THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF COLUMBIA GAS OF OHIO, INC. FOR APPROVAL OF DEMAND-SIDE MANAGEMENT PROGRAMS FOR ITS RESIDENTIAL AND COMMERCIAL CUSTOMERS.	CASE NO. 16-1309-GA-UNC
IN THE MATTER OF THE APPLICATION OF COLUMBIA GAS OF OHIO, INC. FOR APPROVAL TO CHANGE ACCOUNTING METHODS.	CASE NO. 16-1310-GA-AAM

SECOND ENTRY ON REHEARING

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TABLE OF CONTENTS

I. Summary 3

II. Procedural Background 3

III. Discussion 5

A. Is the settlement a product of serious bargaining among capable, knowledgeable parties? 5

1. Interest of Signatory and Non-Signatory Parties 5

B. Does the settlement, as a package benefit ratepayers and the public interest? 8

1. Term of DSM Program 8

2. Reallocation of Program Expenses 9

3. Average Customer Consumption 12

4. Non-Residential Customer Participation 13

5. Competitive Bidding and Participation Rates 14

6. On-Line Audit, Energy Design Solutions, and EPA Portfolio Manager Programs 17

7. EfficiencyCrafted Homes Program 19

8. Cost-Effectiveness 20

9. Cap on DSM Program 23

C. Does the settlement package violate any important regulatory principle or practice? 25

D. Procedural Matters and Other Issues Raised 29

1. Supplier Participation in Smart Thermostat Rebate Program 29

2. Trade Secret Designation of Certain Information 30

3. Reliance on Non-Record Information 38

4. Compliance with R.C. 4903.09 40

IV. Order 42

I. SUMMARY

{¶ 1} The Commission grants, in part, and denies, in part, the applications for rehearing of the Opinion and Order modifying and approving the Joint Stipulation and Recommendation continuing the demand-side management program of Columbia Gas of Ohio, Inc.

II. PROCEDURAL BACKGROUND

{¶ 2} 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.

{¶ 3} R.C. 4905.70 directs the Commission to initiate programs that will promote and encourage energy conservation and reduce the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs. Further, pursuant to R.C. 4929.02(A)(12), it is the policy of the state to promote an alignment of natural gas company interests with consumer interests in energy efficiency and energy conservation.

{¶ 4} R.C. 4905.13 authorizes the Commission to establish systems of accounts to be kept by public utilities and to prescribe the manner in which these accounts will be kept. Pursuant to Ohio Adm.Code 4901:1-13-13, the Commission adopted the Uniform System of Accounts (USOA), which was established by the Federal Energy Regulatory Commission, for gas and natural gas companies in Ohio, except to the extent that the provisions of the USOA are inconsistent with any outstanding orders of the Commission. Additionally, the Commission may require the creation and maintenance of such additional accounts as may be prescribed to cover the accounting procedures of gas or natural gas companies operating within the state.

{¶ 5} On June 10, 2016, Columbia filed an application for approval to continue its demand-side management (DSM) programs as previously approved by the Commission, with certain modifications.

{¶ 6} On August 12, 2016, a Joint Stipulation and Recommendation (Stipulation) was filed by Columbia, Staff, Ohio Partners for Affordable Energy (OPAE), Interstate Gas Supply, Inc. (IGS), Mid-Ohio Regional Planning Commission (MORPC), Ohio Hospital Association, and Retail Energy Supply Association (RESA) (jointly, Signatory Parties) that, if adopted, would resolve all of the issues in these proceedings.

{¶ 7} The Stipulation was opposed by Ohio Consumers' Counsel (OCC), Environmental Law and Policy Center (ELPC), Northwest Ohio Aggregation Coalition (NOAC) and jointly, the city of Toledo, Lucas County Board of Commissioners, city of Perrysburg, Lake Township Board of Trustees, city of Maumee, city of Oregon, city of Northwood, village of Ottawa Hills, city of Sylvania, and village of Holland (collectively, NOAC Communities).

{¶ 8} On December 21, 2016, the Commission issued its Opinion and Order, adopting the Stipulation, with certain modifications (DSM Order).

{¶ 9} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for a rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

{¶ 10} On January 20, 2017, applications for rehearing of the DSM Order were filed by OCC and jointly by ELPC, NOAC, and the NOAC Communities (ELPC/NOAC).

{¶ 11} By Entry issued February 8, 2017, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing.

{¶ 12} ELPC/NOAC raise four assignments of error and OCC asserts five assignments of error on rehearing. The Commission has reviewed and considered all of the arguments raised in the applications for rehearing. Any aspect of an argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

III. DISCUSSION

A. *Is the settlement a product of serious bargaining among capable, knowledgeable parties?*

1. INTEREST OF SIGNATORY AND NON-SIGNATORY PARTIES

{¶ 13} In their fourth assignment of error, ELPC/NOAC argue that the Commission, as a part of the first criterion to evaluate a stipulation, did not properly consider the level and quality of the opposition to the Stipulation or properly weigh the financial interest in favor of the Stipulation. ELPC/NOAC submit that Columbia must demonstrate that the energy efficiency products fully benefit its customers rather than benefit those with a direct financial interest in the Stipulation. ELPC/NOAC posit it is important the Commission recognize that, other than Staff, OCC and ELPC/NOAC are the only parties representing residential customers that do not have a financial interest in the outcome of the Stipulation. Further, according to ELPC/NOAC, the fact that representatives that support the Stipulation have a financial interest in the Stipulation could affect their ability to represent certain customer classes and should be weighed heavily against any claim that the Stipulation was meaningfully bargained for in a way to adequately represent residential customers. Finally, ELPC/NOAC state significant pressure must be placed on the proponents of the Stipulation to demonstrate that the Stipulation is the best plan available and that Columbia and the other Signatory Parties have not met this burden. Accordingly, ELPC/NOAC reason the Commission should require Columbia, and the other supporters of the Stipulation, to modify the DSM Program as recommended by ELPC/NOAC.

{¶ 14} OPAE responds that ELPC/NOAC's arguments ignore Commission precedent for evaluating whether a stipulation meets the first criterion of the three-part test. To the extent that ELPC/NOAC's arguments regarding the financial interest of Signatory Parties are focused on OPAE, OPAE states there is no evidence that OPAE has a financial interest in the outcome of these cases. Furthermore, OPAE notes the Commission has addressed claims of "favor trading" in other Commission proceedings and declined to conclude the benefits received by a signatory party to a stipulation were the signatory party's sole motivation for supporting the stipulation. *In re Ohio Edison Co., The Cleveland Elec. Illuminating Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO (*FirstEnergy ESP 4*), Fifth Entry on Rehearing (Oct. 12, 2016) at 104, citing *FirstEnergy ESP 4*, Opinion and Order (Mar. 31, 2016) at 44-45. Further, OPAE offers that the three-part test for consideration of a stipulation has never required that a stipulation represent the best result possible. OPAE adds that, given that a stipulation is a compromise of the interests of the stipulating parties, what constitutes the "best result" would not be the same.

{¶ 15} Columbia notes that ELPC/NOAC recognize OCC already advanced this argument and the Commission rejected the claim. For that reason, Columbia states the Commission should deny the request for rehearing. Further, Columbia contends the criteria used by the Commission do not include consideration of whether a party or class of customers to a stipulation will receive a financial benefit from the stipulation. *FirstEnergy ESP 4*, Opinion and Order (Mar. 31, 2016) at 43. The test ELPC/NOAC seek to implement, according to Columbia, likely could only be met by non-profit organizations and OCC, essentially providing such parties a "veto" of a stipulation. Columbia declares the Commission has routinely rejected the ability of any party to be vested with the ability to veto a settlement. Columbia notes that the Commission expects that each party will support its respective interest and bargain in support of that interest. *In re Ohio Power Co.*, Case No. 14-1693-EL-RDR, et al. (*AEP PPA Case*), Second Entry on Rehearing (Nov. 3, 2016) at ¶ 46. Columbia submits that the fact that all but three parties to these proceedings

were able to resolve their differences demonstrates serious bargaining occurred rather than reflects the parties' failure to meaningfully bargain, as ELPC/NOAC argue.

{¶ 16} As part of evaluating a stipulation, the Commission has determined that it is not conclusively indicative of a lack of serious bargaining nor sufficient to nullify the first criterion of the three-part test that a signatory party has a financial interest in the adoption of the stipulation. The Commission expects that each party to a proceeding will support its respective interests and bargain in support of that interest. *AEP PPA Case*, Second Entry on Rehearing (Nov. 3, 2016) at ¶ 46. Further, the Commission notes that ELPC raised these claims in its brief and the Commission specifically considered and denied such claims. DSM Order at ¶ 43. ELPC/NOAC contend the Commission failed to properly consider the level and quality of the opposition to the Stipulation. The Commission finds ELPC/NOAC's claim to be incorrect. ELPC/NOAC and OCC raised similar arguments in their briefs, as was noted in the DSM Order, which the Commission considered and rejected. DSM Order at ¶¶ 51, 61-63. The first criterion of the three-part test does not include, as ELPC/NOAC wish, a component to consider the composition of the non-signatory parties opposing a stipulation, beyond consideration of whether such parties were afforded the opportunity to participate in negotiations. Nor does the first criterion of the three-part test used to evaluate the reasonableness of a stipulation permit the composition of the non-signatory parties to be weighed heavily in comparison to the signatory parties, so long as an entire class of customers was not intentionally excluded from negotiations. We expect that each party will act according to its interest in the case; however, the composition of the non-signatory parties has no weight in the Commission's decision regarding the reasonableness of a stipulation. Parties opposing a stipulation are afforded the opportunity to present evidence against the adoption of the stipulation, just as OCC, ELPC, and NOAC did in these proceedings. Accordingly, the Commission denies the request for rehearing.

