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

INITIAL BRIEF OF OHIO PARTNERS FOR AFFORDABLE ENERGY

I. Introduction

Columbia Gas of Ohio ("Columbia") seeks approval from the Public Utilities Commission of Ohio (the "Commission") for a proposed Joint Stipulation ("Stipulation") filed in this proceeding on October 31, 2022.

Ohio Partners for Affordable Energy ("OPAE") respectfully requests that the Commission either reject said Stipulation or modify it in the following manner:

(1) require the proposed bill payment assistance program be fully funded by shareholders and deny any transfer of funds from the WarmChoice program to the proposed bill payment assistance program (pg. 19 – 20);

(2) allow for annual increases to the WarmChoice budget to account for increased eligibility and rising costs (pg. 12);

(3) eliminate the discriminatory restriction on renters' ability to receive service under WarmChoice (pg. 13);

(4) strike the prohibition on Columbia from supporting consumer funded energy efficiency programs whether at the statehouse or the Commission, (pg. 12); and

(5) modify the Stipulation to reject the withdrawal of Columbia's non-low-income demand side management ("DSM") proposal (id.).

Absent these modifications the Stipulation, as a package, does not benefit ratepayers or the public interest and violates important regulatory principles and provides for unjust and unreasonable rates and should be rejected.

II. Standard of Review

The Commission employs a three-part test to evaluate stipulations.[1] This test asks the following questions:

- Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- Does the settlement, as a package, benefit ratepayers and the public interest?
- Does the settlement package violate any important regulatory principle or practice?

A settlement is not evidence, and it is not binding on the Commission.[2] It is a recommendation by parties to a proceeding on how the Commission should address and resolve contested issues.

[1] *Consumers' Counsel v. Pub. Util. Comm'n, 64 Ohio St.3d 123, 126 (1992).* See, also, *AK Steel Corp. v. Pub. Util. Comm'n,* 95 Ohio St.3d 81, 82-83 (2002).
[2] *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, at 125 592 N.E.2d 1370, citing *Akron v. Pub. Util. Comm*. (1978), 55 Ohio St.2d 155 9 O.O.3d 122, 378 N.E.2d 480.

Absent OPAE's requested modifications, the Stipulation fails the second and third prongs of the test. The record demonstrates that the Stipulation, as a package, fails to benefit ratepayers and the public interest. Additionally, because the Stipulation fails to benefit ratepayers and the public interest it violates important regulatory principles and statutory requirement of just and reasonable rates as well as codified state policies.

III. Law and Argument

A. The Stipulation, as a package, does not benefit ratepayers or the public interest.

i. The proposed fixed monthly delivery charge and the effective monthly delivery charge are excessive to the point of unjust and unreasonable, especially because the charges disproportionately impact low-income customers.

The currently approved fixed monthly delivery charge is $16.75.[3] The Stipulation proposes an effective fixed monthly delivery charge of $38.62 in the first year, rising the next two years until it reaches $39.30 in the third year and every year thereafter.[4] That is an unreasonable increase of 134%, at a time when inflationary pressures are crippling residential customers.

To make that fixed monthly increase appear more palatable, The Stipulation and testimony supportive thereof, bundles into the current effective monthly delivery charge Riders IRP and CEP which are set at $11.98 and $5.92 respectively.[5] When those riders are combined with the current monthly delivery charge the total current effective monthly delivery charge rises to $34.65.[6]

[3] Staff Exhibit 1 p. 39.
[4] Joint Exhibit 1 Appendix C.
[5] Id.
[6] Id.

For an apples-to-apples comparison, then, of the Stipulation's total fixed monthly delivery charge for residential customers, the Commission must consider the fixed monthly delivery charge ($39.30) plus Riders IRP ($8.47) and CEP ($8.74). Thus, under the present billing scheme, residential customers pay $34.65 per month for total fixed delivery charges and under the Stipulation, that increases to $56.51.[7]. This represents a potential 63% increase in the effective monthly delivery charge from the current effective monthly delivery charge as defined in the Staff Report.

