

**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
)	

**JOINT POST-HEARING BRIEF
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP
AND
THE KROGER CO.**

Respectfully submitted,

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I. INTRODUCTION

The record evidence submitted in this case overwhelmingly demonstrates that the Stipulation and Recommendation filed on October 31, 2022 (Stipulation) represents a just and reasonable settlement of these proceedings.¹ The Stipulation addresses issues related to Columbia Gas of Ohio, Inc.'s (Columbia) June 30, 2021 Application to increase its rates and charges for natural gas services, for approval of an alternative rate plan, for approval of a demand side

¹ See Joint Ex. 1, Joint Stipulation and Recommendation (Oct. 31, 2022) (Stipulation).

management (DSM) program, and to implement various riders (Application).² The Stipulation resolves these issues in a manner that, as a package, is reasonable, serves the public interest, benefits ratepayers, and does not violate any important regulatory principles or practices. As such, the Public Utilities Commission of Ohio (Commission) should adopt the Stipulation in its entirety to efficiently and equitably resolve numerous complex issues related to Columbia's natural gas distribution rates in a just and reasonable manner that is in the public interest.

Following an extensive open and fair bargaining process, a large and diverse group of Signatory Parties joined the Stipulation.³ Signatory Parties to the Stipulation include Staff, Columbia, the Ohio Manufacturers' Association Energy Group (OMAEG), The Kroger Co. (Kroger), the Office of the Ohio Consumers' Counsel (OCC), the Northeast Ohio Public Energy Council (NOPEC), Industrial Energy Users-Ohio (IEU), the Ohio Energy Group (OEG), Retail Energy Supply Association (RESA), the Ohio Schools Council, and Interstate Gas Supply, Inc. (IGS).⁴

The Commission held an evidentiary hearing in these proceedings, during which several parties offered record evidence in support of the Stipulation. Following the evidentiary hearing, the Commission directed interested parties to submit initial post-hearing briefs by December 9, 2022, and reply briefs by December 23, 2022. The manifest weight of the record evidence in this case demonstrates that the Stipulation, as a package, is just and reasonable and in the public interest, and therefore, the Commission should adopt it.

² Columbia Ex. 1, Application. Note that the document filed as Columbia's Application includes three documents, an Application for Authority to Increase Rates, an Application for Approval of an Alternative Rate Plan, and an Application to Continue its Demand Side Management Program, each separately numbered.

³ Stipulation at 27-31. *See also* Staff Ex. 8, Testimony in Support of Stipulation of David M. Lipthratt at 3-4 (Sept. 22, 2022).

⁴ *Id.*

II. FACTS AND BACKGROUND

Columbia filed a prefiling notice for an application to increase its rates and charges for natural gas services, for approval of an alternative rate plan, for approval of a DSM program, and to implement various riders on May 28, 2021 in the above-captioned cases. Subsequently, Columbia filed its Application and supporting schedules on June 30, 2021. In its Application, Columbia sought a revenue increase of \$221.4 million, representing an increase of approximately 27.07 percent over Columbia's test year revenues.⁵ As part of this proposed revenue requirement, Columbia requested that the Commission grant Columbia a return on equity (ROE) of 10.95 percent, resulting in an overall rate of return (ROR) of 7.85 percent.⁶ Columbia also proposed allocating 83.61 percent of the overall revenue requirement to the Small General Service (SGS) rate class.

Moreover, as part of its Application for a rate increase, Columbia filed an application to expand and continue its DSM program and alternative rate plan. Columbia sought an increase to its annual DSM funding level by approximately two percent each calendar year, a continuation of its shared savings mechanism with increased volume targets, and a five-year extension of the program.⁷ Columbia's proposed alternative rate plan included continuing and expanding the Infrastructure Replacement Program (IRP) and Rider (Rider IRP), continuing and expanding the

⁵ Columbia Ex. 1, Application, Application for Authority to Increase Rates at 3-4. Staff found the increase to represent approximately 21.3 percent over test year revenues, due to adjustments Staff made to Columbia's test year revenue. *See* Staff Ex. 1, Staff Report at 7.

