service: 0
 General Service: 5,554.43
 Large General Service: 11,211.14

Supplemental Response on February 27, 2018:

The data provided in response to this interrogatory is based on customer rate class data as of December 31, 2017 and does not reflect changes in rate classes during the calendar year.

- a) From January – December 2017, 43 customers participated in the Innovative Energy Solutions program.
- b) From January – December 2017, 34 General Service customers participated in the Innovative Energy Solutions program.
- c) From January – December 2017, 3 Large General Service customers participated in the Innovative Energy Solutions program.
- d) From January – December 2017, \$494,004.13 in incentives were received by General Service customers through the Innovative Energy Solutions program.
- e) From January – December 2017, \$135,631.43 in incentives were received by Large General Service customers through the Innovative Energy Solutions program.
- f) Please see Columbia's Supplemental Response to OCC Request for Production of Documents Set 1, No. 10.
- g) Please see Columbia's Supplemental Response to OCC Request for Production of Documents Set 1, No. 10.

- h) The total Mcf saved from January – December 2017 through the Innovative Energy Solutions program, by customer class, is as follows:
- Small General Service: 218
 - General Service: 402,214
 - Large General Service: 12,706

PUCO Case No. 17-2374-GA-RDR
OCC Interrogatories Set 1 No. 13
Respondent: Andrew S. Metz

COLUMBIA GAS OF OHIO, INC.
RESPONSE TO THE OFFICE OF THE OHIO CONSUMERS'
COUNSEL INTERROGATORIES DATED JANUARY 12,
2018

INT-13. Regarding the Energy Design Solutions program, please provide the following information:

- a) Total number of customers that participated in 2017.
- b) Number of General Service customers that participated.
- c) Number of Large General Service customers that participated.
- d) Total dollar value of rebates/incentives received by General Service customers.
- e) Total dollar value of rebates/incentives received by Large General Service customers.
- f) Without identifying specific customers, the total dollar value of rebates/incentives received by each General Service customer (e.g., "Customer A - \$1,000; Customer B - \$5,000; etc.").
- g) Without identifying specific customers, the total dollar value of rebates/incentives received by each Large General Service customer (e.g., "Customer A - \$1,000; Customer B - \$5,000; etc.").
- h) Total MCF saved by this program in 2017, with a breakdown by customer class.

Response:

The data provided in response to this interrogatory is based on customer rate class data as of December 31, 2017 and does not reflect changes in rate classes during the calendar year.

- a) From January – September 2017, 4 customers participated in the Energy Design Solutions program.
- b) From January – September 2017, 1 General Service customer participated in the Energy Design Solutions program.

- c) From January – September 2017, 0 Large General Service customers participated in the Energy Design Solutions program.
- d) From January – September 2017, \$8,801 in incentives were received by General Service customers through the Energy Design Solutions program.
- e) From January – September 2017, \$0 in incentives were received by Large General Service customers through the Energy Design Solutions program.
- f) Please see Columbia's response to OCC Request for Production of Documents Set 1, No. 11.
- g) Please see Columbia's response to OCC Interrogatories Set 1, No. 13(c).
- h) The total Mcf saved from January – September 2017 through the Energy Design Solutions program, by customer class, is as follows:
 Small General Service: 229.7
 General Service: 586.8
 Large General Service: 0

Supplemental Response on February 27, 2018:

The data provided in response to this interrogatory is based on customer rate class data as of December 31, 2017 and does not reflect changes in rate classes during the calendar year.

- a) From January – December 2017, 27 customers participated in the Energy Design Solutions program.
- b) From January – December 2017, 12 General Service customer participated in the Energy Design Solutions program.
- c) From January – December 2017, 0 Large General Service customers participated in the Energy Design Solutions program.
- d) From January – December 2017, \$55,977.55 in incentives were received by General Service customers through the Energy Design Solutions program.
- e) From January – December 2017, \$0 in incentives were received by Large General Service customers through the Energy Design Solutions program.
- f) Please see Columbia's supplemental response to OCC Request for Production of Documents Set 1, No. 11.
- g) Please see Columbia's response to OCC Interrogatories Set 1, No. 13(c).
- h) The total Mcf saved from January – December 2017 through the Energy Design Solutions program, by customer class, is as follows:
 Small General Service: 2,163.41
 General Service: 3,731.85
 Large General Service: 0

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Case No(s). 17-2374-GA-RDR

Summary: Comments Comments by The Office of the Ohio Consumers' Counsel
electronically filed by Ms. Jamie Williams on behalf of Healey, Christopher Mr.