

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Co-	)	
Columbia Gas of Ohio, Inc. for Authority	)	
to Amend its Filed Tariffs to Increase the	)	Case No. 21-637-GA-AIR
Rates and Charges for Gas Services and	)	
Related Matters.	)	

In the Matter of the Application of Co-	)	
Columbia Gas of Ohio, Inc. for Approval of	)	Case No. 21-638-GA-ALT
an Alternative Form of Regulation.	)	

In the Matter of the Application of Co-	)	
Columbia Gas of Ohio, Inc. for Approval of	)	
a Demand Side Management Program	)	Case No. 21-639-GA-UNC
for its Residential and Commercial Cus-	)	
tomers.	)	

In the Matter of the Application of Co-	)	
Columbia Gas of Ohio, Inc. for Approval to	)	Case No. 21-640-GA-AAM
Change Accounting Methods.	)	

---

---

**COLUMBIA GAS OF OHIO, INC.'S MOTION  
TO STRIKE OBJECTIONS OF  
INTERSTATE GAS SUPPLY, INC. AND  
RETAIL ENERGY SUPPLY ASSOCIATION**

---

---

Pursuant to Ohio Adm.Code 4901-1-12, 4901:1-19-07(F) and 4901-1-28(B), Columbia Gas of Ohio, Inc. ("Columbia") respectfully moves to strike certain portions of the objections of Interstate Gas Supply, Inc. ("IGS") and Retail Energy Supply Association ("RESA") to Columbia's Application and the Staff Report of Investigation filed April 6, 2022. RESA and IGS's objections relate to matters not put in issue by Columbia's Application and, therefore, must be struck in accordance with settled law. A memorandum in support of this Motion is attached.

/s/ Joseph M. Clark

Joseph M. Clark, Asst. Gen. Counsel  
(0080711) (Counsel of Record)

John R. Ryan, Sr. Counsel (0090607)

P.O. Box 117

290 W. Nationwide Blvd.

Columbus, Ohio 43216-0117

Telephone: (614) 813-8685

(614) 285-2220

E-mail: josephclark@nisource.com

johnryan@nisource.com

Eric B. Gallon (0071465)

Mark S. Stemm (0023146)

L. Bradfield Hughes (0070997)

Devan K. Flahive (0097457)

Porter, Wright, Morris & Arthur LLP

41 South High Street

Columbus, OH 43215

Telephone: (614) 227-2000

Email: egallon@porterwright.com

mstemm@porterwright.com

bhughes@porterwright.com

dflahive@porterwright.com

(Willing to accept service by e-mail)

Attorneys for

**COLUMBIA GAS OF OHIO, INC.**

## MEMORANDUM IN SUPPORT

### 1. Introduction

On June 30, 2021, Columbia filed a combined application to change its distribution rates, modify its rate class structure, make various other changes to its tariffs and accounting methods, recover approved cost deferrals since its last rate case, and to adopt new riders (the “Application”). By Entry dated July 7, 2021, the Commission approved the test year and date certain. On August 25, 2021, the Commission accepted the Application as of the June 30, 2021 filing date. And on April 6, 2022, Commission Staff filed a report (the “Staff Report of Investigation”) providing Staff’s findings and recommendations regarding Columbia’s Application.

Several parties, including IGS and RESA, have filed objections to the Staff Report of Investigation and/or the Application. Certain portions of the objections filed by IGS and RESA, however, are so unrelated to the Application Columbia filed that they should be struck pursuant to the Commission’s rules and longstanding precedent. IGS’s objections largely concern Columbia’s merchant function as well as its Standard Choice Offer, neither of which are at issue here. Several of RESA’s objections relate to Section VII of Columbia’s tariff and its Choice Program Outline. But these objections are entirely unrelated to the Application at issue in this case. Because the referenced portions of IGS and RESA’s objections go beyond the scope of the matters pending before this Commission, and for all the reasons explained below, the Commission should strike IGS and RESA’s objections.

### 2. IGS and RESA’s Objections Should Be Struck.

#### 2.1. Under the Commission’s rules, objections to Staff reports of investigation that do not relate to the rate application at issue may be struck.

In a rate case proceeding parties may file objections to a staff report of investigation “within thirty calendar days after the filing of the report.”<sup>1</sup> In an alternative rate plan proceeding, objections must “[s]pecifically designate those por-

---

<sup>1</sup> Ohio Adm. Code 4901:1-19-07(F)(1)(a).

tions of the staff report and/or the application that are considered to be objectionable” and “[s]ufficiently explain how the portions of the report and/or the application objected to are unjust and unreasonable.”<sup>2</sup>

The Commission has “considerable discretion in determining which matters are proper for consideration in rate proceedings.”<sup>3</sup> As such, and as the Ohio Supreme Court has confirmed, the Commission may strike objections that relate to “matters not put in issue by the applicant and not related to the rates which are the subject of the application.”<sup>4</sup> The portion of IGS and RESA’s objections that relate to matters not properly before the Commission should be struck for this exact reason – they relate to matters not put in issue by any part of Columbia’s Application.