⁶ Columbia Ex. 17, Prepared Direct Testimony and Exhibits of Paul Moul at 1; Columbia Ex. 1, Application, Schedule A-1.

⁷ Columbia Ex. 1, Application, Application of Columbia Gas of Ohio, Inc. to Continue its Demand Side Management Program at 20.

Capital Expenditure Program (CEP) and Rider (Rider CEP), and creating a new Federally Mandated Investment Rider (Rider FMI).⁸

First, Columbia proposed to roll existing Rider IRP and Rider CEP charges into its rate base.⁹ Columbia proposed expanding its IRP in three ways, which included eliminating current limits on the replacement of interspersed lengths of non-priority pipe, increasing the limit of mandatory relocation projects that include plastic pipe retirement to be included in filings, and eliminating limits on retirement of plastic in the IRP.¹⁰ Columbia proposed expanding Rider CEP by continuing the program for an additional five years, and allowing Columbia to further extend the program through future alternative regulation applications.¹¹ Finally, the proposed new Rider FMI would enable Columbia to recover increased costs imposed under the Pipeline and Hazardous Materials Safety Administration (PHMSA) Mega Rule and other future mandated governmental spending.¹²

Pursuant to R.C. 4909.19, Staff filed its Report of Investigation (Staff Report) on April 6, 2022, which recommended various modifications to Columbia's proposed rates and charges for natural gas services, DSM program, and alternative rate plan. Staff recommended rejecting Columbia's proposal to expand the IRP, and instead determined that Columbia should continue to focus on the original purpose of the program.¹³ Staff also recommended lowering the Small General Service (SGS) yearly rate limit for Rider IRP.¹⁴ Additionally, Staff recommended

⁸ Columbia Ex. 1, Application, Application for Approval of an Alternative Rate Plan at 1.

⁹ *Id.*, Exhibit A at 8, 18.

¹⁰ *Id.*, Exhibit A at 16-22; Staff Ex. 1, Staff Report at 44.

¹¹ Staff Ex. 1, Staff Report at 46.

¹² Columbia Ex. 1, Application, Application for Approval of an Alternative Rate Plan at 3.

¹³ Staff Ex. 1, Staff Report at 44-45.

¹⁴ *Id.*

rejecting Columbia’s proposal to implement Rider FMI, finding the proposal to be vague with the scope of work required unknown.¹⁵ Finally, Staff requested that Columbia rerun its cost-of-service-study (COSS) in order to support its proposed revenue allocation and rate design.¹⁶

Pursuant to R.C. 4909.18, R.C. 4909.19, R.C. 4929.05, Ohio Adm.Code 4901-1-28, Ohio Adm.Code 4901:1-19-07(F), OMAEG¹⁷ and Kroger¹⁸ submitted their objections to the Staff Report and Columbia’s Application on May 6, 2022. OMAEG and Kroger objected to several of the unreasonable proposed revenue requirement,¹⁹ the excessive rate of return,²⁰ the unreasonable expansion of the scope of Columbia’s alternative rate plan (including deferrals),²¹ the unreasonable rate design and allocation based on the flawed COSS,²² the continuation of Columbia’s DSM program,²³ and the excessive, unreasonable, and unjust total bill increase proposed by Columbia.²⁴ Several other parties, including NOPEC and OCC, RESA, IEU, OEG, and the Ohio School Council, also filed their own objections to the Staff Report and/or Application.²⁵

¹⁵ Staff Ex. 1, Staff Report at 49.

¹⁶ *Id.* at 36-38.

¹⁷ Objection to the Application and Objections to the Staff Report of the Ohio Manufacturers’ Association Energy Group (May 6, 2022) (OMAEG Objections).

¹⁸ Objection to the Staff Report and Columbia Gas of Ohio’s Application by The Kroger Co. (May 6, 2022) (Kroger Objections).

¹⁹ OMAEG Objections at 4; Kroger Objections at 7-9.

²⁰ OMAEG Objections at 5-7; Kroger Objections at 7-9.