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

1. TERM OF DSM PROGRAM

{¶ 17} In ELPC/NOAC's third assignment of error, and as a part of OCC's second assignment of error, opposing intervenors reiterate their respective arguments that Columbia's DSM Program should be a three-year plan as opposed to a six-year plan. Opposing intervenors declare the energy efficiency landscape changes too quickly for a six-year plan to remain effective during its lifetime. OCC points out that three years is reasonable, as it balances the utility's need for program certainty and program flexibility. ELPC/NOAC submit the shifting of funds between the DSM's various programs is a poor substitute for the DSM plan staying in front of new, more efficient technology (ELPC/NOAC Ex. 1 at 16; Tr. II at 216; ELPC/NOAC Br. at 13). ELPC/NOAC declare that approving a six-year DSM plan virtually ensures customer funding of a suboptimal plan for a large portion of the DSM plan's six-year existence. OCC avers Columbia did not evaluate the market for energy efficiency but merely continued its previous DSM programs. OCC offers that the programs are already outdated as the programs were designed in a time when gas prices were significantly higher than prices are now. Opposing intervenors advocated for a three-year term to facilitate changes in new appliance standards, technologies, service providers, market conditions and prices, as well as to balance the competing interests in program certainty versus flexibility. For these reasons, opposing intervenors submit the term of the DSM plan should be reduced to three years or, in the alternative, OCC proposes that the Commission modify the Stipulation to establish a reopener after two years to reevaluate the programs in light of the natural gas and natural gas energy efficiency market.

{¶ 18} In reply, Columbia states the DSM Order properly approved the DSM Program for a six-year term. Columbia reasons that the record demonstrated the six-year term benefits ratepayers and is in the public interest, as it provides program stability for customers and subcontractors, creates administrative synergies and efficiencies, may result

in cost savings, and is consistent with the terms of Columbia's prior Commission-approved DSM Programs. Columbia further notes that OCC's and ELPC/NOAC's arguments regarding the term of the DSM Program are merely a repeat of arguments previously raised and rejected by the Commission. Columbia reasons that opposing intervenors failed to demonstrate that a six-year term would render the Stipulation, as a package, contrary to ratepayers' or the public interest. Accordingly, Columbia requests that the Commission reject OCC's and ELPC/NOAC's arguments.

{¶ 19} The Commission again rejects the claims of opposing intervenors that the term of Columbia's DSM Program should be reduced to no longer than three years. ELPC/NOAC and OCC do not offer any new arguments for the Commission's consideration that were not previously evaluated. The longer term provides stability and predictability for Columbia's DSM Program, including the securing of vendors and program participants and a level of cost stability for Columbia customers. We are not persuaded that there are fewer advantages to a six-year DSM Program in comparison to a three-year program. Further, the term of the DSM Program does not prohibit members of the DSM stakeholder collaborative from proposing additions or revisions to the DSM Program. Additionally, Columbia may, at any time, file an application with the Commission to propose additions, revisions, or amendments to any program prior to the expiration of this DSM Program term in 2022. The Commission may also consider additions, revisions, or amendments to Columbia's DSM Program as a part of Columbia's DSM Program renewal application or the annual DSM rider proceedings. For these reasons, we reject the requests for rehearing.

2. REALLOCATION OF PROGRAM EXPENSES

{¶ 20} In its first argument on rehearing, ELPC/NOAC restate their requests that the Commission direct Columbia to shift approximately $22.5 million from its HE HVAC Rebates and Home Performance Solutions programs to the Simple Energy Solutions program, which, according to ELPC/NOAC, would lead to more energy savings per

dollar spent, $661,143 or nearly ten percent of total savings, and engagement with many more customers. ELPC/NOAC argue the testimony of witnesses Jewel and Frye demonstrates that the proposed smart thermostat initiative is highly effective. ELPC/NOAC assert the Commission shifted the burden of demonstrating the effectiveness of the DSM plan from Columbia to ELPC/NOAC. ELPC/NOAC submit that testimony was offered which explained why transferring funds to the smart thermostat program from lower-performing programs would greatly increase the effectiveness of Columbia's DSM Program. ELPC/NOAC request that the Commission find that, based on Columbia's own cost-effectiveness numbers, expanding the Simple Energy Solutions program, as advised by ELPC/NOAC, would greatly increase savings and participation levels and order Columbia to expand the program accordingly.

{¶ 21} Columbia notes the Commission already evaluated and rejected ELPC/NOAC's proposal to transfer $22 million from Columbia's HE HVAC Rebates and Home Performance Solutions programs to the Home Energy Solution's smart thermostat program above the level included in Columbia's application. Columbia believes that ELPC/NOAC fail to offer any reason for the Commission to revise its ruling and that opposing intervenors' claims that the Commission shifted the burden of demonstrating the effectiveness of the DSM plan is without merit. Columbia states that its burden in these proceedings was to demonstrate that the Stipulation met the three-part test used by the Commission for reasonableness. The Company emphasizes it is not its responsibility to disprove each and every alternative presented by intervenors. Columbia contends that, to the extent ELPC/NOAC ask the Commission to modify the DSM plan, ELPC/NOAC had the burden to demonstrate the proposed modification would result in a cost-effective DSM Program. Therefore, the Company reasons ELPC/NOAC's request for rehearing should be denied.

{¶ 22} In these proceedings, ELPC/NOAC reiterate their proposal to transfer approximately $22 million from Home Performance Solutions for home energy audits and

HE HVAC Rebates, which includes rebates for energy efficient water heaters, to the smart thermostat program. ELPC/NOAC proposed that the amount of the rebate for the smart thermostat program be increased, a customer education plan be undertaken, and Columbia provide a direct installation option. Recognizing value in a customer education component for the DSM Program, the Commission directed Columbia, to the extent that it discontinued an underperforming plan within the DSM Program, to use the funds to develop a customer education and marketing campaign for the Simple Energy Solution smart thermostat project. DSM Order at ¶ 71. Noting that the combined rebate from Columbia and other utility service providers could equate to $125 or more for a device with an average price of $250, the Commission concluded the rebate would likely serve as sufficient incentive for a customer interested in installing a smart thermostat. Further, the Commission denied ELPC/NOAC's request to revise the smart thermostat component of Columbia's DSM Program. The Commission finds that ELPC/NOAC have failed to present any new information or nuance for the Commission's consideration. Accordingly, we deny the request for rehearing of this issue.

{¶ 23} However, to clarify the expectations of the Commission as discussed in the DSM Order, an underperforming plan shall be defined as a customer participation rate that is 25 percent or more below the projected customer participation level. DSM Order at ¶ 71. To that end, Columbia is directed to discuss with the DSM stakeholder group methods to improve participation in the DSM Program and, in order to ensure timely discussions between Columbia and DSM stakeholders, to hold biannual DSM stakeholder meetings. Columbia must discuss any underperforming DSM plan at each biannual meeting and justify, in its annual DSM rider application, any decision to continue an underperforming plan, as opposed to using the funds to develop a customer education and marketing campaign for Simple Energy Solutions.

{¶ 24} Further, recognizing that it may not be feasible for a Columbia customer to receive a rebate from both the gas and electric utilities and, if applicable, a competitive

retail electric service (CRES) provider or gas marketer for the purchase of a smart thermostat, the Commission directed, in the DSM Order, Columbia to work with Ohio Power Company and the FirstEnergy Corporation electric distribution utilities to implement a single consolidated rebate application process. DSM Order at ¶ 71. To that end, Columbia is directed to update the Commission on its progress in implementing a consolidated rebate process and indicate if and when the process is operational, the electric utilities or gas marketers with whom the consolidated rebate process is feasible, and the number of customer rebates processed. Columbia shall provide the consolidated rebate application process update as a part of its annual DSM rider application each year through 2022. In addition, if the smart thermostat rebate is included as a part of the Company's next DSM renewal application, Columbia must provide an explanation of its decision to continue or discontinue the consolidated rebate process, including the recommendations of its DSM stakeholder collaborative.

3. AVERAGE CUSTOMER CONSUMPTION

{¶ 25} As part of its second assignment of error, OCC reiterates that the average Columbia customer will use more natural gas by the end of this term of the DSM Program, December 2022, than the average customer currently uses by 0.07 thousand cubic feet (Mcf). Therefore, OCC argues, except for the low-income DSM programs, Columbia's DSM Program should be cancelled. (Co. Ex. 2, Att. A.)

{¶ 26} Columbia states that OCC's claims regarding the effect of Columbia's DSM Program on the natural gas consumption for the average customer present no new issues that the Commission has not previously considered and rejected. Nonetheless, Columbia states OCC's arguments ignore the distinction between reducing natural gas usage below the baseline, which Columbia admits its DSM Program is not projected to do, and reducing natural gas usage below what it would otherwise be without the program, which Columbia's DSM Program is projected to do, consistent with statutory goals. *See*

R.C. 4905.70. Accordingly, Columbia requests that the Commission reject OCC's arguments.