Columbia asks the Commission to approve charging its residential customers, $39.30, 134% more than they currently pay, just for being connected to Columbia's system. According to Columbia Witness Thompson, the only way a customer could avoid these charges is to cancel their service with Columbia.[8] If customers wished to reconnect later, they would be subject to a $52 fee.[9]

Complicating matters further, the proposed increase to fixed charges disproportionately impacts low-income customers who are generally smaller users and place smaller strains on the system. ELPC Witness Rabago testified that the proposed fixed charges are economically regressive.[10] Low-income customers tend to be low-use customers, who therefore contribute very little to the costs causation behind these fixed charged compared to high use customers.[11] Yet, they are forced to pay the same fixed charges as high use customers despite the lack of income to cover the increased costs. This is unjust and unreasonable.

[7] Joint Exhibit 1 pp.15-17; Appendix C.
[8] Evidentiary Hearing Transcript P. 22:17-22.
[9] Id. p. 23:1-6.
[10] ELPC Exhibit 1 p. 19:16-22.
[11] Id. p. 20:1-3.

The size of the distribution system is determined by the collective demand of customers. Low-use customers place little demand on the system; there is no reason to allocate low-use customers a disproportionate share of distribution system costs. High fixed charges that disproportionately impact low-income customers especially when the only method to avoid them is to disconnect from the system are not just or reasonable. Further, a rate design system that results in regular disconnection from the system as a rational decision is flawed and unreasonable, and frankly, needlessly creates safety issues for vulnerable populations.

The Commission must do something to control these ever-expanding fixed charges that disproportionately impact low-income Ohioans who are least equipped to adjust to them. The charges proposed under the Stipulation are so high that they rise to a level of unreasonableness as noted by ELPC Witness Rabago.

ii. The Commission cannot conclude that because there are differences between the Application and Stipulation there must be benefits to the public.

Only three parties offered testimony in support of the Stipulation, Columbia, the Office of the Ohio Consumers' Counsel ("OCC"), and Commission Staff ("Staff"). OCC's witness offered thirteen bullet points he deemed benefits arising from the Stipulation.[12] Five of those points are comparisons of the Stipulation to the Application, one is a withdrawal of proposals that had no guarantee of being approved, and three relate to changes to Columbia's DSM program which will harm customers.

OCC's witness noted that the base distribution annual revenue increase is less than what Columbia requested[13]; the overall annual rate base "is reduced by approximately $55 million

[12] OCC Exhibit 1, p. 6:1- p. 10:20.
[13] Id. p. 6:1-13.

from Columbia's proposed rate base of approximately 3.6 billion"[14]; the overall rate of return is reduced from Columbia's proposed 7.85% to 7.08%[15]; and that residential customers will only be responsible for $64,507,241 of Columbia's base rate increase which is $138,181,471 less than what Columbia requested.[16] Staff uses similar logic as its witness cites to the same examples of a lower-than-proposed revenue increase and rate of return.[17]

These arguments should be rejected because they assume Columbia's initial request would have been approved and therefore any reduction from the original proposal represents a benefit for customers and the public interest. There is no evidence in the record to support that assumption, therefore these comparisons are not probative evidence. (In fact, the mere fact that the agreeing parties had to enter into a stipulation is evidence that the Application would not have been approved.)

The fact that the numbers in the Stipulation are lower than what was proposed in the Application does not automatically mean that they are beneficial or reasonable merely by virtue of being lower. For instance, OCC's claims are particularly jarring when the actual numbers are examined. OCC notes that it is a benefit that the Application's annual rate base "is reduced by approximately $55 million from Columbia's proposed rate base of approximately 3.6 billion." $55 million is 1.5% of $3.6 billion. So according to OCC's witness, a mere 1.5% reduction in a requested annual rate base is a *de facto* benefit for customers. If that were the case, the system would encourage utilities to ask for unreasonable amounts, and then settle for slightly lower

[14] Id. p. 6:14-16.
[15] Id. p.6:17-19.
[16] Id. p. 7:1-4.
[17] Staff Exhibit 8 p. 4:17-21 – p.5:1-2.

unreasonable amounts, because the mere fact that they shifted their position makes the new unreasonable amount reasonable.

