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. 17-2202-GA-ALT

MEMORANDUM CONTRA OF COLUMBIA GAS OF OHIO, INC. TO MOTION OF THE RETAIL ENERGY SUPPLY ASSOCIATION TO VACATE THE EXISTING PROCEDURAL DEADLINES AND ESTABLISH A NEW PROCEDURAL SCHEDULE

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1. INTRODUCTION

When the Retail Energy Supply Association ("RESA") filed its motion to intervene in this proceeding at the last minute – approximately 10 months after Columbia Gas of Ohio, Inc. ("Columbia") filed its initial application, and less than thirty minutes before the Commission's deadline[1] – RESA assured the Commission that its late decision to participate in this proceeding did not presage future efforts to prolong this matter, asserting: "there can be no claim in good faith that RESA's participation will create delay in these proceedings."[2] Now, only three weeks later, RESA wants to delay these proceedings. According to RESA, the recent filing of the other parties' comprehensive stipulation requires fully reopening discovery, significantly extending the testimony deadline, and continuing the hearing date into next year.

RESA's motion should be denied for the following reasons:

- RESA participated in all of the settlement negotiations Columbia scheduled after it moved to intervene on September 24.

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[1] *See* Entry, ¶12(a) (Sept. 19, 2018) (setting a deadline of September 24, 2018, for motions to intervene).

[2] RESA Reply Supp. Motion to Intervene at 5 (Oct. 4, 2018); *see also* RESA Motion to Intervene, Mem. Supp. at 6 (Sept. 24, 2018) ("RESA's * * * intervention would not result in an undue delay of the proceeding.").

- Because RESA attended and participated in these negotiations, RESA had adequate opportunity to prepare and adjust its expert testimony and issue any needed discovery requests.

- RESA's request to unduly delay a hearing in this case by two months into 2019 provides another reason to deny RESA's intervention.

- Extensions of time to file pleadings or other papers require a showing of good cause, and RESA has not made that showing to grant its motion to delay the procedural schedule set forth on September 19.

- RESA's interest in this proceeding, "information technology to upgrade its billing and gas scheduling systems," is a cost and expense that has been historically O&M, and would not be recovered by the CEP Rider.

RESA's last-minute request for a two-month extension to this Commission's procedural schedule is unreasonable, unjustified, and prejudicial.

2. LAW AND ARGUMENT

In 2012, the Commission authorized Columbia to implement a capital expenditure program ("CEP") and to modify its accounting procedures to provide for capitalization of post-in-service carrying costs ("PISCC") on, and deferral of depreciation expense and property taxes directly attributable to, those CEP assets that are placed into service but not reflected in rates as plant in service ("CEP Deferral").[3] In 2013, the Commission authorized Columbia to continue its CEP Deferral until the point where including the accrued deferrals in rates would increase the rates charged to SGS-class customers by more than $1.50 per month.[4] The Commission held, in both proceedings, that it would consider the prudence and reasonableness of the magnitude of Columbia's CEP Deferral and associated

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[3] *In re Application of Columbia Gas of Ohio, Inc. for Approval to Implement a Capital Expenditure Program*, Case Nos. 11-5351-GA-UNC and 11-5352-GA-AAM ("*Columbia CEP I*"), Finding and Order, ¶¶ 31-32 (Aug. 29, 2012).

[4] *In re Application of Columbia Gas of Ohio, Inc. for Approval to Implement a Capital Expenditure Program*, Case Nos. 12-3221-GA-UNC and 12-3222-GA-AAM ("*Columbia CEP II*"), Finding and Order, ¶¶ 11-13 (Oct. 9, 2013).

capital spending when Columbia sought to recover them.[5] In this proceeding, Columbia is now seeking to recover that CEP Deferral, as well as the corresponding assets to which these expenses are directly attributable ("CEP Investment").

