

**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

**CORRECTED¹ JOINT MOTION TO MODIFY THE PROCEDURAL SCHEDULE AND
REQUEST FOR AN EXPEDITED RULING BY OHIO PARTNERS FOR AFFORDABLE
ENERGY, CITIZENS' UTILITY BOARD OF OHIO, AND THE ENVIRONMENTAL
LAW AND POLICY CENTER**

For the reasons set forth in the accompanying Memorandum in Support, Ohio Partners for Affordable Energy, Citizens Utility Board of Ohio, and the Environmental Law and Policy Center (collectively, "Joint Movants") respectfully move the Public Utilities Commission of Ohio ("Commission"), in accordance with Ohio Admin. Code 4901-1-13 and 4901-1-12 (C), to modify the existing procedural schedule. Good cause exists, per Ohio Admin. Code 4901-1-13, to allow for a brief continuance for parties in opposition to the Stipulation to review supportive

¹ A prior version of this filing inadvertently left off the response received by the Retail Supply Association in relation to their position on the Motion and the request for expedited treatment. This version is being filed to correct that omission.

testimony, conduct discovery, and prepare testimony in opposition to the settlement should they choose.

As it currently stands, the hearing in this matter is set to commence on Tuesday November 1, 2022. As of the filing of this Motion near the close of business Thursday October 27, 2022, a mere two business days before the current hearing date, no Stipulation has been filed. To the extent a Stipulation is filed between now and the hearing date, justice and due process demand a brief continuance to allow opposing parties to review and probe any testimony in support of the stipulation, prepare testimony in opposition (should they choose), and depose any witnesses in support (should they choose).

Joint Movants respectfully request that the Commission grant this Motion on an expedited basis, pursuant to Ohio Admin. Code 4901-12-(C). Joint Movants provided the Motion and their request to all parties at 11:13 a.m. on October 27, 2022 via email. As of the filing of this Motion, no party which responded, objected to the request for expedited treatment. However, because not all parties responded to Counsel's email, Joint Movants cannot certify that no party objects to the request for expedited treatment. Which parties responded, as well as their positions will be more fully described in the memorandum in support.

The Motion is more fully supported in the accompanying memorandum in support.

Respectfully submitted,

/s/ Robert Dove

Robert Dove (0092019)
Nicholas S. Bobb (0090537)
Kegler Brown Hill + Ritter Co., L.P.A.
65 E State St., Ste. 1800
Columbus, OH 43215-4295
Office: (614) 462-5443
rdove@keglerbrown.com
(Willing to accept service by email)

Attorneys for OPAA

/s/ Janean R. Weber

Janean R. Weber (0083960)
Environmental Law & Policy Center
21 W. Broad Street, 8th Floor
Columbus, OH 43215
Tel.: 614-569-3827
jweber@elpc.org

***Counsel for the Environmental Law &
Policy Center***

/s/ Trent Dougherty

Trent Dougherty (0079817)
Counsel of Record
Hubay Dougherty
1391 Grandview Ave. #12460
Columbus, Ohio 43212
(614) 330-6752 – Telephone

**Counsel for the Citizens' Utility Board of
Ohio**

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

**MEMORANDUM IN SUPPORT OF THE JOINT MOTION TO MODIFY THE
PROCEDURAL SCHEDULE AND REQUEST FOR EXPEDITED TREATMENT
BY OHIO PARTNERS FOR AFFORDABLE ENERGY, CITIZENS' UTILITY BOARD
OF OHIO, AND ENVIRONMENTAL LAW AND POLICY CENTER**

I. Introduction

In this proceeding Columbia is currently seeking to increase the amount that customers pay for natural gas distribution service. In its base rate case (Case No. 21-637- GA-AIR), Columbia seeks to increase charges to consumers by \$221 million.² On October 7, 2022, Columbia filed an unopposed motion for a continuance in this matter. The Attorney Examiner noted, in a subsequent Entry, that Columbia represented the continuance was necessary to

² Case No. 21-637-GA-AIR, Application, Schedule A-1 (June 30, 2021) (\$221,429,000 revenue increase requested).

continue settlement talks and to finalize the terms of that settlement.³ On October 13, 2022, the Attorney Examiner properly granted the motion to allow parties more time to reach and finalize a potential settlement and set the new hearing date for November 1, 2022.⁴ As of the date of this filing, two business days before the hearing set for this matter, the stipulation has not been finalized and, accordingly, the interested parties have not reached a settlement.

Joint Movants assert that because a stipulation has not been filed, they have not been afforded a meaningful opportunity to prepare to oppose the stipulation. (How could they, as a final stipulation has not been filed.) As such, Joint Movants respectfully request a brief extension of the current procedural schedule to accommodate the opposing parties' due process rights in this proceeding.