{¶ 27} As discussed in the DSM Order, the projected slight increase in the average customer consumption of 0.07 Mcf, over a six-year period, is insufficient to conclude that Columbia's DSM Program is not effective. DSM Order at ¶ 109. Without additional customer energy consumption information in the record to analyze, the Commission considers the minuscule increase in consumption over the term of the DSM Program term to demonstrate, at the very least, maintaining the level of consumption rather than an increase in consumption. OCC has failed on rehearing to present any new arguments for the Commission's consideration in regard to the average consumption level. Accordingly, we deny OCC's request for rehearing of this issue.

4. NON-RESIDENTIAL CUSTOMER PARTICIPATION

{¶ 28} OCC argues it is unreasonable, unfair, and a violation of the principle of cost-causation that non-residential customers do not pay the DSM rider but can participate in and benefit from the DSM Program. OCC argues the DSM Program violates the principle of cost-causation by promoting cross-subsidies between the rate classes. OCC proposes that the Commission modify the Stipulation to require all rate classes pay the DSM rider.

{¶ 29} Columbia avers it is appropriate to allow General Service and Large General Service customers to participate in the Company's DSM Program, although they do not pay the rider. Columbia contends non-residential customer participation provides substantial natural gas savings, including over 3 million Mcf from 2012 through 2015, and numerous system-wide benefits, which OCC overlooks. Columbia argues that the Commission does not strictly apply the principle of cost-causation and, to do so in this instance, would require that only program participants incur the rider. Columbia states that the Commission also considers and balances the principle of cost-causation against

other important public policies and the purpose of utility energy efficiency programs to encourage energy conservation and reduce the growth of energy consumption. Columbia submits applying the principle of cost-causation would discourage the installation of energy efficiency measures, and should not be applied in this instance.

{¶ 30} The Commission recognizes that OCC raised on brief the fact that only Columbia's Small General Service (SGS) rate class customers incur the DSM rider; however, all customers, including large commercial and industrial customers, can participate in the Company's DSM Program. DSM Order at ¶¶ 85, 114. (Tr. I at 36; Tr. II at 288). The Commission finds large commercial and industrial customers represent a significant energy efficiency opportunity, which improves the benefits of the energy efficiency program. Based on the record, the Commission concludes that the participation of large commercial and industrial customers is beneficial to Columbia's DSM Program, including non-participants, as large commercial and industrial customers contribute significantly to the reduction in carbon dioxide emissions, jobs, and improved natural gas capacity, among other things. (Co. Ex. 1 at 5; Co. Ex. 3 at Att. A at 5, 23.) For that reason, the Commission denies OCC's request for rehearing of the DSM Order.

5. COMPETITIVE BIDDING AND PARTICIPATION RATES

{¶ 31} OCC submits that competitive bidding for WarmChoice® program services can reduce program costs and recommends the program service contracts be put out for bid at least every three years. OCC submits the Commission did not modify the Stipulation to incorporate a competitive bid process, and did not explain why. However, OCC recognizes that the Commission did indicate that, in the future, the Commission will review the DSM Program for cost containment and control. OCC argues the issue is ripe for review now and the DSM Order unreasonably failed to require competitive bidding.

{¶ 32} Further, OCC emphasizes that less than one percent annually of Columbia's low-income customers will participate in the Company's weatherization

program, WarmChoice®, at a cost of $14 million per year, spending approximately $7,000 per household. OCC contends that the Commission did not adopt any of the proposals OCC made to revise WarmChoice® or state why the revisions should not be implemented. As part of its second assignment of error, OCC contends the Commission should have directed that Columbia's low-income weatherization program be modified to help as many low-income Ohioans as possible. OCC declares that, to facilitate a broader program, OCC proposed that the DSM stakeholder group work together to reach more low-income Columbia customers, that the program be competitively bid, that the DSM Program not include non-energy efficiency repair costs, and that Columbia explore other funding options for its low-income program, including shareholder funds, veterans' organizations, churches, benevolence groups, and charities, and that Columbia coordinate with the HeatShare and Fuel Fund programs to ensure that customers receive information about Columbia's energy efficiency programs. OCC contends it was unreasonable for the Commission to reject all of its recommendations without any explanation. OCC requests rehearing on the proposed modifications to the WarmChoice® program.

{¶ 33} Columbia posits OCC repeats the arguments previously presented in its initial brief regarding its recommendations to competitively bid the WarmChoice® services, among other recommendations. As Columbia notes in its reply brief and its memorandum contra the applications for rehearing, the four entities that implement WarmChoice® have 30 years of experience and were also selected via competitive bid to provide similar services on behalf of the Ohio Development Services Agency's Home Weatherization Assistance Program. The Company notes no evidence was presented that other qualified entities could provide the same quality and range of services at a lower cost and, therefore, the Commission was justified in declining to make changes to WarmChoice® at this time. As to OCC's other suggestions to revise WarmChoice®, Columbia argues OCC really wants to eliminate the health and safety repairs (which OCC refers to as non-energy efficiency repairs) that Columbia must make before a home can be

weatherized and replace those services with less costly services offered to more customers. Columbia states that, ultimately, OCC wants Columbia to develop a replacement for WarmChoice®. Columbia avers OCC has not demonstrated that other charities would step in to perform the necessary repairs or that other charities have sufficient funding to do so nor demonstrated that replacing WarmChoice®, as OCC proposes, would result in a more cost-effective program. Therefore, Columbia asserts the Commission should again reject OCC's suggestions to change or replace WarmChoice®.

{¶ 34} In regard to OCC's arguments on rehearing that the WarmChoice® program be competitively bid, OCC acknowledges that the Commission, in the DSM Order, warned Columbia that the Commission would review the DSM Program expenses for cost and cost containment processes to ensure that the costs incurred were reasonable for the service area as opposed to requiring Columbia to contract for services only by competitive bid. The Commission did not find it necessary, at this time, to modify the Stipulation, as recommended by OCC, to require all WarmChoice® program vendors be acquired through a competitive bid process. DSM Order at ¶¶ 90, 97, 119. Accordingly, this aspect of OCC's application for rehearing is denied.

{¶ 35} The Commission grants OCC's request for rehearing, in part, to direct that Columbia and the DSM stakeholder group discuss and collaborate on how more low-income Columbia customers can be made aware of the WarmChoice® program, and that Columbia coordinate with HeatShare and Fuel Fund programs to inform customers about Columbia's energy efficiency programs. Columbia should commence this process with the DSM stakeholder group at its next meeting, to be held no later than within the next six months, and demonstrate compliance with this Commission directive in its next DSM Program renewal application.

{¶ 36} However, the Commission declines to modify the Stipulation or the DSM Order, at this time, to eliminate non-energy efficiency health and safety repair costs from

the program. The Commission has several concerns with this recommendation, particularly as it relates to OCC's other recommendations to reduce WarmChoice® program costs, and to increase participation levels. The Commission is gravely concerned that, without Columbia's WarmChoice® vendors finding and addressing the non-energy efficiency repairs, such repairs would not be made, adversely impacting the health and safety of household members. In addition, without such repairs, the vendor may be unable to safely install the weatherization and/or the weatherization measures will not operate at the optimal level. Accordingly, the Commission denies OCC's request for rehearing to eliminate the non-energy efficiency repairs. However, in an effort to contain the cost of WarmChoice®, Columbia is directed to explore other funding options to cover non-energy efficiency health and safety repair costs (OCC Ex. 9 at 9-10, JDW-5; Tr. III at 447-448, 490). Accordingly, Columbia should commence this process initially with the DSM stakeholder group at its next meeting, to be held within the next six months after the issuance of this Entry. To ensure that Columbia stays informed on potential funding sources, the issue of available funding options to cover non-energy efficiency health and safety repair costs, as well as other related subjects, should be discussed by Columbia and the DSM stakeholder group at each of the biannual DSM stakeholder meetings. Columbia shall demonstrate compliance with this directive in its annual DSM rider applications through the end of this DSM Program term.

6. On-Line Audit, Energy Design Solutions, and EPA Portfolio Manager Programs

{¶ 37} According to OCC, Columbia's On-Line Audit, Energy Design Solutions, and EPA Portfolio Manager Programs cost $5.74 million over the six-year term of the plan but are not projected to result in any energy savings. OCC proclaims that the Commission failed to state in the DSM Order why it approved Columbia's On-Line Audit, Energy Design Solutions, and EPA Portfolio Manager services. OCC states retaining the specified programs does not benefit customers or the public interest and, therefore, the programs

are unreasonable and should be eliminated. OCC requests that the Commission modify the Stipulation accordingly.

{¶ 38} Columbia reasons, as it previously explained, that the On-Line Audit, Energy Design Solutions, and EPA Portfolio Manager are educational and rebate programs that encourage conservation and help to market other DSM programs. Columbia declares that these DSM programs are cost-effective, representing less than three percent of total DSM Program funding. The Company states the specified programs are part of a well-rounded DSM Program to educate builders and consumers. Columbia contends OCC has not offered any reason to disturb the Stipulation package and abolish these programs.