On October 25, after over a month of intensive negotiations, Staff and all but one of the parties (including CRNGS supplier Interstate Gas Supply, Inc. ("IGS")) filed a comprehensive stipulation ("Stipulation") that endorses the creation of a CEP Rider. The rider would start "not later than Columbia's first billing cycle in 2019"[6] and continue through at least Columbia's next base rate case. The Stipulation would allow Columbia to continue deferring expenses associated with CEP Investment until Staff reviews them through an annual audit and Columbia recovers such costs through an adjustment to the CEP Rider rates. And, it would commit Columbia to meeting with interested signatory parties "to determine the feasibility and cost effectiveness of implementing information technology [("IT")] system enhancements related to commercial and industrial [CHOICE] customers," and then implementing those IT enhancements "determined to be feasible and cost effective[,] prior to [Columbia's] 2021 base rate case filing."[7]

According to RESA, that 13-page Stipulation necessitates a radical reworking of the procedural schedule. RESA claims that it will need an additional two months to conduct discovery and develop expert testimony, pushing the hearing out to at least the second week of January, "to protect its interests that were affected not only by the application * * *, but now * * * the stipulation which * * * includes new cost recoveries and issues not in the application."[8] But, as Columbia expressed in its opposition to RESA's motion to intervene in this case and its motion to strike RESA's objections to Staff's report of investigation (filed contemporaneously with this Memorandum), RESA has not shown that its interests are affected by this proceeding. And it has not shown good cause for throwing out the Commission's procedural schedule and pushing this case into 2019. For both of these reasons, the Commission should deny RESA's Motion.

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[5] *Columbia CEP I*, Finding and Order, at 13; *Columbia CEP II*, Finding and Order, ¶ 15.

[6] Stipulation at 2, ¶ 2 (Oct. 25, 2018).

[7] *Id.* at ¶ 12.

[8] RESA Motion to Vacate the Existing Procedural Deadlines at 3.

2.1. RESA has not shown good cause for delaying the resolution of this proceeding by two months.

First, RESA has not justified the lengthy extension and continuance it is seeking. RESA notes that the Stipulation proposes a process for Columbia to recover its future CEP-related costs and expenses, adjusts Columbia's distribution rates to reflect recent federal tax cuts, commits Columbia to file a base rate case by 2021, and further commits Columbia to implement feasible and cost-effective IT enhancements for non-residential CHOICE customers,[9] and RESA says it wants to address these matters at hearing. But RESA does not explain why it has an interest in those provisions that the Commission should hear. RESA's members do not even pay Columbia's distribution rates, for example, so the adjustment of those rates to reflect recent federal tax law changes will not affect them.

More fundamentally, RESA does not explain why it needs two months to address those provisions of the Stipulation in which it may have a legitimate interest, if any exist. RESA has known since it intervened on September 24 that it would be required to file expert testimony on October 29 and go to hearing on November 6, as was set forth in the Attorney Examiner's September 19 Entry. And while the Stipulation does amend the Amended Application, RESA has attended and participated in the settlement negotiations that resulted in the Stipulation since it filed its motion to intervene. RESA has issued no substantive discovery requests in this proceeding. Presumably, RESA spent the last month preparing testimony and any necessary examination outlines for hearing. If RESA has properly prepared up to this point, amending its testimony and examinations to address the Stipulation should not require the lengthy extensions and continuances RESA is seeking.

There is no good cause for reopening discovery, which closed on September 28,[10] at this late date. There is no good cause for extending RESA's deadline for filing testimony in opposition to the Stipulation until almost Christmas Eve. And there is no good cause for continuing the hearing in this case until the week after New Year's Day. For these reasons alone, RESA's motion should be denied.

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[9] *Id.* at 4.

[10] *See* Ohio Adm. Code 4901:1-19-07(G) (stating that discovery in alternative rate plan proceedings proceeds according to the typical rules for general rate proceedings in Ohio Adm. Code 4901-1-17(B)); Ohio Adm. Code 4901-1-17(B) (imposing a deadline for discovery requests of 14 days after the filing of Staff's investigation report).

2.2. RESA's interest regarding IT investment is likely O&M costs and is not relevant to this case.

As previously noted, RESA indicates it wants to ensure that Columbia has "invested appropriately," and will continue to invest, "in information technology to upgrade its billing and gas scheduling systems" and meters.[11] But these investments are similar to the investments that Columbia previously made for its CHOICE suppliers. As it discussed in Columbia's Memorandum Contra RESA's Motion to Intervene, Columbia has modified its bills and tariffs to provide for several billing enhancements, including:

- Providing CRNGS providers with the option to bill commodity-related charges to their customers via rate-ready billing, bill-ready billing, or a combination of the two;[12]
- Providing CRNGS providers with the option to bill customers a charge, rather than a rate, and to CHOICE Prepay service;[13] and
- Implementing CHOICE Immediate Enrollment and CHOICE Prepay service.[14]

And these IT costs and expenses have not been capital in nature. Conversely, the purpose of the CEP Rider is to capture *capital expenses*. And the Stipulation – which CRNGS supplier IGS has signed and supports – contains further commitments to investigating and making further investments in its IT systems for non-residential CHOICE customers, if those investments prove feasible and cost-effective.[15] Therefore, RESA's request for an extension to provide a witness to testify to its interests in IT investment is not necessary.