## **2.2. IGS’s objections are unrelated to Columbia’s Application.**

IGS raises several objections, two of which do not relate to the matters put forth in Columbia’s Application and, therefore, must be struck. In particular, IGS objects that:

- (1) the “Application and Staff Report fail to recommend that Columbia exit the merchant function for commercial and industrial customers”;<sup>5</sup> and
- (2) Staff failed “to recommend that the fee assessed against competitive retail natural gas suppliers be set to zero.”<sup>6</sup>

---

<sup>2</sup> Ohio Adm. Code 4901:1-19-07(F)(1)(b)-(c).

<sup>3</sup> *In the Matter of the Application of Ohio Edison Company for Authority to Change Certain of Its Filed Schedules Fixing Rates and Charges for Electric Service*, Case No. 89-1001-EL-AIR, 1990 Ohio PUC LEXIS 912, Opinion and Order, at \*9 (Aug. 16, 1990) (affirming attorney examiner’s motion to strike matters which were not put in issue in the utility’s application).

<sup>4</sup> *Indus. Energy Consumers v. Pub. Util. Com.*, 63 Ohio St.3d 551, 553-554, 589 N.E.2d 1289 (1992), quoting *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.*, 42 Ohio St.2d 403, 419-420, 330 N.E.2d 1 (1975) (reversing a Commission opinion and order striking intervenor objections and testimony on the grounds that, contrary to the Commission’s conclusion, the objections and testimony *did* relate to rates placed at issue by the utility’s application); *In the Matter of the Application of Duke Energy Ohio Inc. For Authority to Adjust Rider AU for 2016 Grid Modernization Costs*, Case No. 17-690-GA-RDR, Entry (Sept. 14, 2017) at ¶ 17 (granting utility’s motion to strike comments concerning matters that were beyond the scope of the proceeding).

<sup>5</sup> IGS Objections at 6.

<sup>6</sup> *Id.* at 8.

First, IGS explicitly requests the Commission reopen a stipulation that its trade association signed on its behalf, on matters entirely unrelated to Columbia's Application. In Case No. 12-2637-GA-EXM, Columbia entered into an Amended Stipulation and Recommendation with numerous parties, including Staff, the Retail Energy Supply Association (RESA), and the Ohio Gas Marketers Group, which for purposes of that proceeding included IGS.<sup>7</sup> In that Amended Stipulation, Columbia, RESA, and the Ohio Gas Marketers Group agreed that "Columbia [would not] exit the merchant function for Non-Residential Customers" (*i.e.*, provide commodity service to CHOICE-eligible Non-Residential Customers from a Competitive Retail Natural Gas Supplier through Columbia's CHOICE Program or MVR Program) "unless and until participation in Columbia's CHOICE program meets \*\*\* specified thresholds \*\*\* and other conditions \*\*\* are met."<sup>8</sup> The Commission adopted the Amended Stipulation.<sup>9</sup> IGS acknowledges that the levels of shopping required for Columbia to exit the merchant function for non-residential customers have not been met, but faults Columbia for not including a request to exit the merchant function for such customers anyways, and similarly faults Staff for failing to recommend a non-residential exit.<sup>10</sup> IGS should not be asking the Commission to alter the Commission-approved conditions for Columbia to exit the merchant function for non-residential customers; given that IGS was specifically identified as a member of one of the signatories of the approved Amended Stipulation proposing those conditions, IGS may not use this rate proceeding to reopen previously settled matters.<sup>11</sup> But regardless, this issue is outside the scope of these proceedings. Columbia's CHOICE And Standard Choice Offer ("SCO") programs are not at issue in Columbia's Application.

In a similar vein, IGS objects to the Staff's "failure to address the costs or discriminatory nature of [Columbia's] switching fee."<sup>12</sup> However, Columbia's switching fee, which is a part of Section VII of Columbia's tariff,<sup>13</sup> is not at issue in

---

<sup>7</sup> *In the Matter of the Joint Motion to Modify the December 2, 2009 Opinion and Order and the September 7, 2011 Second Opinion and Order in Case No. 08-1344-GA-EXM, Case No. 12-2637-GA-EXM ("2012 Columbia Exemption Proceeding")*, Amended Joint Motion to Modify Orders Granting Exemption (Nov. 27, 2012), Jt. Ex. No. 2 (Amended Stipulation and Recommendation) ¶ 2 n.2.

<sup>8</sup> *Id.* ¶ 19.

<sup>9</sup> *2012 Columbia Exemption Proceeding*, Opinion and Order (June 9, 2013) at 23-26, 30-31.

