BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Annual Application of Columbia Gas of Ohio, Inc. for an Adjustment to Rider IRP & Rider DSM Rates	))))	Case No. 18-1701-GA-RDR

INITIAL BRIEF BY THE ENVIRONMENTAL LAW & POLICY CENTER

I. INTRODUCTION

Columbia Gas of Ohio, Inc. ("Columbia" or "Company") has been implementing its demand-side management ("DSM") programs to promote customer conservation since approval of those programs by the Public Utilities Commission of Ohio ("PUCO" or "Commission") in the December 21, 2016 Opinion and Order in Case Nos. 16-1309-GA-UNC *et al.* ("*2016 DSM Case*"). The Environmental Law & Policy Center ("ELPC") now seeks an order to effectuate the Commission's own directive in that 2016 case, providing for the expansion of Columbia's smart thermostat offerings utilizing funds that are not needed elsewhere in the Company's program budget. The testimony of Columbia's main witness on its DSM programs indicates that the Company seeks to carry over unspent 2018 funds for use in future years, in exactly the scenario where the Commission's *2016 DSM Case* Order indicated that Columbia should redirect program resources to provide additional cost-effective customer savings through increased smart thermostat rebates. Therefore, it is appropriate and within the Commission's authority in this proceeding to direct Columbia to reallocate its DSM program funds going forward in accordance with that prior Order.

II. FACTS

A. Columbia's Existing Smart Thermostat Offerings

Columbia currently offers customer rebates for Energy Star-certified smart, or "learning," thermostats through its Simple Energy Solutions program. Co. Ex. 4, Metz Direct Test. at 5; Tr. at 25:9-12. In 2018, the Company provided rebates for 11,759 smart thermostats through that program, within its total budget of $2.4 million. Co. Ex. 2, Application to Adjust Rider IRP and Rider DSM Rates (Feb. 28, 2019) ("Columbia Application"), Schedule DSM-2. To qualify for Energy Star labeling under the "Connected Thermostat" specification, such thermostats must "demonstrate typical product performance in the field" on average of at least an 8% reduction in heating run time or meet equivalent alternative testing requirements. U.S. Environmental Protection Agency, ENERGY STAR Program Requirements For Connected Thermostat Products at 10-11, https://www.energystar.gov/products/heating_cooling/smart_thermostats?qt-consumers_product_tab=1#qt-consumers_product_tab (last visited Apr. 5, 2019). According to the testimony of Company witness Metz, Columbia's 2018 smart thermostat rebates have provided customers with cost-effective savings. Tr. at 24:2-8.

B. The *2016 DSM Case*

The Commission authorized Columbia's DSM programs through 2022 in the *2016 DSM Case*. In that proceeding, ELPC and co-intervenors submitted testimony in support of a proposal for Columbia to increase funding for customer education about smart thermostats and smart thermostat rebates through its Simple Energy Solutions program. *2016 DSM Case*, Opinion and Order (Dec. 21, 2016) at 34-35. ELPC *et al.* argued that a more robust smart thermostat effort would allow a greater percentage of the Company's customers to access the cost-effective savings available through reducing heating and cooling of unoccupied spaces – up to 123 therms annually over manual thermostats and 72 therms annually over programmable thermostats – providing "the best way to increase active participation in Columbia's DSM programs." *Id.* The Commission denied the requested amendments of the program "at this time," but directed that:

> over the term of Columbia's DSM programs approved pursuant to this Opinion and Order, that as Columbia determines any other DSM program within the DSM portfolio is not performing as projected and the program budget should be reduced or the program discontinued, the funds should be transferred to the Simple Energy Solutions program to first develop an education and marketing campaign, in conjunction with electric distribution utilities and gas marketers operating in Columbia's service territory, and then, if participation in Simple Energy Solutions exceeds Columbia's projections, to increase the number of rebates available from Columbia for smart thermostats.

Id. at 36-37.

C. Columbia's 2018 Program Spending

Overall, Columbia spent "approximately $22.1 million in its DSM programs in 2018 versus the $25.7 million in the DSM Action Plan budget." Co. Ex. 4, Metz Direct Test. at 8. The Company seeks to "carry forward [this] un-invested DSM funding from 2018 for possible use in future program years." *Id.*

It appears this under-spending occurred because Columbia over-budgeted for its Home Performance Solutions program, which provides in-home energy audits and energy efficiency measure rebates. ELPC Ex. 1, *2016 DSM Case* Application at 10. In the *2016 DSM Case*, Columbia projected an annual budget for its Home Performance Solutions program of approximately $7.6 million in 2018, increasing incrementally through 2022. *Id.* at 25. Columbia's Application here indicates that, in fact, the Company expended only $4.9 million on this program in 2018, less than 65% of the budgeted amount. Co. Ex. 2, Columbia Application, Schedule DSM-2. At that level of spending, Columbia's contractor performed energy audits or assessments for about 4,500 customers through this program in 2018. Co. Ex. 8, Metz Direct Test. (Feb. 28, 2019) at 4 (describing Home Performance Solutions program as "Home Energy Audits and Rebates" program).