{¶ 39} The Commission finds value in the Stipulation, as a package, and as modified by the DSM Order, to the extent that Columbia's DSM Program continues to include On-Line Audit, Energy Design Solutions, and EPA Portfolio Manager. On-Line Audit, Energy Design Solutions, and EPA Portfolio Manager are beneficial educational components of Columbia's DSM Program. The on-line energy audit tool allows interested homeowners or occupants to take the initial step to evaluate their energy consumption. Similarly, EPA Portfolio Manager is an interactive energy management tool for building owners to evaluate energy consumption. On-Line Audit and EPA Portfolio Manager inform the consumer and, potentially, encourage the consumer to pursue energy conservation measures. Energy Design Solutions serves to educate commercial builders and the building trades and, in conjunction with EPA Portfolio Manager, to encourage builders to design for energy conservation above the applicable code compliance level. While the record evidence does not include the energy conserved or projections of energy to be conserved as a direct result of these three programs, the Commission finds benefit in these programs as a component of the Stipulation, in light of the cost of the programs in comparison to the overall cost of Columbia's total DSM Program costs, and on the basis that these three programs serve as an avenue to communicate with and educate the energy

consumer and to encourage energy conservation. Accordingly, the Commission finds On-Line Audit, Energy Design Solutions, and EPA Portfolio Manager should continue to be components of Columbia's DSM Program portfolio and we deny the request for rehearing. (Co. Ex. 1 at 4-5; Co. Ex. 3 at 5).

7. EFFICIENCYCRAFTED HOMES PROGRAM

{¶ 40} OCC argues the EfficiencyCrafted Homes program provides unlimited rebates to home builders rather than the customer. On rehearing, OCC argues there is no evidence in the record that builders would not install energy efficiency and conservation measures without the rebates from the DSM Program and the Commission should modify the Stipulation to eliminate the EfficiencyCrafted Homes program. OCC argues that the Signatory Parties to the Stipulation did not prove that the EfficiencyCrafted Homes program benefits customers or the public interest and, therefore, the Stipulation and the DSM Order are unreasonable.

{¶ 41} Columbia responds that, under Commission precedent, Columbia was not required to demonstrate that builders would not install energy efficient and conservation measures absent the rebates received through the EfficiencyCrafted Homes program. Columbia notes the testimony offered by ELPC witness Jewell reveals that customers tend not to implement energy efficiency and conservation measures absent some incentive from their natural gas utility, as well as that the Commission has encouraged the development of programs aimed at improving the energy efficiency of new buildings. Tr. II at 209; *In re The East Ohio Gas Co. d/b/a Dominion East Ohio*, Case No. 07-829-GA-AIR, et al., Opinion and Order (Oct. 15, 2008) at 23; *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 07-1080-GA-AIR, Opinion and Order (Jan. 7, 2009) at 13. The Company notes that, pursuant to the Technical Reference Manual (TRM), which establishes a reference home for comparison purposes, any utility that adheres to the guidelines in the TRM is afforded a presumption of reasonableness, subject to rebuttal. Therefore, Columbia reasons OCC had the burden to present evidence that new home builders would construct just as many energy efficient

homes absent the DSM Program incentives. Columbia states OCC failed to present such evidence and, therefore, the Commission properly affirmed Columbia's continuation of its EfficiencyCrafted Homes program.

{¶ 42} We deny OCC's request for rehearing of the DSM Order on the basis that the incentive rebate as part of the EfficiencyCrafted Homes program does not go to the purchaser of the home/Columbia customer. As discussed in the DSM Order, the Commission finds significant benefit in the program and, thus, its continuance as part of the Stipulation package. DSM Order at ¶¶ 114-115. The EfficiencyCrafted Homes program provides long-term energy efficiency benefits, as homes may be occupied for many decades, and the program facilitates the installation of energy efficiency measures that would otherwise be a lost opportunity to achieve efficiency improvements in new construction. Further, assuming that the builder does not pass some portion of the incentive received to the home purchaser/Columbia customer, there is not a practical and verifiable means to provide the incentive rebate to the home purchaser. The Commission also notes that the homeowner/occupant of the residence receives the benefit of reduced utility bills as a result of the installed energy efficiency measures. For these reasons, we deny the request for rehearing as to this aspect of the DSM Order.

8. COST-EFFECTIVENESS

{¶ 43} OCC avers that the Commission approved the Stipulation although the record evidence did not demonstrate Columbia's energy efficiency programs are cost-effective, as required by Commission rule and in accordance with Commission precedent. OCC notes that Columbia only presented the final results of its cost-effectiveness analysis in the application. Further, OCC asserts it was error for the Commission to conclude Columbia, as well as the other Signatory Parties, met the burden to demonstrate that the programs are cost-effective, as Columbia's only witness on the issue could not substantiate any calculations, assumptions, or the methodology. According to OCC, Columbia did not exclusively rely on the TRM, as the Company asserts. OCC notes that, during cross-

examination, Columbia witness Laverty cited just one example where Columbia used the TRM (Tr. II at 371). Therefore, OCC proclaims Columbia did not meet its burden to demonstrate that its other savings calculations are just and reasonable. *In re Protocols for the Measurement and Verification of Energy Efficiency and Peak Demand Reduction Measures*, Case No. 09-512-GE-UNC, Entry on Rehearing (July 31, 2013) at 11. OCC argues that Columbia witness Laverty failed to substantiate the cost-effectiveness analysis, as stated in the DSM Order. DSM Order at ¶ 110. On rehearing, OCC notes that Columbia adjusted the avoided cost of gas for certain tariff riders, the amount shopping customers pay for commodity, and the discount rates. OCC argues that Columbia's witness was not knowledgeable about the source of the discount rates used or their reliability nor did the witness independently verify the rates or know of any other utility or third party that relied on the same website for the information or how the website obtained the rates it listed. For these reasons, OCC claims the Commission could not have reasonably concluded that the discount rates Columbia used are accurate and reliable.

{¶ 44} OCC continues to argue on rehearing that Columbia's use of the 2015 Energy Information Administration (EIA) natural gas cost projections was unreasonable, given that the 2016 EIA projections were available when the Stipulation was executed. OCC contends that Columbia failed to meet its burden to demonstrate that use of the 2015 EIA data projections was reasonable. Finally, as to Columbia's cost-effectiveness calculations, OCC argues the DSM Order misrepresents OCC witness Haugh's testimony by implying that there were only four errors in Columbia's cost-effectiveness results when there are many more errors in Columbia's calculations. On rehearing, OCC argues Signatory Parties did not meet the burden of proof, as well as that the DSM Order improperly shifted the burden of proof to OCC and failed to find Columbia's cost-effectiveness analysis unreasonable in light of the flaws highlighted by OCC as set forth in OCC witness Haugh's testimony. DSM Order at ¶¶ 112-113.

{¶ 45} Columbia argues the Company presented the results of its cost-effectiveness analysis, as well as the underlying calculations, ample testimony, exhibits, and briefs that described the assumptions and data underlying its cost-effectiveness analysis calculations and responded to discovery regarding its cost-effectiveness calculations with any party that agreed to a confidentiality agreement. The Company notes that Columbia witness Laverty testified to the gas cost projections, the rationale for using the 2015 EIA reference case projections, the adjustments made to the projections, non-energy benefits, and the use of discount rates. As explained in its reply brief, Columbia reasons the sum of the evidence meets the Company's burden of proof. Further, Columbia interprets OCC's application for rehearing to focus on whether Columbia's use of 2015 EIA data was reasonable as opposed to whether the 2016 EIA projections were more reliable, as argued in OCC's briefs. Columbia repeats that OCC witness Haugh's critiques of Columbia's cost-effectiveness calculations were not material and accepting Mr. Haugh's proposed corrections would not have established that Columbia's DSM Program is not cost-effective, as OCC argues. Further, Columbia emphasizes that, under the Commission's criteria, a stipulation is considered as a package. The Company states the Commission evaluated the Company's cost-effectiveness calculations and OCC's recommended calculations, ultimately rejecting OCC's arguments about the 2016 EIA reference projections. DSM Order at ¶ 113. Columbia notes that the Commission rejected OCC's argument that Columbia should have updated its cost-effectiveness calculations after the Stipulation was filed to reflect the 2016 EIA natural gas cost projections. According to Columbia, after considering that request, the Commission determined and should confirm that the record does not support that the 2016 projections are more accurate than the 2015 projections, as explained in the DSM Order. (Co. Ex. 1, App. B, Table 1; Co. Ex. 3 at 8; OCC Ex. 4-8 (Confidential); Tr. II at 351-354; Co. Reply Br. 36-33.)

{¶ 46} We affirm the discussion set forth in the DSM Order at ¶¶ 105-113, and confirm and clarify our conclusion that Columbia met its burden to demonstrate the

results of it cost-effectiveness analysis for the DSM Program are reasonable based on the record (Joint Ex. 1 at 2; Co. Ex. 1, App. B, Table 1; Co. Ex. 3 at 8; OCC Ex. 4-8 (Confidential); Tr. II at 329, 332, 344-345, 346, 371-372). Columbia's rationale on brief adequately explained the basis of its cost-effectiveness calculations based on the record evidence (Co. Reply Br. 25-37). On rehearing, OCC notes that Columbia adjusted the avoided cost of gas to account for the Percentage of Income Payment Plan Rider, the Uncollectible Expense Rider, and the rates shopping customers pay. OCC also disapproves of the DSM Order's acceptance of the discount rates selected by Columbia. The Commission clarifies that we find Columbia's use of the 2015 EIA natural gas cost projections, and the Company's other adjustments in the cost-effectiveness model, reasonable in this instance, as we explained the decision in the DSM Order. DSM Order at ¶ 113. OCC has failed to present any new arguments for the Commission's consideration and, therefore, we deny this aspect of its application for rehearing. The Commission discussed the more salient parts of OCC's arguments in opposition to the Stipulation in the DSM Order, not to shift the burden, as OCC asserts, but to explain our rationale for the decisions reached in the DSM Order.