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[11] RESA Reply Supp. Motion to Intervene at 1, 3.

[12] *In re Application of Columbia Gas of Ohio, Inc. to Revise its Tariffs to Allow for the Implementation of Bill-Ready Service*, Case No. 15-691-GA-ATA, Finding and Order, ¶ 5 (Aug. 26, 2015).

[13] *In re Application of Columbia Gas of Ohio, Inc. for a Waiver of Ohio Adm.Code 4901:1-13-11(B)(9)*, Case No. 16-653-GA-WVR, Entry, ¶¶ 5-6 (July 20, 2016).

[14] *In re Application of Columbia Gas of Ohio, Inc. to Revise its Tariffs to Implement Immediate CHOICE Enrollment and CHOICE Pre-pay*, Case No 16-2430-GA-ATA, Finding and Order, ¶ 1 (May 24, 2017).

[15] Stipulation at 7, ¶ 12 (Oct. 25, 2018).

2.3. RESA's proposal to significantly delay the resolution of this proceeding further weighs against granting its intervention.

Of course, RESA's motion to vacate the procedural schedule and establish a new, longer schedule is only relevant if the Commission grants RESA's motion to intervene in this proceeding. As Columbia and OCC expressed in their joint Memorandum Contra RESA's Motion to Intervene in this proceeding, filed October 1, RESA should not be a party in the first place, and the original grounds for opposing RESA's intervention still stand. Moreover, as is discussed in Columbia's Motion to Strike RESA's Objections filed today, many if not most of RESA's objections to Columbia's Amended Application and the Stipulation are actually objections to the authority granted in R.C. 4929.111 and the Commission's alternative rate plan regulations.

However, RESA's latest Motion offers substantial new grounds for denying intervention. Ohio statute and the Commission's rules both require the Commission to weigh "[w]hether the intervention by [a] prospective intervenor will unduly prolong or delay the proceedings * * *."[16] Columbia did not previously challenge RESA's intervention on this ground, because nothing in RESA's Motion to Intervene gave Columbia reason to question RESA's assurance that "its intervention would not result in an undue delay of the proceeding."[17] But now, RESA is explicitly asking the Commission to delay the resolution of this proceeding. And RESA is not simply seeking a short extension to address the recently filed Stipulation. Instead, it is seeking: an extended deadline for testimony supporting the Stipulation, which no other party has yet requested; a filing date for Staff testimony in response to objections to the Staff report, which Staff has not requested; a reopening of discovery; a nearly two-month extension to file testimony opposing the Stipulation; and an even longer continuance of the hearing date. Because RESA's Motion clearly demonstrates that RESA's intervention would unduly prolong or delay the proceedings, RESA's motion to intervene should be denied.

3. CONCLUSION

Columbia and OCC originally opposed RESA's motion to intervene on numerous grounds, all of which still stand. But RESA's Motion to Vacate the Existing Procedural Schedule and Establish a New Procedural Schedule provides

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[16] R.C. 4903.221(B)(3); Ohio Adm. Code 4901-1-11(B)(3).

[17] RESA Motion to Intervene at 6.

an additional, important reason to deny intervention. RESA has now made clear that it cannot comply with the existing procedural schedule in this case. Consequently, allowing RESA to intervene would unduly prolong and delay these proceedings – past the holidays, past the New Year, and past the Stipulation's proposed effective date for the CEP Rider rate and Federal Tax Reform Rate reduction. And RESA has not demonstrated good cause for the two-month extension of the testimony deadline, and two-month continuance of the hearing, that it now seeks in this proceeding.

For all of these reasons, Columbia respectfully requests that the Commission deny RESA's Motion to Vacate or simply deny RESA's Motion to Intervene.

Respectfully submitted,

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Summary: Memorandum Contra Motion of the Retail Energy Supply Association to Vacate the Existing Procedural Schedule and Establish a New Procedural Schedule electronically filed by Mr. Eric B. Gallon on behalf of Columbia Gas of Ohio, Inc.