Further, OCC's witness states that the reduction in the base distribution revenue increase of $153.2 million represents a $766 million benefit for customers over the next five years. This benefit is a fiction. It is disingenuous to claim any benefit from a reduction in a proposed number that was never approved. It is even more disingenuous to then compound that number and claim a greater benefit for customers.

The reality is that there is no evidence customers are avoiding any cost because there is no evidence that the proposed rate of $221.4 million would ever have been approved. The record does demonstrate that customers will be charged $68.2 million more than they currently are if the Stipulation is approved, which equates to $341 million more for customers assuming Columbia's next rate case takes effect in five years.

The Commission should reject attempts by Staff and OCC to claim benefits merely by comparing an unapproved, proposed number in the Application to an agreed upon lower number in the Stipulation. If the reduced number is truly a benefit to customers it should be demonstrated by the merit of the number, not by comparing it to the utility's Christmas list.

Similarly, Staff, OCC, and Columbia's witnesses claim that the withdrawal of certain proposals contained in the Application is a benefit.[18] This relies on the same flawed premise that the measure of benefit is to the Application, not to reality. That issue is then compounded in this case when some of the withdrawn proposals would have been a benefit to customers – as is the case with the non-low-income DSM programs that are being withdrawn. The Commission

[18] OCC Exhibit 1 p. 9:10-17; Staff Exhibit 8 p. 5:14-16; Columbia Exhibit 35 p. 1:24-26.

should reject these conclusory arguments that are based on unsupported assumptions of rubber stamp approval.

iii. The Commission should modify the Stipulation to reject its changes to the WarmChoice program.

The Stipulation contains several provisions related to DSM programs that will harm customers. Specifically, the Stipulation will cap the low-income DSM program budget at its current 2022 level of $14,867,329 while also expanding income eligibility for the WarmChoice program to 200% of the federal poverty guidelines, up from 150%. Additionally, the Stipulation raids the WarmChoice budget in the first two years of the rate plan to fund or partially fund a bill payment assistance program – which has a net benefit to shareholders. The Stipulation goes on to artificially limit certain eligible customers' ability to receive services based on who their landlord is. Finally, the Stipulation calls for two new audits of the WarmChoice program, in addition to the annual audits undertaken by Staff, that will be paid for out of the WarmChoice's capped budget with no cap on the audit expense. Taken together, these actions will restrict the ability to provide sufficient service to low-income Ohioans in Columbia's service territory as described by both of OPAE's witnesses.

a. The Commission should reject the WarmChoice budget cap at 2022 levels proposed in the Stipulation as well as the inclusion of new, unnecessary, and uncapped audits.

At the outset, OPAE wants to be clear it supports the income eligibility increase proposed in the Application, and left undisturbed by the Stipulation, of 200% of the federal poverty guidelines for the WarmChoice program. This is a good change that OPAE supports without reservation. It will bring WarmChoice in line with the eligibility requirements for other assistance programs – thereby streamlining and reducing administrative costs. It will also enable the program to reach more people. Greater eligibility opens the door to greater participation

which is a good thing. However, this greater participation, under the Stipulation, will be strangled by a budget meant for participation at a lower eligibility level. In no uncertain terms, this will undermine the spirit of increased eligibility.