II. Law and Argument

Ohio Admin. Code 4901-1-13 (A) authorizes continuances of public hearings and extensions of time to file pleadings for good cause shown. In this proceeding, parties have been engaged in extensive settlement talks for months. As of the date of filing of this Motion, the Company has yet to file a Stipulation – despite requesting additional time to do so as the basis for extending the hearing date to November 1, 2022. This Motion is being filed on Thursday October 27, 2022, two business days before the hearing is set to take place. To the extent a settlement is filed between now and the hearing date, the Joint Movants certify it will not be a unanimous settlement.

Additional time is necessary to allow those parties who oppose the settlement, which at a minimum will include Joint Movants, time to review the testimony offered in support of the stipulation, probe the basis of that testimony (including through written discovery and

³ Entry ¶14 (October 13, 2022.)

⁴ Id. ¶15.

depositions if they choose) and to draft testimony in opposition to any proposed settlement. None of those oppositional efforts could be completed in the two business days remaining between the filing of this Motion and the currently scheduled hearing date.

Recent rate cases demonstrate that opposing parties have been provided significantly more time than maximum two business days currently possible to review and prepare opposition testimony to a stipulation. For example, in a prior Duke rate case, the attorney examiners provided 26 days after testimony in support of the Stipulation was filed before intervenors needed to file their testimony (May 25, 2018 to June 20, 2018). *In re: App. of Duke Energy Ohio*, Case No. 17-32-EL-AIR, Entry at ¶ 11 (May 9, 2018). Discovery responses were required within seven days following service of the requests. *Id.* at ¶ 12. In Dayton Power & Light's rate case, Case No. 15-1830-EL-AIR, et al., the attorney examiners required testimony in support of the stipulation to be filed by June 26, 2018, with opposition testimony due July 16, 2018. *In re: App. of Dayton Power & Light to Increase Rates*, Case No. 15-1830-EL-AIR, et al., Entry at ¶ 8 (June 21, 2018). The discovery deadline was July 18, 2018, but parties were required to respond to any discovery request within five business days. *Id.*

In both Case Nos. 17-32-EL-AIR and 15-1830-EL-AIR, opponents to the stipulations were provided with sufficient time to conduct discovery following testimony filed in support of the stipulations and prior to the due date for their own testimony in opposition. In particular, the procedural schedule in Case No. 15-1830-EL-AIR permitted an opponent to file a discovery request the day after testimony in support was filed and receive a response over two weeks before the opponent's testimony was due. Joint Movants are entitled to at least that much time in the instant matter. However, the current case schedule deprives them of the ability to conduct any meaningful discovery.

Assuming a stipulation is filed prior to the hearing date in this case, it will either be filed on Friday, October 28, 2022, or Monday, October 31, 2022. Neither date provides anywhere near sufficient time for opponents to review and prepare testimony in advance of the November 1, 2022 hearing date. The Commission has previously recognized the importance in rate cases of having the utility (who bears the burden of proof) file its testimony in support of a stipulation in advance of the parties opposing the stipulation. *In the Matter of the Commission's Investigation into PALMco*, Case No. 19-957-GE-COI, Entry, ¶21 (Sept. 3, 2019). In *PALMco*, the Attorney Examiner noted that in cases where the utility is seeking approval for an application, and bears the burden to demonstrate its lawfulness, the utility files testimony before opposing parties. *Id.*

This sequence of events is reasonable as it allows opposing parties the opportunity to review the testimony in support of the application or stipulation to prepare their opposition testimony. The procedural schedule, as currently set, will not allow enough time for opposing parties to review any potential stipulation and prepare opposition testimony – effectively depriving them of a meaningful opportunity to oppose the stipulation. Therefore, the Joint Movants respectfully request the following modifications to the procedural schedule assuming a Stipulation is filed no later than Monday, October 31, 2022:

- Testimony in support of the Stipulation - Monday, November 7, 2022;
- Testimony in opposition to the Stipulation– Wednesday, November 23, 2022;
- Staff testimony in response to Objections to the Staff Report – Wednesday November 30, 2022;
- Evidentiary Hearing Commences– Tuesday December 13, 2022.

In addition to the dates above, Joint Movants would request a seven-day response time for discovery requests. To the extent the Attorney Examiner thinks it would be helpful, the current

November 1, 2022 hearing date could be held as a call and continue and converted to a prehearing conference.

The dates proposed above balance the needs of the opposing parties' due process rights to review supporting testimony and prepare their opposition, with the Company's desire for a quick hearing date. The dates above also avoid starting the hearing in advance of Thanksgiving and then having to pause for the holiday as well as avoiding deadlines around the holiday for any parties other than the opposing parties. The hearing date also accounts for another hearing that is scheduled to occur the week before, to avoid double booking certain parties. The Joint Movants respectfully request that the Commission grant this request to modify the procedural schedule as outlined above.