<sup>10</sup> IGS Objections at 7.

<sup>11</sup> *In the Matter of the Application of DP&L to Establish a Standard Service Offer in the Form of an Electric Security Plan*, Case Nos. 08-1094-EL-SSO, *et al.*, Fifth Entry on Rehearing (Jun. 16, 2021) (refusing to allow parties to relitigate a previous stipulation).

<sup>12</sup> IGS Objections at 8.

<sup>13</sup> See Columbia's Tariff, Section VII, Third Revised Sheet No. 25, § 25.3, Fourth Revised Sheet No. 27, § 27.3, and Ninth Revised Sheet No. 28, § 28.3.

this proceeding. Columbia's Application does not seek to change any portion of Section VII that relates to switching fees.<sup>14</sup> Because IGS Objections 4 and 5 do not relate to Columbia's Application, they should be struck.

### **2.3. RESA's objections are also unrelated to Columbia's Application.**

RESA, in turn, has raised objections that are equally unrelated to Columbia's Application. RESA objects, in relevant part, that:

- (1) Columbia's Application and the Staff Report failed to "ensure that all of Columbia Gas' Tariff Section VII conforms to the applicable competitive market rules, including the contract assignment rules";<sup>15</sup>
- (2) "The Staff Report failed to review and recommend removal of the switching fee from the Tariff, or alternatively, to recommend applying the switching fee in a nondiscriminatory manner";<sup>16</sup>
- (3) "The Staff Report failed to review the terms/conditions of the Choice Program Outline and failed to recommend that they be incorporated into Columbia Gas' Tariff";<sup>17</sup> and
- (4) "The Staff report failed to \* \* \* address incidents in which Columbia Gas added/enrolled, at the request of a customer, accounts at a specific supplier rate without an enrollment request or consent from the supplier."<sup>18</sup>

Like IGS, RESA raises several issues that are not relevant to Columbia's Application, including the contract assignment provisions<sup>19</sup> and switching fees in Section VII of Columbia's tariff. RESA correctly notes that Columbia's Application only includes pages of its tariff where it proposed a revision.<sup>20</sup> Indeed, the contract assignment provision RESA cites in its objection is not even attached to Columbia's

---

<sup>14</sup> See Columbia's Application, Schedule E-2.1, pages 137, 144, and 149.

<sup>15</sup> RESA Objections at 3 and 8.

<sup>16</sup> *Id.* at 4; *see also id.* at 9 ("Columbia Gas' switching fee is not justified or nondiscriminatory, and should be rejected.").

<sup>17</sup> *Id.* at 5; *see also id.* at 9 ("Columbia Gas failed to recommend that the Choice Program Outline be incorporated into its Tariff.").

<sup>18</sup> *Id.* at 6; *see also id.* at 9 ("Columbia Gas failed to address steps it will take to prevent incidents in which it added/enrolled, at the request of a customer, accounts to a specific supplier rate without an enrollment request or consent from the supplier").

<sup>19</sup> See Columbia's Tariff, Section VII, Original Sheet No. 9, § 9.4.

<sup>20</sup> RESA Objections at 3.

Application. Columbia also did not attach any of Section VIII, which addresses the SCO auction. RESA seemingly disagrees with the fact that Staff limited its review to matters presently before the Commission.<sup>21</sup> But RESA misinterprets the function and scope of this rate proceeding. RESA incorrectly asks the Commission to consider irrelevant matters related to the Commission's competitive market rules and regulations. The scope of this case cannot be expanded to matters not raised in the Application.

### 3. Conclusion

That Columbia did not raise certain issues in its Application, and that Staff failed to address issues not raised, are not grounds for objection. Columbia's Application requests several changes, modifications, and additions to Columbia's distribution rates, rate class structure, tariffs, accounting methods, and riders. Intervenor is free to raise objections related to the issues set forth in Columbia's Application. However, IGS and RESA's objections extend beyond the scope of the Application and, thus, beyond the scope of this proceeding.

For the reasons provided above, Columbia Gas of Ohio, Inc. respectfully requests that the Commission strike the referenced objections filed by Interstate Gas Supply, Inc. and the Retail Energy Supply Association.

/s/ Joseph M. Clark

Joseph M. Clark, Asst. Gen. Counsel  
(0080711) (Counsel of Record)

John R. Ryan, Sr. Counsel (0090607)

P.O. Box 117

290 W. Nationwide Blvd.

Columbus, Ohio 43216-0117

Telephone: (614) 813-8685

(614) 285-2220

E-mail: josephclark@nisource.com

johnryan@nisource.com

---

<sup>21</sup> *Id.* at 3 ("The Staff Report confirms that only a selective review of Columbia Gas' Tariff was conducted.").

