BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters.	)))))	Case No. 21-637-GA-AIR
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation.	)))	Case No. 21-638-GA-ALT
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a Demand Side Management Program for its Residential and Commercial Customers.	)))))	Case No. 21-639-GA-UNC
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Change Accounting Methods.	)))	Case No. 21-640-GA-AAM

COLUMBIA GAS OF OHIO, INC.'S REPLY MEMORANDUM IN SUPPORT OF ITS MOTION TO STRIKE OBJECTIONS OF INTERSTATE GAS SUPPLY, INC. AND RETAIL ENERGY SUPPLY ASSOCIATION

1 Introduction

The Commission should limit these consolidated proceedings to the matters raised in the Application filed by Columbia Gas of Ohio, Inc. ("Columbia"). Both IGS and RESA maintain that their objections relate, or have a "sufficient nexus," to Columbia's Application. However, a simple review of Columbia's Application reveals that Columbia has *not* put at issue its switching fees, Standard Choice Offer ("SCO"), or its Choice Program Outline. And IGS's request to reopen a previously approved stipulation governing Columbia's potential exit from the merchant function is similarly irrelevant to these proceedings.

IGS and RESA seek to expand this proceeding to all matters vaguely related to Columbia's general business operations. But their broad definition of "relevancy" is untenable. IGS and RESA's attempt to bloat this proceeding with irrelevant matters not only conflicts with Ohio law, but also threatens the orderly and expeditious review and resolution of this rate case. The Commission, therefore, should use its discretion to strike IGS and RESA's irrelevant objections.

2 Law and Argument

2.1 IGS's Objections Do Not "Sufficiently Relate" to Columbia's Application, and therefore, must be struck.

IGS agrees that, in Columbia's Application, "Columbia elected to leave [its] switching fee * * * unchanged."[1] And IGS does not assert that Columbia has proposed to change its SCO program. Yet, IGS maintains that its objections regarding these issues are "sufficiently related" to Columbia's Application to be taken up in these proceedings.[2] IGS also argues that it has "placed in issue" certain matters through its objections.[3] IGS's arguments misinterpret Ohio law.

IGS derides the proposition that Columbia's "application somehow dictates what parties may address in objections."[4] But IGS concedes that "[t]he purpose of objections is to place the applicant, the Staff, and other parties on notice as to the issues that will be litigated."[5] And as the Supreme Court of Ohio has held, issues unrelated to the application will not be litigated. "The scope of the Commission's inquiry does not extend to matters not put in issue by the applicant and not related to the rates which are the subject of the application."[6] Allowing an intervenor to "place in issue" any irrelevant topic it desires would violate binding Supreme Court precedent and render rate case proceedings indefinite and unworkable. Accordingly, the Commission has granted motions to strike objections in a rate case that are unrelated to the matters raised in the Application.[7]

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1 IGS's Memo Contra at 2.

2 *Id.* at 5.

3 *Id.* at 2.

4 *Id.* at 3.

5 *Id.*

6 *Cleveland Elec. Illum. Co. v. Pub. Util. Com.*, 42 Ohio St.2d 403, 420, 330 N.E.2d 1 (1975).

7 *See In the Matter of the Application of the Fairlane Water Company for an Increase in Rates and Charges*, Case No. 91-1205-WW-AIR, 1992 Ohio PUC LEXIS 299, at *3-4 (Apr. 22, 1992) (granting motion to strike objections that were unrelated to the application).

IGS cites to *Industrial Energy Consumers v. Pub. Utils. Comm'n of Ohio*, 63 Ohio St.3d 551, 553-54 (1992), for the proposition that the Supreme Court of Ohio has "adopt[ed] a broader approach" governing objections in a rate case.[8] But IGS mischaracterizes the Court's opinion. In *Industrial Energy Consumers*, the Ohio Supreme Court reversed a Commission opinion and order striking intervenor objections and testimony because the Court found that the objections and testimony *did* relate to rates placed at issue by the utility's application.[9] In other words, the Court reaffirmed its position that the Commission may not extend its inquiry into matters not put in issue by the *applicant*.

IGS also attempts to reframe the Commission's prohibition against considering unrelated issues to that of a "sufficient nexus" test.[10] But this is a distinction without a difference. IGS cannot demonstrate a "sufficient nexus" between Columbia's exit from the merchant function and the present proceeding, and makes little effort to do so. IGS asserts that "both the Application and the Staff Report note extensively the interrelation between Columbia's Standard Choice Offer and distribution rates,"[11] but IGS does not provide any detail, and the cited pages from the Staff Report[12] and Columbia's testimony[13] say absolutely nothing of the sort. IGS then broadly asserts that "the exit function has been an integral piece of gas rates cases in the past," but it only cites to the stipulation in one proceeding – Vectren's recent rate case – to support that assertion.[14] The fact that the parties to Vectren's rate case took up the company's potential exit from the merchant function in settlement discussions does not mean the topic was relevant to Vectren's application, much less an "integral piece" of Vectren's rate case. Stipulations often resolve issues raised in other proceedings.[15] In approving the Stipulation in the Vectren rate case, the Commission noted that "[e]xiting the merchant function has

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[8] *See* IGS's Memo Contra at 2, fn. 1.

[9] *Industrial Energy Consumers*, 63 Ohio St.3d at 553-54.