III. Request for Expedited Treatment

The Joint Movants also seek expedited treatment of this Motion because of the immediate and irreparable harm that would occur to the Joint Movants if they were forced to go to hearing with only one-to-two business days to review a stipulation and supportive testimony and to prepare their opposition. Pursuant to Ohio Admin. Code 4901-1-12 (C), expedited treatment may be requested for any motion if the grounds for the request are set forth in the memorandum in support. Joint Movants certify that they contacted all parties via email on October 27, 2022, at 11:13 a.m. and requested responses by 4:45 p.m., noting that this Motion was to be filed between 5:00 p.m.- 5:30 p.m. on October 27, 2022. Initially, Columbia responded that it opposed the motion but not the request for expedited treatment. Staff and Ohio Schools Council indicated that they neither support nor oppose the motion, as then written, and that neither party object to the request for expedited treatment.

Subsequent to those responses, another party indicated they would have to oppose the motion as it was then written, with a December 6 proposed hearing date, due to a conflict with another hearing date, but that they would not oppose the motion if the proposed hearing date was moved back. Joint Movants changed the proposed hearing date to the currently proposed December 13, 2022, to accommodate this request. After the change, Ohio Manufacturers Association Energy Group, Retail Energy Supply Association, and The Kroger Co. indicated they neither oppose nor support the Motion and do not object to the request for expedited treatment. Counsel sent an email to the parties at 3:41 p.m. noting the change in proposed hearing date and asking if any party who previously indicated they did not oppose or support the Motion needed to change their position as a result of the proposed hearing date change. Counsel also called Counsels for Staff and Ohio Schools Council to attempt to ask if this changed their client's position but was unable to connect with them.

No other parties have responded to Joint Movants' emails and therefore Joint Movants cannot certify that no party objects to their request for expedited treatment of this Motion. However, none of those parties that responded, Columbia, Staff, Ohio Schools Council, Ohio Manufacturers Association Energy Group, Retail Energy Supply Association, and The Kroger Co., objected to Joint Movants' request for expedited treatment.

IV. Conclusion

For the foregoing reasons, Joint Movants respectfully request that the Commission grant this Motion to Modify the Procedural Schedule and the request for expedited treatment.

[Signature blocks on following page.]

/s/Robert Dove

Robert Dove (0092019)
Nicholas S. Bobb (0090537)
Kegler Brown Hill + Ritter Co., L.P.A.
65 E State St., Ste. 1800
Columbus, OH 43215-4295
Office: (614) 462-5443
Fax: (614) 464-2634
rdove@keglerbrown.com

(Willing to accept service by email)

Attorneys for OPAE

/s/ Janean R. Weber

Janean R. Weber (0083960)
Environmental Law & Policy Center
21 W. Broad Street, 8th Floor
Columbus, OH 43215
Tel.: 614-569-3827
jweber@elpc.org

***Counsel for the Environmental Law &
Policy Center***

/s/ Trent Dougherty

Trent Dougherty (0079817)
Counsel of Record
Hubay Dougherty
1391 Grandview Ave. #12460
Columbus, Ohio 43212
(614) 330-6752 – Telephone

**Counsel for the Citizens' Utility Board of
Ohio**

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served on all parties of record via the DIS system on October 27, 2022. A courtesy copy has been sent to the following parties:

werner.margard@OhioAGO.gov shaun.lyons@OhioAGO.gov mjsettineri@vorys.com glpetrucci@vorys.com stacie.cathcart@igs.com michael.nugent@igs.com evan.betterton@igs.com joe.oliker@igs.com jweber@elpc.org mpritchard@mcneeslaw.com bmckenney@mcneeslaw.com mkurtz@bkllawfirm.com paul@carpenterlipps.com wygonski@carpenterlipps.com trent@hubaydougherty.com Attorney Examiners: jacqueline.st.john@puco.ohio.gov gregory.price@puco.ohio.gov	kboehm@bkllawfirm.com jkylercohn@bkllawfirm.com josephclark@nisource.com mlthompson@nisource.com johnryan@nisource.com egallon@porterwright.com mstemm@porterwright.com bhughes@porterwright.com dflahive@porterwright.com dparram@bricker.com gkrassen@nopec.org dstinson@bricker.com rmains@bricker.com gkrassen@nopec.org bojko@carpenterlipps.com
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/s/ Robert Dove
Robert Dove

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

Summary: Text Corrected Joint Motion to Modify the Procedural Schedule and Request for Expedited Treatment electronically filed by Mr. Robert Dove on behalf of Ohio Partners for Affordable Energy and Environmental Law and Policy Center and Citizens' Utility Board of Ohio