III. ARGUMENT

A. Columbia Should Increase Its Budget for Smart Thermostat Education, Marketing, and Rebates in Compliance with the Commission's 2016 Order.

The Commission issued a clear directive in the *2016 DSM Case* Order: that, if any of Columbia's DSM programs "is not performing as projected and the program budget should be reduced or the program discontinued," then the Company should transfer the extra funds "to the Simple Energy Solutions program" to support additional efforts in support of smart thermostat deployment. *2016 DSM Case*, Opinion and Order at 37. That scenario has come to pass, and therefore Columbia should undertake the steps specified by the Commission: "an education and marketing campaign, in conjunction with electric distribution utilities and gas marketers operating in Columbia's service territory, and then, if participation in Simple Energy Solutions exceeds Columbia's projections, to increase the number of rebates available from Columbia for smart thermostats." *Id.*

The Commission issued the 2016 order in response to ELPC's expert testimony in the *2016 DSM Case* that a robust smart thermostat program could provide a significant number of customers with cost-effective opportunities to save money. *2016 DSM Case*, Opinion and Order at 34. In 2018, Columbia provided rebates for over 11,000 smart thermostats using just a portion of the $2.4 million budget for the Simple Energy Solutions program. *Infra* at 2. In that same year, Columbia had unused DSM funds of approximately $3.6 million that could be dedicated toward significantly expanding the Company's smart thermostats efforts as envisioned by the Commission. *Infra* at 3. In particular, a well-designed customer education and marketing program could help increase customer participation in the Simple Energy Solutions program. Tr. at 14:12-15:3. With a larger budget for smart thermostat rebates under that program, Columbia could then meet that higher customer demand and significantly expand the reach of its cost-effective DSM programs.

For example, assuming a $1 million annual budget for customer education and marketing along with $2.6 million for additional smart thermostat rebates going forward, at the current rebate level of $75 Columbia could support customer adoption of more than 45,000 smart thermostats a year – close to 140,000 customers total by the end of 2022, or 10% of the Company's 1.4 million residential customers.[1] Tr. at 13:6-8. Only Columbia's Home Energy Reports and Student Energy Efficiency Education programs reach similar numbers of customers, but they primarily provide education rather than direct support for customer installation of efficiency measures. *See* Co. Ex. 4, Metz Direct Test. at 5-6. Otherwise, Columbia's greatest reach in directly incentivizing customer efficiency measures in 2018 was providing 6,000 rebates under its Appliance Rebates program – less than 0.5% of its customer base. *Id.* at 6. As the Commission recognized in directing Columbia to prioritize this budget reallocation in the *2016 DSM Case*, shifting available funds toward smart thermostat offerings represents a cost-effective approach that can significantly increase access to energy saving opportunities for a large proportion of Columbia customers.

[1] Assuming an extra 34,666 smart thermostat rebates at $75 each, plus the existing 11,759 smart thermostat rebates achieved through the Simple Energy Solutions program in 2018 (Co. Ex. 4, Metz Direct Test. at 5), with the expanded program starting in 2020.

B. This Proceeding Is an Appropriate Venue for the Commission to Order Compliance with its *2016 DSM Case* Order.

The Commission undoubtedly issued the *2016 DSM Case* Order expecting it to be implemented. Now is the time to do so. Columbia's filing in this case has provided the Commission with the necessary information regarding program spending and results to ascertain that its Home Performance Solutions program "is not performing as projected" and thus there is available funding within the Company's approved annual budget to support additional smart thermostat efforts. Indeed, Columbia proposes in this case to retain the unspent funds from 2018 for "use in future program years." Co. Ex. 4, Metz Direct Test. at 8. The Commission has already specified what that use should be in the *2016 DSM Case* Order, and thus is well-positioned to carry out its previous intent through an order here.

Issuing an order in this docket to ensure Columbia recovers its Rider DSM costs in compliance with the Commission's order in the *2016 DSM Case* would be well within the Commission's discretion. Ohio Revised Code Chapters 4905 and 4909 provide the Commission with expansive authority to generally supervise and regulate public utilities (R.C. 4905.04, 4905.06), including their "compliance with all . . . orders of the commission" (R.C. 4905.06); to ensure that utility rates are just and reasonable both when they are originally fixed and when they are changed (R.C. 4909.15, 4909.17); and to oversee utility implementation of energy conservation programs. R.C. 4905.70. In particular, the Commission's rate-setting powers include the authority to give "due regard to all such other matters as are proper, according to the facts in each case." R.C. 4909.15(E)(2). Additionally, R.C. 4901.13 gives the Commission the power "to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort." *Toledo Coal. for Safe Energy v. PUCO*, 69 Ohio St. 2d 559, 560, 433 N.E.2d 212 (1982). That power should be sufficient to encompass a Commission decision to ensure implementation of a previous order regarding a given rider through a subsequent proceeding to adjust the rate for that same rider.