²¹ OMAEG Objections at 9-11, 13-15; Kroger Objections at 9-12, 14-15.

²² OMAEG Objections at 7-8; Kroger Objections at 3-6.

²³ OMAEG Objections at 15; Kroger Objections at 11.

²⁴ OMAEG Objections at 8-9; Kroger Objections at 6-7.

²⁵ *See* Objection to the PUCO Staff’s Report of Investigation by Northeast Ohio Public Energy Council and Office of the Ohio Consumers’ Counsel (May 6, 2022); Objection to the Staff Report of Retail Energy Supply Association (May 6, 2022); Objection to Staff Reports of Investigation and Summary of Major Issues of Industrial Energy Users-Ohio (May 6, 2022); Objections to Staff Report of Ohio Energy Group (May 6, 2022); Objection to the Staff Report by Ohio School Council (May 6, 2022).

Following a robust and lengthy negotiation process, the Signatory Parties reached an agreement, and submitted the Stipulation on October 31, 2022. The Stipulation lowered the overall revenue requirement from Columbia’s proposal,²⁶ set a lower ROR and ROE than Columbia proposed,²⁷ limited Columbia’s deferral of environmental remediation expenses,²⁸ significantly reduced and limited customer funding for the DSM program to one low-income program,²⁹ reduced Columbia’s proposed expansion of Rider CEP and Rider IRP,³⁰ and established a revenue requirement allocation based on the updated COSS which more closely aligns rates with cost of service.³¹ Subsequently, the parties participated in the hearing on November 16, 2022 to present evidence in support of the Stipulation.

III. ARGUMENT

The manifest weight of the evidence demonstrates that the Stipulation, as a package, is just and reasonable, benefits ratepayers, and should be adopted. The Supreme Court of Ohio has endorsed the Commission’s use of this test “to resolve cases in a manner economical to ratepayers and public utilities” and has “affirmed that the Commission may place substantial weight on the terms of a stipulation.”³² As part of its evaluation, the Commission considers:

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?
2. Does the settlement, as a package, benefit ratepayers and the public interest?

²⁶ Joint Ex. 1, Stipulation at 3.

²⁷ *Id.*

²⁸ *Id.* at 9-11.

²⁹ *Id.* at 11-14.

³⁰ *Id.* at 15-18.

³¹ *Id.* at 3.

³² *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 629 N.E.2d 423 (1994), *citing Consumers’ Counsel v. Public Util. Comm.*, Ohio St.3d 123, 126, 592 N.E.2d 1370, 1373 (1992).

3. Does the settlement package violate any important regulatory principle or practice?³³

A large group of capable, knowledgeable parties participated in numerous settlement meetings, over the course of several months, where the parties engaged in negotiations regarding Columbia’s proposed rate increase, alternative rate plan, and DSM program. These settlement meetings ultimately led to the Stipulation, which expeditiously and equitably resolves all of the issues in this proceeding in a way that benefits ratepayers and the public interest, and does not violate any important regulatory principle or practice. The weight of the evidence presented by the parties demonstrates that the Stipulation satisfies the Commission’s three-part test, and should be adopted by the Commission in its entirety.

A. The Stipulation was the product of serious bargaining.

When considering whether the parties are capable and knowledgeable, the Commission acknowledges that the parties to a proceeding are in the best position to evaluate their own best interests and costs, and “expects that parties to Settlement negotiations will bargain in support of their own interest in deciding whether to support a stipulation.”³⁴ There is no requirement that every party, or the parties most adverse to a stipulation, join a stipulation as a signatory.³⁵

The Stipulation resulted from an extensive, robust bargaining process between the parties, who were represented by experienced and knowledgeable counsel. The parties engaged in “numerous virtual and in-person meetings spanning many hours, with opportunities for parties to

³³ *Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125-26 (1992).

³⁴ *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 44 (Dec. 30, 2020).