Eric B. Gallon (0071465)  
Mark S. Stemm (0023146)  
L. Bradfield Hughes (0070997)  
Devan K. Flahive (0097457)  
Porter, Wright, Morris & Arthur LLP  
41 South High Street  
Columbus, Ohio 43215-6194  
Telephone: (614) 227-2000  
Email: egallon@porterwright.com  
mstemm@porterwright.com  
bhughes@porterwright.com  
dflahive@porterwright.com

(Willing to accept service by e-mail)

Attorneys for  
**COLUMBIA GAS OF OHIO, INC.**

## CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 16th day of May, 2022 upon the parties listed below.

<b>Citizens' Utility Board of Ohio</b>	Trent Dougherty <a href="mailto:trent@hubaydougherty.com">trent@hubaydougherty.com</a>
<b>Environmental Law &amp; Policy Center</b>	Janean R. Weber <a href="mailto:jweber@elpc.org">jweber@elpc.org</a>
<b>Industrial Energy Users-Ohio</b>	Matthew R. Pritchard Bryce A. McKenney McNees Wallace & Nurick LLC <a href="mailto:mpritchard@mcneeslaw.com">mpritchard@mcneeslaw.com</a> <a href="mailto:bmckenney@mcneeslaw.com">bmckenney@mcneeslaw.com</a>
<b>Interstate Gas Supply, Inc.</b>	Michael Nugent Evan Betterton Joseph Oliker <a href="mailto:michael.nugent@igs.com">michael.nugent@igs.com</a> <a href="mailto:evan.betterton@igs.com">evan.betterton@igs.com</a> <a href="mailto:joe.oliker@igs.com">joe.oliker@igs.com</a>
<b>The Kroger Company</b>	Angela Paul Whitfield Carpenter Lipps & Leland LLP <a href="mailto:paul@carpenterlipps.com">paul@carpenterlipps.com</a>
<b>Northeast Ohio Public Energy Council</b>	Devin D. Parram BRICKER & ECKLER LLP <a href="mailto:dparram@bricker.com">dparram@bricker.com</a>  Glenn S. Krassen <a href="mailto:gkrassen@nopec.org">gkrassen@nopec.org</a>

<b>Office of the Ohio Consumers' Counsel</b>	Angela D. O'Brien William J. Michael Assistant Consumers' Counsel <a href="mailto:angela.obrien@occ.ohio.gov">angela.obrien@occ.ohio.gov</a> <a href="mailto:william.michael@occ.ohio.gov">william.michael@occ.ohio.gov</a>
<b>Ohio Energy Group (OEG)</b>	Michael L. Kurtz, Esq. Kurt J. Boehm, Esq. Jody Kyler Cohn, Esq. BOEHM, KURTZ & LOWRY <a href="mailto:mkurtz@BKLawfirm.com">mkurtz@BKLawfirm.com</a> <a href="mailto:kboehm@BKLawfirm.com">kboehm@BKLawfirm.com</a> <a href="mailto:jkylercohn@BKLawfirm.com">jkylercohn@BKLawfirm.com</a>
<b>Ohio Manufacturers' Association Energy Group</b>	Kimberly W. Bojko Jonathan Wygonski Carpenter Lipps & Leland LLP <a href="mailto:Bojko@carpenterlipps.com">Bojko@carpenterlipps.com</a> <a href="mailto:Wygonski@carpenterlipps.com">Wygonski@carpenterlipps.com</a>
<b>Ohio Partners for Affordable Energy</b>	Robert Dove Kegler Brown Hill + Ritter Co., L.P.A. <a href="mailto:rdove@keglerbrown.com">rdove@keglerbrown.com</a>
<b>Ohio School Council</b>	Glenn S. Krassen BRICKER & ECKLER LLP <a href="mailto:gkrassen@bricker.com">gkrassen@bricker.com</a>  Dane Stinson BRICKER & ECKLER LLP <a href="mailto:dstinson@bricker.com">dstinson@bricker.com</a>
<b>Retail Energy Supply Association</b>	Michael J. Settineri Gretchen L. Petrucci Vorys, Sater, Seymour and Pease LLP <a href="mailto:mjsettineri@vorys.com">mjsettineri@vorys.com</a> <a href="mailto:glpetrucci@vorys.com">glpetrucci@vorys.com</a>

/s/ Joseph M. Clark  
Joseph M. Clark

Attorney for  
**COLUMBIA GAS OF OHIO, INC.**

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**5/16/2022 4:52:05 PM**

**in**

**Case No(s). 21-0637-GA-AIR, 21-0638-GA-ALT, 21-0639-GA-UNC, 21-0640-GA-AAM**

Summary: Motion to Strike Objections of Interstate Gas Supply, Inc. and Retail Energy Supply Association electronically filed by Mr. Eric B. Gallon on behalf of Columbia Gas of Ohio, Inc.