9. CAP ON DSM PROGRAM

{¶ 47} Finally, OCC submits the Stipulation does not adequately limit the amount customers pay for Columbia's DSM Program. OCC notes the Commission recently stated it would be reluctant to approve a stipulation in other energy efficiency/peak demand reduction (EE/PDR) program portfolio cases, if the stipulation does not include a cap on EE/PDR program costs. *In re Ohio Power Co.*, Case No. 16-574-EL-POR (*Ohio Power EE/PDR Case*), Opinion and Order (Jan. 18, 2017).

{¶ 48} Columbia argues that OCC's first request for a cost cap on the DSM Program was in OCC's application for rehearing and further notes that OCC fails to propose any particular cap amount. Importantly, the Company notes that OCC's request for a cost cap is based on a Commission order issued a month after the DSM Order in

these proceedings. Columbia states that its projected DSM Program expenses range from $32.3 to $35.7 million annually, including the base rate funding for WarmChoice®, which is less than one-third of the expected cost of the program OCC cites in support of its request to include a cost cap. *Ohio Power EE/PDR Case*, Opinion and Order (Jan. 18, 2017) at ¶ 21. Columbia notes that its DSM Program is projected to cost the average SGS customer $1.60 per month through 2022. Columbia reasons that the Commission annually reviews its DSM rider for reasonableness and prudence, and in light of the program cost imposed on residential customers and the Commission's annual review, there is no need to impose a cost or rider cap. (Co. Ex. 1, Appendix B, Table 3 at 25; Co. Ex. 2 at 9). *Ohio Power EE/PDR Case*, Opinion and Order (Jan. 18, 2017) at ¶ 32.

{¶ 49} In the course of these proceedings, OCC recommended that the Stipulation be modified to include caps on various incentives, select rebates, and particular programs within the catalog of Columbia's DSM Program, as well as other cost containment measures. However, OCC did not, prior to its application for rehearing, recommend a cost cap on Columbia's DSM Program or the DSM rider in these proceedings. These are very different requests. Under the circumstances, the Commission finds OCC's request to modify the Stipulation, as modified and approved in the DSM Order, to impose a cap on Columbia's DSM Program to be improper at this stage of the proceedings. We also note that the order OCC cites for support was issued after the DSM Order; pertains to the electric industry, which is subject to EE/PDR programs by statute; and addresses a cost cap imposed pursuant to a stipulation. *Ohio Power EE/PDR Case*, Opinion and Order (Jan. 18, 2017). Accordingly, we deny OCC's request for rehearing.

{¶ 50} In conclusion, as discussed above, we deny ELPC/NOAC's first and third assignments of error and grant, in part, and deny, in part, OCC's second assignment of error. Further, the Commission finds, for the reasons discussed above, that the Stipulation, as a package, and as modified in the DSM Order and further clarified and modified in this Second Entry on Rehearing, benefits ratepayers and the public interest.

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

{¶ 51} In its third assignment of error, OCC argues the Commission approved the Stipulation in violation of certain regulatory principles, such as those requiring the Commission to minimize the impact of energy efficiency programs on non-participants and to protect customers from paying too much for energy efficiency program costs and shared savings, as well as those prohibiting intra-class subsidies. To minimize the cost of the DSM Program, OCC recommends that the Commission modify the DSM rider to require that the General Services and Large General Services rate classes pay the rider; reduce the scope of Columbia's DSM Program, excluding the low-income programs; eliminate the On-Line Audit, Energy Design Solutions, and EPA Portfolio Manager programs; require Columbia to competitively bid its low-income WarmChoice® program and other programs; reduce the term of the DSM plan to three years; reduce the amount of the shared savings ratio; and direct Columbia to work with the stakeholder group to develop ways to increase participation in the programs at all income levels.

{¶ 52} OCC posits the DSM Order is unreasonable to the extent it approved the Stipulation without any of the aforementioned recommendations proposed by OCC. Further, OCC submits the Commission has long discouraged intra-class subsidies and notes that, in its most recent rate case as of these proceedings, Columbia too designed its rates to avoid intra-class subsidization. *In re Columbus and S. Ohio Elec. Co.*, Case No. 83-314-EL-AIR, Opinion and Order (Dec. 20, 1983); *In re Columbia Gas of Ohio, Inc.*, Case No. 08-72-GA-AIR, et al. (*2008 Distribution Rate Case*), Opinion and Order (Dec. 3, 2008) at 18. OCC points out that only three percent of Columbia's customers are projected to participate in the DSM Program; therefore, the remaining customers are paying an intra-class subsidy. OCC submits the DSM Order is unreasonable and unlawful on the basis that the Order takes no steps to minimize the intra-class subsidy. According to OCC, the Commission should reject the Stipulation or modify the Stipulation as proposed by OCC.

OCC suggests, as it did in its second assignment of error, that the Commission impose a cap on the cost of Columbia's DSM Program like the Commission did in Ohio Power Company's energy efficiency case. *Ohio Power EE/PDR Case*, Opinion and Order (Jan. 18, 2017).

{¶ 53} Columbia declares OCC's suggestion that the Commission must accept any proposed modification to the DSM Program that would reduce the scope of the programs, reduce cost recovery, or increase the number of customers paying the DSM rider is incorrect. Columbia asserts OCC's interpretation of the Commission's duty would essentially give OCC, or other intervenors, veto authority over a stipulation. Columbia notes that the Commission has repeatedly declined to require any single party to agree to a stipulation for passage of the three-part test used to evaluate stipulations. DSM Order at ¶ 59. Further, Columbia argues that, while reframing the WarmChoice® program as proposed by OCC would reduce overall cost, OCC's requested revisions would deprive Columbia's low-income customers of economically valuable and potentially life-saving repairs, elevate costs over the effectiveness of the DSM Program, and contradict the public policy underlying the adoption of the program. Columbia interprets the requirement to minimize the impact on non-participants to mean the proposed DSM rider must be reasonable. The Company declares the DSM rider, at $1.60 per month, minimizes the impact on non-participating customers.

{¶ 54} In regard to OCC's claims of intra-class subsidies, Columbia notes that OCC's reference to a three-percent participation level excludes the approximately 30 percent of Columbia customers that receive the Home Energy Report each year, which the Commission determined to be a cost-effective way to provide customers energy efficiency and conservation information to facilitate a customer's informed choice to pursue and potentially install energy efficiency devices. The Company believes OCC's interpretation of the prohibition on intra-class subsidies would effectively end Ohio's natural gas DSM

programs, and is inapposite to the Commission's recognition that conservation and energy efficiency have an integral part in natural gas policy.

{¶ 55} On rehearing, OCC asserts specific means by which the Commission failed to modify the Stipulation by minimizing the impact to non-participating Columbia customers. One of the means OCC advocates to minimize the impact of the DSM Program on Columbia customers is that General Service and Large General Service rate classes be charged the DSM rider. As these proceedings are not an application for an increase in rates, with affected customers notified accordingly, this DSM application is not the appropriate proceeding for the Commission to consider the rates and charges. Accordingly, this aspect of OCC's request for rehearing is denied.

{¶ 56} OCC also advocates on rehearing that the Commission reconsider OCC's request to modify the Stipulation to reduce the amount of shared savings received by Columbia as a means of reducing the cost of the DSM Program. The Commission acknowledged OCC's arguments and Columbia's reply in the DSM Order, but did not reduce the shared savings as requested by OCC. DSM Order at ¶¶ 98-99. The shared savings provision of the Stipulation requires the Company to achieve 100 percent of the Mcf savings targets, maintains a tiered shared savings percentage for savings achieved above 100 percent, and caps the shared savings incentive at $4.5 million, excluding taxes, over the term of the DSM Program. Further, the shared savings provision advances the state policy set forth in R.C. 4929.02(A)(12). The Commission finds the shared savings, as reflected in the Stipulation, to be a reasonable balance of the benefits of the DSM Program to Columbia's customers and for Columbia, to incent the Company to deliver quality energy efficiency programs. Accordingly, we deny the request for rehearing of this aspect of the DSM Order. (Co. Ex. 1 at 16-19; Joint Ex. 1 at 3; Co. Ex. 2 at 2.)