In carrying out its expansive statutory authority, the Commission has in a number of cases asserted its ability to consider a topic not specifically raised by a utility's application in a proceeding as long as there is a "sufficient nexus" to the rates at issue. *In Re Toledo Edison Co.*, Case Nos. 95-299-EL-AIR *et al.*, Opinion and Order, 1996 WL 190802 at *74 (Apr. 11, 1996); *see also, e.g.*, *In re GTE North Inc.*, Case No. 87-1307-TP-AIR, Order on Rehearing, 1989 WL 1733882, at *1 (Mar. 28, 1989) (addressing level of carrier access charges that "were included in the development of the revenue requirement proposed in the application" even though the utility had not put those charges at issue in its application). The Ohio Supreme Court has endorsed this approach, defining the bounds of the Commission's authority as reaching to any matters "related to the rates which are the subject of the application" in a proceeding. *Cleveland Elec. Illuminating Co. v. PUCO*, 42 Ohio St. 2d 403, 420, 330 N.E.2d 1 (1975); *AT&T Commc'ns of Ohio, Inc. v. PUCO*, 51 Ohio St. 3d 150, 152, 555 N.E.2d 288 (1990).

Accordingly, it is not surprising that the Commission has previously addressed future implementation of Columbia's DSM programs in dockets regarding the Company's recovery of costs under its DSM rider. For example, in the Company's 2012 DSM Rider adjustment case, the Commission approved a stipulation that provided for Columbia to implement a staff recommendation to hold regular annual meetings of its DSM stakeholder group going forward. ELPC Ex. 3, Case No. 12-2923-GA-RDR, Joint Stipulation and Recommendation (Apr. 9, 2013) at 2; Case No. 12-2923-GA-RDR, Opinion and Order (Apr. 24, 2013) at 5, 7-8. That precedent is certainly applicable here, especially where Columbia itself seeks Commission approval of its proposal to reserve its $3.6 million in unspent 2018 DSM funds for use toward future programs. Co. Ex. 8, Metz Direct Test. at 8.

If the Commission does not address this issue now, Columbia may simply move forward with programs based on its 2018 budget. Company witness Metz testified Columbia looks to past program expenditures and participation levels as a basis for future program budgets, Tr. at 13:21-14:11, suggesting that without Commission intervention its DSM programs in 2019 and future years may well be similar to its 2018 programs. Columbia has not made any commitment as to how it might spend its existing unspent DSM funds, stating only that it might use the money for "[p]rograms that are successful" in order "[t]o serve more customers." Tr. at 18:6-21. Since that participation is influenced by Columbia's own efforts to market programs to customers, Tr. at 14:12-15:3, that funding may never go toward smart thermostats without an additional effort by the Company to educate customers about the existence and benefits of smart thermostat rebates under the Simple Energy Solutions program. With respect to overall plans to implement the Commission's *2016 DSM Case* Order with respect to redirecting resources toward smart thermostats, Company witness Metz testified that Columbia had not taken any steps to do so in 2018 and that it "would be speculation" to say whether Columbia would do so in 2019. Tr. at 22:1-23:15.

The next opportunity for the Commission to address Columbia's DSM spending will be in the proceeding to adjust the Company's Rider DSM to reflect its 2019 spending – that is, in spring 2020, after Columbia has already implemented its 2019 programs and likely made specific commitments to budget levels and implementation plans for 2020. The result may be a full year or more when Columbia is not taking steps to carry out the Commission's directive from the *2016 DSM Case*. That lost time is particularly concerning given that it will mean lost opportunities to coordinate smart thermostat offerings with Columbia's overlapping electric utilities, AEP Ohio and FirstEnergy, which could provide customers with added synergistic value. *See* Tr. at 25:17-27:6 (Company witness Metz testifying that Columbia at times coordinates program marketing and rebates with electric utilities). Before Columbia's next Rider DSM case, the only ongoing forum for sharing of information and discussion about the Company's DSM programs is in the meetings of its stakeholder group. That stakeholder group is limited to discussing the programs' performance, asking questions, and providing input. Tr. at 30:22-31:15. There is no guarantee Columbia will accept that input. *Id.* at 31:13-15.

Since the DSM stakeholder group meetings are the only available forum for discussion of ongoing implementation of Columbia's programs, the Commission should also require that the Company provide information to that group at regular meetings regarding any efforts to expand its smart thermostat efforts (including steps it is taking to coordinate with AEP Ohio and FirstEnergy). That step will allow stakeholders, including ELPC, to effectively monitor Columbia's work to carry out the Commission's *2016 DSM Order* and provide input as to how to do so most effectively.

ELPC does not seek to introduce wholly new proposals regarding Columbia's DSM programs, but rather only to ensure that, as the Company collects Rider DSM revenues, it implements those programs consistent with the Commission's prior order regarding their budget level and substance. The Commission has more than sufficient authority under its enabling statutes and existing precedent to address that issue here.

IV. CONCLUSION

Although Columbia has apparently successfully implemented its 2018 programs, the Commission should exercise its oversight authority to ensure that the Company builds on its efforts going forward and provides robust conservation programs to significant proportions of its customers in accordance with the *2016 DSM Case* order. The above proposals will provide the necessary building blocks for that future success.

April 10, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Initial Brief submitted on behalf of the Environmental Law & Policy Center was served by electronic mail upon all Parties of Record on April 10, 2019.

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