OPAE Witness Peoples noted that Columbia does not track how many of its customers fall within 150% and 200% of the Federal Poverty Guidelines.[19] Therefore, Columbia has no knowledge of how many more customers will be eligible to or will ultimately seek service. It is likely, especially in a time of rising inflation and higher costs, that those customers who were never eligible for these services to reduce their gas usage and therefore their gas bills will apply for those services. Further, as noted by OPAE Witness Peoples, rising material costs, inflation, and rising workforce expenses combine to place additional strain on WarmChoice administrators' budgets every year.[20]

Under normal circumstances, service under WarmChoice requires small annual increases to be consistent year over year. That issue is compounded by adding in additional eligible customer. Capping the WarmChoice budget at 2022 levels while also expanding eligibility will put undue strain on the program administrators and unnecessarily limit the number of customers served. The Commission should modify the Stipulation to reject this cap and adopt the original proposed budget levels found in the Application and Columbia Witness Poe's testimony.

The Stipulation also proposes two new audits, in addition to the annual audits the Stipulation calls for by Staff or its designee, that will conduct exhaustive reviews of the management of the WarmChoice program, paid for out of the WarmChoice budget, with no cap on what the audit expense may be. WarmChoice administrators are not new to oversight and

[19] OPAE Exhibit 2 p. 8:11-14.
[20] Id. p. 6:4-17.

audits. As OPAE Witness Peoples testified, administrators of WarmChoice are subject to audits by Columbia for quality assurance and administration, audits by the Ohio Department of Development for quality assurance and administration, and independent evaluator annually audits the administrator from a corporate perspective as well. OPAE's objection to the Stipulation's call for additional audits is not for fear of the process but for grave concern for the budget.

The Stipulation freezes the budget at 2022 levels for the next five years, despite expanding the eligibility and creating more demand. Further exacerbating those issues, it will also shift funds away from WarmChoice services to a newly proposed bill payment assistance program – one that is designed to help shareholders. On top of those budgetary challenges the Stipulation proposes to introduce two additional audits, by a third-party evaluator to be paid for out of the WarmChoice budget with no express cap on audit expenses. Warm Choice administrators are already subject to at least three audits and no party presented evidence as to what benefit may be gained by adding two more. Further, the audit criteria include parameters Columbia has no way of knowing – such as which rental properties may be sold within their territory. (Conceivably the only way to make that determination is to pay the auditor to conduct surveys, adding yet another layer of unnecessary cost to an already constrained budget.)

Absent a clear showing of additional substantive benefit to be gained from the audit for customers, the Commission should reject the proposal to add another layer of bureaucracy and expense to the WarmChoice program. The more funds are used for non-weatherization purposes the fewer customers are served and the fewer benefits achieved.

b. The Commission should reject the discriminatory limitation on renters' ability to receive service under WarmChoice proposed in the Stipulation.

Another artificial constraint the Stipulation places on the WarmChoice program is a limit on the program's ability to service renters within the Columbia territory. The Stipulation states, "notwithstanding the foregoing, property owners are limited to receiving weatherization assistance for on rental premise per calendar year during the five-year term of the DSM program."[21] This is both a vague and onerous requirement that will harm income eligible renters in Columbia's service territory. OPAE Witness Peoples explained that the services provided to renters under WarmChoice benefit the renter because the renter is paying the utility bill that is reduced by the weatherization services.[22] Weatherization of gas heated homes can typically save **the renter** 40% on their utility bills.[23]

However, under the Stipulation, renters may not be able to obtain service if another renter with the same landlord already received service under WarmChoice that calendar year. This is an inefficient and discriminatory provision that only serves to harm low-income renters based on the fact that they rent. If they owned their home, they would be able to receive service but because they rent, if any other renter who shares their landlord has already received service they will be unnecessarily and discriminatorily denied.

Further, the Stipulation does not define "rental premise." If a landlord owns a duplex or a quadplex can only one unit be served? In which case all units would lose out as you cannot serve more than one premise and a building with multiple units would contain multiple rental premises. In the event the interpretation included multi-unit buildings, this provision would still

[21] Joint Exhibit 1 p.13.
[22] OPAE Exhibit 2 p. 9:15-22; p10:1-2.
[23] Id.

eliminate the efficiency that can be created with numerous low-income customers live in the buildings in the same area. Instead of servicing all eligible customers in the same time period, administrators would be forced to service one building per year needlessly driving up costs. This is a radical and discriminatory change to WarmChoice that should be denied.

c. The Commission should reject attempts to shift funds collected from WarmChoice to bill payment assistance.