{¶ 57} Further, OCC argues the Commission failed to modify the Stipulation to eliminate the On-Line Audit, Energy Design Solutions, and EPA Portfolio Manager

programs, to require Columbia to competitively bid its WarmChoice® and other programs, to reduce the term of the DSM Program from six years to three years, to minimize the impact to non-participating Columbia customers, and to meet the requirements of the third part of the test used to evaluate stipulations. As discussed in the DSM Order and above in regard to OCC's second assignment of error, the Commission finds value and benefits to Columbia customers in the On-Line Audit, Energy Design Solutions, and EPA Portfolio Manager programs; denies the request to require WarmChoice® and other vendors be obtained by competitive bid; and denies the request to reduce the term of the DSM Program. The DSM Program, as modified and approved, costs participating and non-participating SGS customers approximately $1.60 per month (Co. Ex. 2 at 9). DSM Order at ¶ 66. We note that reducing the term of the DSM Program would not directly minimize the impact to non-participants. The Commission finds the DSM Program, as approved pursuant to the Stipulation and modified by the DSM Order and this Second Entry on Rehearing, reasonably minimizes the cost to the non-participants in comparison to the energy efficiency benefits derived. On rehearing, OCC fails to present any additional arguments which persuade the Commission that the Stipulation, as modified and approved, requires further modification to avoid violating any important regulatory principle or practice.

{¶ 58} In the DSM Order, the Commission evaluated the Stipulation as a whole, in light of the purpose of gas energy efficiency programs, and concluded that the Stipulation, as modified in the Order, met the third criterion of the Commission's three-part test. DSM Order at ¶¶ 126-127. To the extent that we clarify and grant specific requests for rehearing, the Commission concludes that the Stipulation, as a whole, and as modified by the DSM Order and this Second Entry on Rehearing, continues to comply with the third part of the three-part test to evaluate stipulations. Accordingly, we deny OCC's third assignment of error.

D. Procedural Matters and Other Issues Raised

1. SUPPLIER PARTICIPATION IN SMART THERMOSTAT REBATE PROGRAM

{¶ 59} In its second assignment of error, ELPC/NOAC request that the Commission clarify that Columbia must engage with all competitive retail natural gas service (CRNGS) and CRES providers that want to participate in the smart thermostat rebate program and make the rebate available to all competitors.

{¶ 60} Columbia replies that ELPC/NOAC's request is based on a misunderstanding of the rebate program. Columbia avers that all eligible CRNGS suppliers may participate in the program, as the Company partners with any interested CRNGS supplier certified to operate in Columbia's service area. Accordingly, Columbia requests that ELPC/NOAC's request for rehearing be denied.

{¶ 61} In the Stipulation, as part of its Simple Energy Solutions program, Columbia agreed to provide a rebate of $75 per learning thermostat and to engage in discussions with RESA, IGS, and Staff on mechanisms to streamline and/or enhance the rebate process associated with the program (Joint Ex. 1 at 3). Columbia, RESA, IGS, and Staff negotiated to develop enhancements to the customer rebate process. The Commission is not persuaded that, based on the arguments of ELPC/NOAC on rehearing, it is unreasonable to include only certain parties to the proceedings in the initial discussions to improve the customer rebate process and, after a proposal is developed, to discuss the customer rebate process with the DSM stakeholder collaborative. In addition, the Commission ordered Columbia to work with the two electric distribution companies that operate in Columbia's service territory and, if applicable, the customer's gas marketer to ensure that, if the customer is eligible to receive a rebate from both Columbia and its electric utility or CRES provider for the purchase of a smart/wi-fi thermostat, the customer is not prohibited from processing or receiving both rebates, preferably through a single rebate application process. DSM Order at ¶ 71. The Commission clarifies the intent

of the DSM Order was to ensure that the customer is not foreclosed from receiving other available rebates for which the customer is eligible and directly receives, whether offered by Columbia, the two electric distribution utilities operating in Columbia's service area, or the CRES or CRNGS provider serving the customer.

2. TRADE SECRET DESIGNATION OF CERTAIN INFORMATION

{¶ 62} In its fourth assignment of error, OCC argues that the DSM Order violates R.C. 1333.61, in its determination that certain information is a trade secret. OCC adds that the DSM Order fails to comply with R.C. 4903.09, which requires the Commission to explain in sufficient detail the reason and rationale for its conclusion that Columbia's projected customer participation levels, energy efficiency program costs, cost-effectiveness model, and certain inputs are trade secrets.

{¶ 63} OCC asserts the attorney examiner's entry in a Duke Energy Ohio, Inc. proceeding is on point and the rationale and reasoning applies in the present cases. *In re Duke Energy Ohio, Inc.*, Case No. 11-4393-EL-RDR (*Duke DSM Rider Case*), Entry (Oct. 3, 2011) at 2-3. According to OCC, Columbia failed to meet its burden to demonstrate, consistent with Ohio law, that the information regarding projected customer participation numbers and energy efficiency program rebates is entitled to protective treatment as trade secrets. OCC notes that, in Columbia's prior two DSM proceedings,[1] Columbia filed its projected customer participation rates and energy efficiency rebates information publicly and, in these present proceedings, only selectively guards the secrecy of its rebate information, as the Stipulation discloses the amount of its thermostat rebate. OCC declares that the Commission failed to require Columbia to show that the information subject to the motion for protective order met the requirements for trade secret status beyond the Company's mere assertions, without any elaboration or support for such claims, or that the cost-effectiveness spreadsheets provided economic value to Columbia

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1 *In re Columbia Gas of Ohio, Inc.*, Case No. 08-833-GA-UNC, Application (July 1, 2008); *In re Columbia Gas of Ohio, Inc.*, Case No. 11-5028-GA-UNC, et al., Application (Sept. 9, 2011).

and that other parties might derive economic value from disclosure. R.C. 1333.61(D). OCC also notes that Columbia shared the cost-effectiveness spreadsheets with counsel for OPAE, whose members include potential competitive bidders for certain DSM energy efficiency services. For these reasons, OCC declares that the DSM Order is unjust, unreasonable, and unlawful.

{¶ 64} In addition, OCC argues the DSM Order relies on the premise that Columbia has an independent business interest in competing in the unregulated market for energy efficiency services, as the Commission implied that disclosure of the protected information would negatively affect the competitive bidding process and Columbia's ability to ensure the incurred costs for such programs are reasonable. OCC advocates that the Commission's rationale is unsupported by the record and directly contradicted by Columbia's sharing the information with a party that participates in the competitive process. According to OCC, Columbia's only interest in the energy efficiency programs is its financial interest and the protective order prevents customers, who pay for the DSM Program, access to the information and data concerning the program. Therefore, OCC reasons the DSM Order is unjust, unreasonable, and unlawful.

{¶ 65} OCC declares that Columbia's inputs, data, and calculations related to its cost-effectiveness model are not trade secrets, as Columbia offered no explanation as to how it derives any value from its projected costs, inputs, and data or how any third party could use such information to its competitive advantage. As noted above, OCC states that Columbia selectively disclosed the information. OCC declares that Columbia can not have the information protected from disclosure and disclose the information. Therefore, OCC concludes Columbia did not met its burden to establish that the information is entitled to protection, pursuant to Ohio trade secret law.

{¶ 66} Columbia emphasizes that, in OCC's recitation of the law, OCC ignores the recognized exceptions to Ohio's public records law that the Commission correctly

applied in the DSM Order. Columbia asks that the Commission consider that customers are not requesting public disclosure of the confidential information at issue in these cases. Columbia reasons that the application, non-confidential record evidence, and docket provide ample information to the public regarding Columbia's DSM Program, which properly balances the disclosure of DSM Program information with the value Columbia and Columbia's customers would lose if the confidential information is disclosed to competitors and to those who may bid to implement individual components of Columbia's DSM Program. Further, Columbia points out that the Commission explicitly distinguished the *Duke DSM Rider Case* from these proceedings. *Duke DSM Rider Case*, Entry (Oct. 3, 2011) at 2-3. DSM Order at ¶ 25. Columbia interprets the Entry in the *Duke DSM Rider Case* to specifically declare that the information did not qualify as trade secret merely because the information would provide per-participant pricing information to potential bidders. Columbia states it demonstrated, in its motion for protective order and its reply, that the information would be valuable to potential competitors in the energy efficiency market.

{¶ 67} In addition, Columbia argues that the confidential information at issue is exponentially more voluminous, detailed, and revealing, as it is the culmination of Columbia's business experience with the DSM Program. Columbia admits, as it previously conceded, that, in past filings, projected participation rates were voluntarily disclosed in the Company's DSM applications. Columbia states, in contrast to the participation rates previously disclosed, Columbia's response to OCC Interrogatory Set 2, No. 1 is a year-by-year breakdown of projected participation rates, and OCC Interrogatory Set 2, No. 5 includes all proposed rebates for the six-year DSM Program period. Thus, according to Columbia, the previously released information does not compare with the voluminous and detailed information included in the confidential discovery responses at issue in these cases. Columbia reasons that the amount of the thermostat rebate will be made public as Columbia works with other utilities to maximize the rebate available to

consumers, consistent with the DSM Order. DSM Order at ¶ 71. Columbia argues that OCC's criticism of the Company's attempt to put as much information as possible into the public record, while maintaining the protection of trade secret information, puts Columbia in a no-win situation.

{¶ 68} In regard to the cost-effectiveness model spreadsheets, and other confidential information, Columbia states that the Commission already considered and rejected OCC's arguments and OCC presents no reason for the Commission to reverse its decision. DSM Order at ¶¶ 24-26. Columbia contends that the Company explained how the confidential information has independent economic value to Columbia, potential competitors, and bidders that would use the cost-effectiveness information to maximize their bid to the budgeted level for the DSM Program. Columbia admits that it provided the cost-effectiveness spreadsheets to OPAE's counsel, pursuant to an executed protective agreement. Further, Columbia confirmed with counsel for OPAE that the information was not shared with any OPAE members. The Company declares that, since no OPAE members received the information, there is no reason to prohibit OPAE members from bidding on providing Columbia's DSM energy efficiency services. Accordingly, Columbia asks the Commission to reject OCC's request for rehearing.