[10] IGS's Memo Contra at 3.

[11] *Id.* at 5.

[12] Staff Report at 18.

[13] Direct Testimony of Melissa Thompson at 8.

[14] *Id.* (citing *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval of an Increase in Rates*, Case Nos. 18-298-GA-AIR, et al., Opinion and Order (Aug. 28, 2019)).

[15] *See, e.g. In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 10-388-EL-SSO, Opinion and Order at 8 (Aug. 25, 2010) (noting that the stipulation under review would "resolve all remaining issues in a number of other Commission proceedings").

proven to be a complex and timely process * * * ."[16] The Ohio Supreme Court precedent discussed above does not allow IGS to make that "complex and timely process" a part of Columbia's rate case unilaterally.

Similarly, IGS cites to a recent case where Staff "supported several recommendations addressing EXM issues wholly unrelated to the application."[17] But IGS again misses the mark. In that case, the parties addressed the exemption matters by stipulating that Duke would open a *new* proceeding as a part of its commitment to transition from its gas cost recovery mechanism to a standard service offer.[18] The fact that parties were willing to address certain issues in settlement talks says nothing about the Commission's ability to consider those issues in objections or testimony, for the reasons discussed above. Thus, the Commission did not allow a debate in the proceeding regarding irrelevant matters. In fact, the opposite happened—the parties discussed those issues in settlement negotiations and agreed to address them in an entirely separate proceeding.[19] Here, the Commission should use its discretion to strike IGS's irrelevant objections at this stage, rather than allow IGS to overwhelm this proceeding with unrelated issues.

2.2 RESA's Memorandum Contra Misinterprets Ohio Law.

As indicated above, Ohio law is clear: the Commission may strike objections in a rate case that relate to "matters not put in issue by the applicant and not related to the rates which are the subject of the application."[20] RESA seeks to violate that bedrock principle. According to RESA, in a traditional rate case, every aspect of the utility's operation is up for discussion,[21] and the Commission's rules permit a rate case intervenor to object to Staff's failure to address matters not raised in the utility's application.[22] RESA's argument seemingly requests that the Commission abandon the relevancy requirement affirmed by the Ohio Supreme Court and this Commission. Not only would such a course of action be unlawful, it is impractical.

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[16] *Id.*

[17] IGS's Memo Contra at 6, fn. 3.

[18] *See In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates,* Case Nos. 14-0375-GA-RDR, et al., Opinion and Order, ¶ 135 (Apr. 20, 2022).

[19] *Id.* ("Pursuant to the terms of the Stipulation, that future application is required to be approved through a subsequent proceeding after due process has been afforded to all interested parties * * * [w]e will not speak to the merits of that application[,] [r]ather, we will focus on the terms subject to our approval today.").

[20] *Indus. Energy Consumers*, 63 Ohio St.3d at 553-54, quoting *Cleveland Elec. Illum.*, 42 Ohio St.2d at 419-20.

[21] RESA's Memo Contra at 3.

[22] *See id.* at 4.

If the Commission were to adopt RESA's approach and allow intervenors to introduce any issue generally related to a utility company, rate cases would become entirely unworkable.

In particular, RESA asserts that its objections "relate to the manner in which Columbia Gas will provide its service going forward under the full Tariff."[23] If that is the test for relevancy—that the matter must generally relate to the utility's service—then virtually any topic could be taken up within a rate case. The results of such a rule are unimaginable. Columbia cannot be expected to reopen and relitigate every aspect of its business within every rate proceeding. Staff appears to want Columbia to file its next rate case in five years.[24] If rate cases become a vessel for all kinds of irrelevant issues, utilities will be discouraged from filing such proceedings.

RESA repeatedly argues that it is permitted to object to matters the Staff Report failed to address.[25] While it is true that Ohio Adm.Code 4901-1-28(B) permits a party to object to matters the Staff Report did not address, this rule remains subject to basic relevancy standards. Parties may object to matters *in the Application* that the Staff Report did not address. The Commission's rules explicitly authorize attorney examiners to "[r]ule on objections, procedural motions, and other procedural matters" and to "[t]ake such actions as are necessary to * * *[a]void unnecessary delay[,] [p]revent the presentation of *irrelevant* or cumulative evidence[, and] [a]ssure that the hearing proceeds in an orderly and expeditious manner."[26] Thus, attorney examiners are given a great deal of discretion in regulating the course of a proceeding. Because RESA's objections are entirely irrelevant to Columbia's Application, the Commission should utilize its discretion by removing such topics from consideration.

3 Conclusion

IGS and RESA's objections extend far beyond the scope of Columbia's Application. The Commission should reject IGS and RESA's attempt to bloat this proceeding with unrelated, irrelevant matters. For the reasons provided above, Co-

[23] RESA's Memo Contra at 2.

[24] *See* Staff Report at 46 (proposing that Columbia's Capital Expenditure Program be terminated and the depreciation offset be reinstated unless Columbia "files a new rate case" within five years).

[25] RESA's Memo Contra at 4.

[26] (Emphasis added.) Ohio Adm.Code 4901-1-27(B)(4) and (7)(a), (b), and (d).

lumbia 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.

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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 27th day of May, 2022, upon the parties listed below.

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Summary: Reply Memorandum in Support of 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.