³⁵ *Id.*

attend and negotiate,” over the course of about five months.³⁶ Staff Witness Liphtratt testified as to the bargaining process:

The Stipulation is the product of an open process in which all intervenors were given an opportunity to participate. All parties were represented by experienced and competent counsel, many of whom have participated in numerous regulatory proceedings before the Commission. There were extensive negotiations among the parties and the Stipulation represents a comprehensive compromise of the issues raised by parties with diverse interests.³⁷

Although diversity of interests is not a requirement of the Commission’s review of the reasonableness of a Stipulation, to the extent the Commission may consider it, the Signatory Parties nonetheless represent a diverse group of varied interests.³⁸ In addition to Columbia and Commission Staff, representatives of commercial and industrial customers, suppliers, schools, governmental aggregators, and Columbia’s 1.4 million residential consumers, joined the Stipulation.³⁹

As such, the Stipulation resulted from an extensive fair and open bargaining process in which representatives of varied and diverse interests were able to participate. The parties engaged in serious bargaining, and were represented by experienced and knowledgeable counsel. As such, the Stipulation satisfies the first prong of the Commission’s test.

B. The Stipulation, as a package, benefits ratepayers and the public interest.

The Commission does not focus on individual provisions when evaluating the second prong of the settlement test. Instead, “[t]he question before the Commission is not whether there

³⁶ OCC Ex. 1, Supplemental Testimony in Support of the Settlement by Kerry J. Adkins at 5 (Nov. 7, 2022) (Adkins Testimony).

³⁷ Staff Ex. 8, Testimony in Support of Stipulation of David M. Liphtratt at 3 (Nov. 7, 2022) (Liphtratt Testimony).

³⁸ Columbia Ex. 35, Supplemental Direct Testimony of Melissa L. Thompson (Oct. 31, 2022) (Thompson Testimony).

³⁹ Joint Ex. 1, Stipulation at 27-31. *See also* Staff Ex. 8, Liphtratt Testimony at 3-4 (Sept. 22, 2022) and OCC Ex. 1, Adkins Testimony at 4.

are other mechanisms that would better benefit ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest.”⁴⁰ This leads to a “balanced approach by recognizing some of the objections to the Staff Report...rejecting some of the objections, and considering alternative approaches.”⁴¹ The Signatory Parties highlighted a number of benefits of the Stipulation through testimony.

The Stipulation significantly reduces the proposed revenue requirement increase of \$221 million to an increase of \$68.192 million.⁴² Similarly, the Stipulation recommends an ROE of 9.6 percent and an overall ROR of 7.05 percent, both significantly lower than the 10.95 percent ROE and the 7.85 percent ROR proposed by Columbia in its Application.⁴³ The Stipulation also limits the deferral of environmental remediation cost for manufactured gas plant sites.⁴⁴

Moreover, the Stipulation allocated the natural gas distribution base revenue requirement,⁴⁵ the Rider IRP revenue requirement,⁴⁶ and the Rider CEP revenue requirement⁴⁷ based on Columbia’s updated COSS. These allocations result in charges that are more closely aligned with the cost of service for each rate class.

Furthermore, Rider IRP and Rider CEP will be adjusted to \$0 on September 1, 2027, unless Columbia files a new base distribution rate case by that date.⁴⁸ The Stipulation also creates

⁴⁰ *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73 (Dec. 30, 2020).

⁴¹ Staff Ex. 8, Lipthrott Testimony at 4.

⁴² *Id.*

⁴³ *Id.* at 4-5.

⁴⁴ *Id.* at 6.

⁴⁵ Joint Ex. 1, Stipulation at 3.

⁴⁶ *Id.* at 15-16.

⁴⁷ *Id.* at 17-18.

⁴⁸ Staff Ex. 8, Lipthrott Testimony at 5.

significantly lower rate caps for both riders.⁴⁹ Moreover, Columbia agreed to withdraw its proposed Federal/State Tax Reform Rider, Carbon Reduction Rider, and Rider FMI, as well as to discontinue its existing Regulatory Assessment Rider.⁵⁰ Columbia also agreed to significantly reduce its DSM Program, limiting it to a WarmChoice program targeted at low-income, residential customers, and not collect shared savings as part of its limited DSM Program.⁵¹

For the SGS rate class, the Stipulation provides for bill proration, which will be phased in over three years.⁵² Columbia will also offer a \$3.5 million customer bill-payment assistance program, with \$2.3 million of the program cost not recovered from customers and the balance being recovered through the DSM Rider.⁵³

The Stipulation, as a package, benefits customers and the public interest by protecting them from unjust and unreasonable rates, excessive riders, and future deferrals, while more closely aligning rates with the cost of service. As such, the Commission should find that the Stipulation satisfies the second prong of the Commission's three-part test.