{¶ 69} Columbia asserts that OCC's position, that customers pay for the DSM Program and, therefore, are entitled to all information, would logically mean that no utility information could be confidential where the services or programs are paid for with revenues generated from customer payments. Columbia contends that such a broad view has never been adopted by the Commission and is contrary to Ohio law and Commission precedent. Columbia declares that it has a business interest in the protected information and demonstrated the value of the information to both Columbia and to potential competitors in its motions. Therefore, Columbia reasons it should not be forced to reveal its confidential trade secrets.

{¶ 70} Columbia acknowledges that it inadvertently revealed, in discovery, the names of the inputs into the avoided gas cost component of the cost-effectiveness calculation. However, Columbia states the numerical values associated with the various inputs remain protected and were not released into the public domain. Columbia reiterates that the cost-effectiveness calculations are used to review and evaluate an energy efficiency program and the numerical inputs carry independent economic value to Columbia and competitors. Columbia reasons that competitors of its DSM Program could use the numerical inputs and their concomitant effect on Columbia's program to benchmark the competitor's program or model their own review using Columbia's inputs. Columbia notes that access to the cost-effectiveness test inputs would save a potential competitor the significant time and financial resources that it would otherwise need to expend to independently obtain the same type of information. Accordingly, Columbia states the Commission properly determined the cost-effectiveness model, inputs, and data are trade secrets.

{¶ 71} First, in regard to OCC's contention that Columbia lacks an independent business interest in the energy efficiency services market, the Commission disagrees. Columbia's DSM Program has been enacted by order of the Commission, with the associated cost of the DSM Program recovered by way of the DSM rider. Columbia has a duty and an obligation to develop, manage, and oversee its energy efficiency programs with the same level of care as must be exercised in the other facets of its gas distribution business. In addition, Columbia recognized and demonstrated that the Company does in fact have a business interest in the value of the information. Consistent with the approved Stipulation, Columbia receives, depending on the effectiveness of the DSM Program, a share of the savings achieved and, therefore, Columbia has a financial interest in the success of the DSM Program.

{¶ 72} The Commission rejects OCC's argument that, because the cost of the DSM Program is recovered by customer payments, the information can not be a trade

secret and, therefore, must be publicly disclosed. We reject this argument because, to do otherwise, would equate to nullification of R.C. 1333.61(D) and applicable Ohio trade secret case law.

{¶ 73} The Commission recognizes that Columbia previously disclosed the same type of information in prior DSM applications filed in 2008 and 2011. The Commission is not convinced that, merely because Columbia previously disclosed this type of information, Columbia is precluded from subsequently seeking or obtaining trade secret status for the current information, consistent with the requirements of R.C. 1333.61.

{¶ 74} OCC cites the disclosure of confidential information to counsel for OPAE as a reason that certain information can not be a trade secret. It is common practice in Commission proceedings for the counsel of an intervening party to receive confidential, proprietary, trade secret information pursuant to a protective agreement. We note, according to Columbia, counsel for OPAE confirmed that the confidential information received was not shared with OPAE members. Therefore, the Commission finds that it is not detrimental to Columbia's claim that the cost-effectiveness spreadsheets are trade secret that such information was provided to counsel for OPAE.

{¶ 75} The Commission affirms its decision, as stated in the DSM Order, that certain information meets the requirements for trade secret status under R.C. 1333.61 and Ohio case law. The Commission finds that OCC has failed to raise any new arguments which persuade the Commission otherwise regarding energy efficiency incentives and rebates and the cost-effectiveness model, associated inputs, and data. Instead, the record reflects that Columbia secured the services of a consultant to refine its DSM Program cost-effectiveness model. Columbia demonstrated that the inputs have economic value as non-disclosed information used to determine the cost-effectiveness of Columbia's DSM Program. The Company relies on its experience and uses its own proprietary information to design its DSM Program cost-effectiveness model and the inputs and data thereto.

Columbia contends the information in the cost-effectiveness model, and the rebates and incentives, demonstrates the design, compilation, program, and methods of Columbia's DSM Program. The Commission does not believe it is feasible for a potential competitor or bidder to conveniently obtain the DSM Program details by other means. The Commission finds that certain of the inputs associated with the calculations used in Columbia's cost-effectiveness model carry independent economic value, as the information reflects Columbia's years of experience providing energy efficiency services. The Commission takes note that Columbia expended time and financial resources in determining the numerical inputs, and that disclosure of this information would allow competitors to skip this crucial step in creating a similar program. The Commission finds that Columbia has demonstrated that the information it seeks to protect from disclosure was correctly given protective treatment, as the information is only known to Columbia personnel within the DSM group and has independent economic value in not being readily ascertainable by competitors who can obtain economic value from its use. For these reasons, we deny OCC's fourth assignment of error on rehearing, in part. DSM Order at ¶¶ 17-25. (Tr. II at 350.) Accordingly, the Commission affirms its decision that the documents, as set forth in the DSM Order, except as designated in Paragraph 77 below, include information that meets the requirements of a trade secret.[2]

{¶ 76} In regard to the customer participation rates, the Commission concludes that such information does not meet the requirements of a trade secret under R.C. 1333.61. Upon further consideration of the arguments raised on rehearing, a thorough and

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[2] Columbia's responses to: OCC Interrogatory Set 2, No. 1; OCC Interrogatory Set 4, Nos. 70-81; OCC Ex. 5, OCC Ex. 7, and OCC Ex. 8; OCC Interrogatory Set 2, No. 5; OCC Interrogatory Set 2, No. 13; OCC Request for Production of Documents Set 2, No. 6 Att. A (Confidential); OCC Ex. 4; OCC Request for Production of Documents Set 4, No. 22 Att. A (Confidential); OCC Request for Production of Documents Set 4, No. 23; Staff DSM Data Request Set 1, No. 6, Att. A (Confidential), Att. B (Confidential), and Att. B (Confidential) Supplemental - as corrected on August 10, 2016; OCC Request for Production of Documents Set 4, No. 22 Att. A (Confidential); OCC Request for Production of Documents Set 4, No. 23; Staff DSM Data Request Set 1, No. 6, Att. A (Confidential), Att. B (Confidential), and Att. B (Confidential) Supplemental - as corrected on August 10, 2016; OCC Ex. 6.

thoughtful review of the motions and memorandum contra, and the decision in the *Duke DSM Rider Case*, the Commission revises this aspect of the DSM Order. Duke sought, in the *Duke DSM Rider Case*, to keep cumulative customer participation levels confidential. In these proceedings, the Commission recognized only that "the information at issue in the *Duke DSM Rider Case*, which was the total utility budget cost per DSM program, has already been publicly provided in the present cases" and reasoned that the case was not directly on point. DSM Order at ¶ 25. We note, consistent with the attorney examiner's conclusion in the *Duke DSM Rider Case*, and in other DSM cases as well as other energy efficiency proceedings, projected customer participation rates are not afforded trade secret status.

{¶ 77} In its motions for protective treatment, Columbia addresses the requirements of the six-factor test utilized by the Ohio Supreme Court to determine a trade secret under R.C. 1333.61. *State ex rel. Plain Dealer v. Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997). Columbia reasons projected customer participation rates would allow competitors to evaluate their programs in comparison to Columbia's, harm the bidding process, and hinder Columbia's ability to negotiate. Columbia states, generally, that reasonable efforts are undertaken to maintain the secrecy of the projected customer participation rates. With further consideration, the Commission reasons that projected customer participation rates will only indicate to an energy efficiency provider the potential scope of participation expected; however, projections are simply predictions of future activity. Even the most reliable projections may be proven wrong over the term of the DSM Program, particularly where customers are free to elect to participate or not. For this reason, we find any independent value to a potential competitor speculative, at best, and unlikely to pose significant harm to Columbia's ability to secure bids or to negotiate for services. Accordingly, the Commission concludes the projected customer participation rates are not a trade secret, pursuant to R.C. 1333.61, and grants this aspect of OCC's fourth request for rehearing. To that end, the Commission's docketing division is

directed to release into the dockets, no sooner than seven days after the issuance of this Second Entry on Rehearing, OCC Request for Production of Documents Set 2, No. 9, Att. A. Further, Columbia is directed to prepare copies of OCC Interrogatory Set 2, No. 1; OCC Interrogatory Set 2, No. 5; OCC Interrogatory Set 2, No. 13; and OCC Request for Production of Documents Set 2, No. 6, Att. A, to reveal the customer participation rates by program, consistent with the DSM Order and this Second Entry on Rehearing, and file redacted copies in the dockets within 30 days after the issuance of this Second Entry on Rehearing.

3. RELIANCE ON NON-RECORD INFORMATION

{¶ 78} In its fifth assignment of error, OCC argues the Commission unfairly allowed OPAE and Columbia to rely on documents not in the record. First, OCC submits OPAE relied on a stipulation filed in the *2008 Distribution Rate Case*, without the stipulation being admitted into the record in these proceedings. Second, OCC avers Columbia was permitted to refer to its tariffs for the first time in its reply brief. OCC declares allowing parties to utilize documents or information outside the record is contrary to Ohio law, violates Commission precedent and the Ohio rules of evidence, and causes a chilling effect on due process.