In the face of the budgetary constraints identified, *supra*, the Stipulation proposes shifting $1.2 million over two years away from the WarmChoice program budget.[24] As OPAE Witness Sarver testified, there was no evidence provided in support of the Stipulation showing the need for additional bill payment assistance.[25] OPAE supports bill payment assistance as a short term, tactical fix for a customer's problem. But, weatherization services, such as those provided by WarmChoice, represent long-term, strategic solutions. If a customer cannot pay their bill, it is more useful to the customer to help them control their usage and lower than bill consistently than to pay their bill without further action just to have the problem arise month after month.

Another problem with the proposed bill payment assistance program is the lack of details. OPAE Witness Sarver testified that the Stipulation leaves the program open ended with administration criteria "to be agreed between Columbia, Staff, and OCC".[26] Witness Sarver notes there are a list of minimum criteria but even that language is not definitive, leaving the possibility for additional criteria to be added.[27] The administration is also left open ended, to be determined by agreement between OCC and Columbia, unless agreement cannot be reached at

[24] Joint Exhibit 1
[25] OPAE Exhibit 1 p. 9:9-22; p. 10:1-11.
[26] OPAE Exhibit 1 p. 4:7-19.
[27] Id. p. 4:21-22; p. 5:1-2.

which point the "funding shall be used to expand upon bill payment assistance available through the HeatShare program, which may include other agencies as designated by OCC."[28]

This is not a program design. It is a hope that a program can be designed at a later date, and if no such design can be made, it is a grant of authority to OCC to direct the use of funds collected by a utility from customers under a Commission approved rider. The Stipulation fails to cite to any statutory authority to grant OCC the power to direct and dispense customer funds.

Additionally, the proposed bill payment assistance program would shift funds meant for weatherization, which reduces energy usage and therefore reduces the profit made by Columbia over time to an antithetical purpose. Bill payment assistance funds are used to pay bills – meaning they line the coffers of Columbia and its shareholders. Further, under the Stipulation, Columbia would administer this program and be able to pay itself for doing so – up to 10% of the overall budget .[29] Therefore, not only would the shifting of these funds reduce the available budgets to provide customers weatherization services, it would transform the funds from assisting customers and providing long term benefits to supporting Columbia's bottom line both through bill payment but also through a fee Columbia would be entitled to earn for paying itself with customers' money.

The Commission has previously, and repeatedly, rejected attempts to shift funds from weatherization services to bill payment assistance.[30] OPAE would respectfully request the Commission do so again. There is insufficient information provided to demonstrate this arrangement would be legal and there is insufficient detail as to the criteria and the

[28] Joint Exhibit 1 p. 20.
[29] OPAE Exhibit 1 p. 8:1-5.
[30] Pub. Util. Comm. Case No. 19-1940-GA-RDR ¶52 (Dec. 2, 2020); Pub. Util. Comm. Case No. 20-637-GA-UNC ¶46 (May 20, 2020); Pub. Util. Comm. Case No. 20-649-GA-UNC ¶46 (June 3, 2020); Pub. Util. Comm. Case No. 19-2084-GA-UNC ¶66 (Feb. 24, 2021).

administration of the program. OPAE has no objection to a bill payment assistance program funded by shareholders but the Commission should deny the transfer of WarmChoice dollars to a bill payment assistance program. Such a shift will not only harm customers but is antithetical to the purpose of WarmChoice and the reasons those funds are collected in the first place. OPAE respectfully requests the Commission reject this attempted shifting of weatherization funds to bill payment as it has done in the past.

d. The Commission should modify the Stipulation to reject Columbia's withdrawal of their non-low-income DSM programs.