C. The Stipulation does not violate any important regulatory principles or practices.

Third, the Stipulation, as a package, complies with the Ohio Revised Code, the Ohio Administrative Code, and Commission precedent. When determining whether a stipulation violates any important regulatory principle or practice, the Commission tends to consider its own precedent, and favor stipulations that follow that precedent.⁵⁴ Overall, the Stipulation results in

⁴⁹ Staff Ex. 8, Lipthrott Testimony at 6-7.

⁵⁰ *Id.* at 5.

⁵¹ *Id.* at 6.

⁵² *Id.* at 5.

⁵³ *Id.* at 7.

⁵⁴ See, e.g., *In the Matter of the Application of The East Ohio Gas Company dba Dominion Energy Ohio for Approval of an Alternative Form of Regulation to Establish a Capital Expenditure Program Rider Mechanism*, Case No. 19-

charges to consumers that “are ‘just and reasonable as a package, as required under R.C. 4905.22, R.C. 4909.15, R.C. 4909.19, and R.C. 4929.05.’”⁵⁵

Staff Witness Liphtratt testified that “based on [his] involvement in this proceeding, and review of the Stipulation...it does not violate any important regulatory principle or practice.”⁵⁶ Witnesses for Staff, Columbia, and OCC, all agree that the Stipulation does not violate any important regulatory principle or practice.⁵⁷ As discussed above, the ROE, ROR, allocation, total revenue requirement, and rider caps agreed upon in the Stipulation all result in just and reasonable rates as compared to Columbia’s proposals in its Application. Moreover, the Stipulation serves the purpose of gradualism by avoiding rate shock and yearly rider caps. Finally, by more closely aligning rates with the cost to serve, the Stipulation supports the principle of cost causation. Overall, the Stipulation serves a variety of important regulatory principles and practices, and therefore satisfies the third prong of the Commission’s three-part test.

IV. CONCLUSION

Record evidence presented at the evidentiary hearing demonstrates that the Stipulation filed on October 31, 2022 satisfies the Commission’s three-part test for evaluating stipulations. A large, diverse group of capable, knowledgeable parties, including representatives of residential customers, participated in a fair and open settlement process where all parties were invited to negotiate the Stipulation. The Stipulation, which expeditiously and equitably resolves all of the issues in this proceeding, serves the public interest by reducing any rate increase and avoiding

468-GA-ALT, Opinion and Order at ¶ 79 (Dec. 30, 2020) (Where the stipulating parties had “presented adequate justification for the Commission to uphold the precedent” and “no argument presented by opposing Intervenors [convinced] the Commission to change or revise this practice,” the Commission adopted the stipulation.).

⁵⁵ OCC Ex. 1, Adkins Testimony at 11.

⁵⁶ Staff Ex. 8, Liphtratt Testimony 7.

⁵⁷ *Id.*; Columbia Ex. 35, Thompson Testimony at 4-5; OCC Ex. 1, Adkins Testimony at 11.

costs associated with a fully litigated rate case. By avoiding rate shock, aligning revenue requirement allocation with cost of service, and promoting State policy, the Stipulation complies with important regulatory principles and practices.

As such, the weight of the evidence presented by the parties demonstrates that the Stipulation satisfies the Commission's three-part test for evaluation stipulations. Therefore, OMAEG and Kroger respectfully request that the Commission adopt the Stipulation in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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AAM**

Summary: Brief Joint Post-hearing Brief electronically filed by Mrs. Kimberly W. Bojko on behalf of The Ohio Manufacturers' Association Energy Group and The Kroger Co.