{¶ 79} Columbia notes that, while OCC challenges the Commission's ruling regarding Columbia's tariffs, OCC makes no arguments to distinguish the Commission's holding that a tariff has the same binding effect as law or to explain why law should be subject to cross-examination. *In re Complaint of City of Reynoldsburg*, 134 Ohio St.3d 29, 2012-Ohio-5270, 979 N.E.2d 1229, ¶ 41. Further, Columbia notes, as previously explained in its memorandum contra OCC's motion to strike, that its natural gas cost projection adjustments in its cost-effectiveness calculations are not derived from information in its tariff sheets. According to Columbia, most of the information OCC sought to strike simply described the riders and charges that Columbia took into consideration when it adjusted its gas cost projections, as part of its cost-effectiveness analysis, and the remaining

information shows, for comparison purposes, that the adjustments to Columbia's projected natural gas costs were in line with its recent tariff charges. Thus, Columbia reasons the Commission's ruling was consistent with Commission precedent and the status of tariff sheets as law. Accordingly, Columbia advocates that the ruling should be affirmed on rehearing.

{¶ 80} In reply, OPAE asserts the relevant language in its brief was from the Commission's Opinion and Order in the *2008 Distribution Rate Case*, which OPAE cited as Commission precedent. *2008 Distribution Rate Case*, Opinion and Order (Dec. 3, 2008). OPAE reasons the language at issue in its brief addresses whether the settlement negotiations in the instant cases were tainted by the presence of non-intervening parties at settlement negotiations. OPAE points out that OCC, as a signatory party to the stipulation in the *2008 Distribution Rate Case*, was aware of the provisions of the stipulation and had the opportunity to address OPAE's claims in its reply brief. OPAE notes that, as a signatory party to the stipulation in the *2008 Distribution Rate Case*, OPAE may cite the stipulation in any other proceeding to enforce the terms of the stipulation. OPAE also notes that, in accordance with the *2008 Distribution Rate Case* stipulation, the process to be used to continue, modify, and/or expand Columbia's DSM Program includes stakeholder meetings before Columbia files its DSM application.

{¶ 81} In the DSM Order, the Commission denied OCC's request to strike sections of OPAE's initial and reply briefs that referenced the stipulation approved by the Commission in the *2008 Distribution Rate Case*.[3] OCC, as a signatory party, was aware of or should have been aware of the stipulation in the *2008 Distribution Rate Case*. Further, OCC had the opportunity to and did address OPAE's arguments and interpretation of the *2008 Distribution Rate Case* stipulation in its reply brief and motion to strike. OPAE argued that references to the stipulation in the *2008 Distribution Rate Case* were necessary to

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3 OPAE Br. at 8, 37, 38; OPAE Reply Br. at 4.

enforce the terms of the stipulation and that consideration of the process undertaken was relevant to the first criterion of the three-part test used to evaluate stipulations. Accordingly, OCC's motion to strike the references was denied. The Commission is not prohibited from citing its Order in the *2008 Distribution Rate Case* on the basis that the Order was not part of the record in these proceedings and, in any event, the Commission took administrative notice of the Order. Additionally, the Commission would have reached the same conclusion as to the first criterion of the three-part test used to evaluate a stipulation, with or without the portions of OPAE's briefs OCC requested be stricken. Without addressing whether the DSM stakeholder group meetings were settlement negotiations, the Commission determined that, because the parties were afforded the opportunity, outside of the stakeholder meetings, to propose settlement terms or provisions to be included in the Stipulation, the first criterion of the test had been met. DSM Order at ¶ 55. Accordingly, the Commission denies OCC's request for rehearing.

{¶ 82} Further, the Commission notes that testimony offered by Columbia and Columbia's responses to certain interrogatories reflect an adjustment for certain riders reflected in the bills of Columbia's customers (Tr. II at 357; OCC Ex. 6 (Confidential)). Accordingly, the Commission denies OCC's application for rehearing regarding Columbia's reference to its tariffs in Columbia's reply brief for the same reasons discussed in the DSM Order. DSM Order at ¶ 37.

4. COMPLIANCE WITH R.C. 4903.09

{¶ 83} OCC, in its first assignment of error, and as part of its fourth assignment of error, argues the Commission erred by failing to explain its decision regarding many of the recommendations made by OCC to modify the Stipulation. According to OCC, in violation of R.C. 4903.09, the Commission's Order did not provide any reasoning or explanation regarding several of the proposals OCC made to modify the Stipulation, to reject the Stipulation, or to cancel or revise various aspects of Columbia's DSM Program or to eliminate the DSM Program in its entirety. OCC also argues, as part of its fourth

assignment of error, that the DSM Order failed to present in sufficient detail the Commission's rationale for determining certain information constitutes trade secret information under R.C. 1333.61 or the six-factor test. Therefore, according to OCC, the Commission, in the DSM Order, failed to explain its decision, in violation of R.C. 4903.09. OCC reasons it is error for the Commission to fail to offer a response to OCC's claims. *In re Application of Columbus Southern Power Co.*, 147 Ohio St.3d 439, 2016-Ohio-1608, 67 N.E.3d 734, ¶¶ 64-66 (*AEP Ohio ESP 2 Case*).

{¶ 84} Columbia responds that the Supreme Court decision on which OCC relies does not demonstrate that the Commission did not comply with R.C. 4903.09. Columbia reasons the *AEP Ohio ESP 2 Case* involved a very specific statutory provision utilized to evaluate the electric utility's earnings, known as the significantly excessive earnings test (SEET). Columbia notes the present cases and the *AEP Ohio ESP 2 Case* are distinguishable in two respects. According to Columbia, the *AEP Ohio ESP 2 Case* was fully litigated and appealed in regard to discrete issues, whereas these proceedings were resolved by stipulation and, thus, the Commission's obligations are limited to the three-part test for evaluating stipulations. Further, Columbia argues there is not a specific and explicit statutory requirement, with the specificity of the SEET, applicable to natural gas DSM programs. Accordingly, Columbia concludes the cases are distinguishable.

{¶ 85} Further, Columbia states the purpose of R.C. 4909.03 is to permit the Court to review the actions of the Commission without reading the voluminous record in Commission cases. Columbia submits that strict compliance with R.C. 4903.09 is not required. According to Columbia, the Court requires the Commission's decision to provide sufficient detail to permit the Court to determine the basis of the decision, including some factual basis and reasoning based thereon in reaching its conclusion. *Payphone Assoc. of Ohio v. Pub. Util. Comm.*, 109 Ohio St.3d 453, 2006-Ohio-2988, 849 N.E.2d 4, ¶ 32. Finally, Columbia concludes that the Commission's 65-page order discusses the facts it relied on and the rationale for its decision, including refuting many of the

arguments presented by OCC, to reach a determination that the Stipulation meets the requirements of the three-part test. Thus, Columbia encourages the Commission to reject OCC's application for rehearing.

{¶ 86} The Commission interprets the Ohio Supreme Court's ruling cited by OCC, and the progeny of decisions interpreting R.C. 4903.09, to require the Commission to state the basis for its decision such that the Court can determine how the decision was reached, to comply with the requirements of R.C. 4903.09. *Allnet Communication Serv., Inc. v. Pub. Util. Comm.*, 70 Ohio St.3d 202, 209, 638 N.E.2d 516 (1994). It is the sufficiency of the evidence and the rationale presented in support of the Commission's determination that must be stated in the order.

{¶ 87} Conversely, OCC argues that the Commission failed to address each and every claim or recommendation OCC raised in opposition to the Stipulation. The Commission finds that it is not necessary, under the requirements of R.C. 4903.09, that each and every argument presented by an opposing intervenor be directly addressed by the Commission. The Commission must, however, set forth the factual basis, rationale, and record support for its decision such that it can be evaluated by the Ohio Supreme Court. The DSM Order, within the framework of the three-part test for evaluating the reasonableness of a stipulation, explained the basis for the Commission's conclusion that the Stipulation, as modified and clarified by the DSM Order, complied with the three-part test and was reasonable. Nonetheless, as the Commission thoroughly addresses each of the assignments of error above in this Second Entry on Rehearing, we have expounded upon our rationale for determining that the Stipulation, as modified by the Commission, complies with the three-part test and, therefore, the requirements of R.C. 4903.09 have been met. Accordingly, the Commission denies OCC's request for rehearing of this issue.

IV. ORDER

{¶ 88} It is, therefore,

{¶ 89} ORDERED, That the application for rehearing filed by ELPC/NOAC be denied. It is, further,

{¶ 90} ORDERED, That the application for rehearing filed by OCC be granted, in part, and denied, in part, as set forth in this Second Entry on Rehearing. It is, further,

{¶ 91} ORDERED, That the Commission's docketing division release into the dockets, no sooner than seven days after the issuance of this Second Entry on Rehearing, OCC RPD Set 2, No. 9, Att. A. It is, further,

{¶ 92} ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

M. Beth Trombold, Chair

Thomas W. Johnson

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

GNS/hac

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Tanowa M. Troupe
Secretary