Columbia originally proposed a diverse suite of DSM programs for non-low-income customers. Under the Stipulation, Columbia seeks to withdraw those programs. The Commission recently held a series of workshops regarding the future of energy efficiency in the state. The Commission solicited comments and reply comments. Columbia submitted individual comments, joint comments, reply comments, and presented before the Commission all in support of DSM and energy efficiency programs. Copies of these comments and presentations can be found as Exhibit JFS-2 to OPAE Exhibit 1.

Columbia's programs have been historically beneficial for customers, saving over 124 Bcf of natural gas over the lifetime of Columbia's programs, the equivalent of avoiding green house gas emissions from over 1.4 million passenger vehicles drive for one year.[31] That is all in addition to saving customers money – a lot of money. Now, at a time when Columbia is seeking historically high fixed customer charges, on top of rising natural gas prices, inflation, and other expanding expenses, the Stipulation seeks to eliminate these programs and raise customer's bills.

[31] OPAE Exhibit 1 – Exhibit JFS-2 p. 35.

Eliminating DSM programs now, after years of proven benefits, including benefits recognized by the Commission as recently as last year[32] would be unjust, unreasonable and inconsistent with R.C. 4905.70's mandate to the Commission to encourage conservation and the reduction in the growth rate of energy consumption. It would also violate state policy codified in R.C. 4929.02(A)(4) and (A)(12) to encourage and market access to DSM services and promote alignment of natural gas company interest with consumer interest in energy efficiency and energy conservation. Columbia's proposal is still in the record through Columbia Exhibits 1 and 19. There is no reason the Commission could not, if it chose, modify the Stipulation to reject the withdrawal of the non-low-income programs and include the proposals already in the record.

e. As has been shown, the Stipulation, as a package, does not benefit ratepayers and the public interest.

As discussed above, the Stipulation, as a package fails to benefit ratepayers and the public interest. The Stipulation, if approved, would implement exceptionally high fixed customer charges with increases over 130% to the monthly delivery charge and over 63% to the effective monthly delivery charge. The imposition of such a burdensome fixed cost which disproportionately and unjustly impacts low-income customers is reason enough to reject the Stipulation.

The Stipulation also caps the budget of the WarmChoice program through 2027 at current 2022 levels while providing for increases in every other rider. On top of limiting the budget, the Stipulation dilutes the service WarmChoice can provide by raiding the budget for improper purposes not related to weatherization services and imposing unnecessary and costly audits all

[32] Pub. Util. Comm. Case No. 19-2084 ¶73 (Feb. 24, 2021).

while expanding the demand for the services. Non-low-income customers will not fair much better under the Stipulation as their DSM programs would be eliminated while costs are rising.

Many of the purported benefits pointed to by OCC and Staff are illusions created by comparing requested but unapproved numbers, with no proof they ever would have been approved, against agreed upon slightly lower numbers in the Stipulation. OCC brazenly calls it a benefit when the Stipulation strips residential customers of Columbia's award-winning DSM programs because they focus solely on the cost that will be removed without thought to the proven benefits lost.

The Commission's job is to balance and weigh all of the foregoing to determine if the Stipulation benefits ratepayers and the public interest. The Commission adjusts the standard required to be satisfied in any case in which a Stipulation is filed.[33] Once a Stipulation is filed, the Commission no longer has to judge an application by the standard of the statute under which it was filed, instead substituting a three-part test of the Commission's creation. Because of this standard shifting, previous Chairman Haque recognized that the Commission has more leeway to approve provisions under a Stipulation than it otherwise would be able to under the original standard.[34] Because the Commission has greater leeway under the standard of approval for a

[33] In the Matter of the Application of the Ohio Edison Co., Case No. 14-1297-EL-SSO, Concurring Opinion of Commissioner Asim Z. Haque pp. 1-2 (March 31, 2016.) ("The key difference here, legally, is that AEP (and FirstEnergy) filed a settlement stipulation with the Commission. As a result, while the legal standard of review still requires that the utilities bear the burden of proof, the true test for legality in these cases is the three-part stipulation test established by this Commission…")

[34] Id. p. 7. ("If these cases were not presented to us as stipulations, I would have looked more to those factors as guide posts in my decision-making. However, again, the presentation of these cases as stipulations very much changed my legal standard of review, and thus, my analysis. To note, I do not believe that either company successfully proved that the PPA units are needed to preserve reliability. Based upon the legal standard of review though, this failure to meet one of the Commission's permissive factors is not fatal.")

Stipulation, the Commission necessarily has more responsibility to ensure that the Stipulation satisfies the reduced standard.

As Chairman Haque stated,

> It is extremely important to note that cost is not the only factor that this Commission is to weigh in determining whether the stipulations benefit ratepayers and are in the public interest. *In In re Application of Columbus Southern Power Company*, 129 Ohio St.3d 46 (2011), the Supreme Court of Ohio addressed this issue of whether the PUCO could consider more than cost in determining whether a stipulation benefits ratepayers and is in the public interest. In that case, lEU-Ohio challenged AEP's peak demand reduction plan stipulation, presenting what it believed to be a more cost-effective approach to prove that AEP's stipulation did not benefit ratepayers and was not in the public interest. The Supreme Court of Ohio held that, "While cost is surely a relevant concern to be balanced... it is not the only concern, **and the commission is entitled to consider more**. (emphasis added at 51).[35]

In this case, OPAE encourages the Commission to look at the whole package presented by the Stipulation not only in costs being paid, of which there are many, alleged costs being saved, but also of the benefits of historic programs that stand to be lost. OPAE also encourages the Commission to consider how that loss will impact customers. And how that loss, if allowed, could possibly align with the state policy and Commission's mandate to encourage conservation, reduction in energy growth, and access to DSM services. OPAE respectfully submits that the costs in this case, under the Stipulation as proposed, both directly to customers and in lost services and savings, far outweigh any purported benefits. OPAE respectfully requests the Commission reject the Stipulation or modify according to the recommendations discussed above.

[35] Id. p. 5.

B. The Stipulation violates important regulatory principles and practices because it will result in unjust and unreasonable rates and asks the Commission to adopt a provision it has no authority to enforce.

As discussed at length above, the Stipulation, as proposed, will result in unjust and unreasonable rates for residential customers. Therefore, the Stipulation fails the third prong as it violates the prohibition against unjust and unreasonable rates. Additionally, the Stipulation contains a provision that would preclude Columbia from advocating for any consumer-funded energy efficiency programs either at the statehouse or the Commission, or support others pursuit of the same for the term of the rate plan. This is an unprecedented provision and one the Commission should reject out of hand.

The Commission is a creature of statute and only has that authority conferred upon it by the General Assembly. Nowhere in the Revised Code is the authority for the Commission to control the speech of a regulated entity before it. The subject matter sought to be stifled is irrelevant. The Commission cannot and should not approve a Stipulation with such a blatantly unenforceable provision. Approving the Stipulation with that provision will set the precedent that the Commission has the right to control the speech of an entity who appears before it not only at the Commission but in other venues as well. This is clearly well beyond the bounds of the Commission's statutory authority. In addition to the lack of authority, a state agency attempting to control the speech of an entity or individual would certainly raise constitutional law questions if the provision was ever attempted to be enforced.

The Commission should reject the Stipulation as it violates important regulatory principles and practices as discussed above.

IV. Conclusion

The Stipulation, as currently drafted, as a package, does not benefit ratepayers or the public interest, violates important regulatory principles, state law, fails to achieve state policies, and results in unjust and unreasonable rate for Columbia's customers, specifically their low-income customers. OPAE respectfully requests that the Commission make the modifications outline above to ensure the Stipulation's just and reasonableness and compliance with Ohio laws and regulatory principles.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served on all parties of record via the DIS system on December 9, 2022. A courtesy copy has also been sent to the individuals listed below.

/s/ Robert Dove

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Summary: Text Initial Brief electronically filed by Mr. Robert Dove on behalf of Ohio Partners for Affordable Energy