

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

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

**INITIAL BRIEF
BY
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**INITIAL BRIEF
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I. INTRODUCTION

A Joint Stipulation and Recommendation (“Settlement”)¹ was negotiated over five months and signed by the Office of the Ohio Consumers’ Counsel (“OCC”), Columbia Gas of Ohio, Inc. (“Columbia”), Staff of the Public Utilities Commission of Ohio (“PUCO Staff”) and many other diverse parties. The Settlement satisfies the PUCO’s three-prong test for evaluating settlements. The PUCO should approve the Settlement without modification.

¹ Joint Ex. 1 (Settlement).

The Settlement is a comprehensive resolution of a number of cases that Columbia filed, including a traditional rate case – and the non-traditional alternative regulation cases that the Ohio legislature allowed for single-issue riders.² First, the Settlement is the product of serious bargaining among capable, knowledgeable, and diverse parties.³ The Settlement’s signatory parties include, but are not limited to, Ohio’s statutory advocate (OCC) for Columbia’s 1.4 million residential consumers, the utility (Columbia), the PUCO Staff, the Northeast Ohio Public Energy Council (“NOPEC”), Ohio Schools Council, organizations representing nonresidential customers,⁴ and natural gas marketers.⁵

Second, the Settlement benefits consumers and the public interest. Among other things, the Settlement reduces the overall annual base distribution revenue customers will pay by \$153.2 million from Columbia’s initial proposal of \$221.4 million.⁶ The Settlement reduces the overall rate of return (that includes profit) customers will pay from Columbia’s proposed 7.85% to 7.08%.⁷ Under the Settlement, residential customers will be responsible for \$64,507,241 of Columbia’s base rate increase, which is \$138,181,471 less than what Columbia initially proposed to charge residential consumers.⁸

² Joint Ex. 1 (Settlement) at 1-2.

³ *Id.*

⁴ Industrial Energy Users – Ohio (“IEU”), the Ohio Manufacturers’ Association Energy Group (“OMAEG”), and the Kroger Co. (“Kroger”).

⁵ Interstate Gas Supply, Inc. (“IGS”) and the Retail Energy Supply Association (“RESA”).

⁶ OCC Ex. 1 (Adkins Supplemental) at 6.

⁷ *Id.*

⁸ *Id.*

Third, in addition to providing benefits to consumers, the Settlement is consistent with regulatory principles and practices. The evidence demonstrates that the Settlement reflects nearly \$1.7 billion in reductions from Columbia’s initial proposal for charges to consumers in base rates, fixed charges, riders, and demand side management (“DSM”) charges.⁹

The Settlement also preserves over \$70 million for weatherization services for low-income consumers. And it provides \$3.5 million for bill-payment assistance for Columbia’s low-income consumers including at-risk populations (mostly at shareholder expense) consistent with policy set forth in R.C. 4928.02(L).¹⁰

Thus, the resulting charges to consumers as a package do not violate regulatory principles and practices under R.C. 4905.22, R.C. 4909.15, R.C. 4909.19, R.C. 4929.02(A)(1), and R.C. 4929.05, among other law and PUCO precedent.

The evidence presented by OCC, the PUCO Staff, and Columbia shows that the Settlement as a package passes the PUCO’s three-prong test for evaluating settlements. For Columbia’s consumers, the PUCO should approve the Settlement in its entirety without modification.

⁹ *Id.* at 11.

¹⁰ *Id.*

II. STANDARD OF REVIEW

In PUCO proceedings, the applicant bears the burden of proof.¹¹ In the context of a settlement, the signatory parties “bear the burden to support the stipulation” and must “demonstrate that the stipulation is reasonable and satisfies the [PUCO’s] three-part test.”¹² A settlement is a recommendation to the PUCO on behalf of the settling parties.¹³ It is not binding on the PUCO,¹⁴ and ultimately, the PUCO must “determine what is just and reasonable from the evidence presented at the hearing.”¹⁵

To answer this question, the PUCO has adopted the following three-prong test:¹⁶

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

¹¹ *In re Application of the Ottoville Mut. Tel. Co.*, Case No. 73-356-Y, 1973 Ohio PUC LEXIS 3, at *4 (“the applicant must shoulder the burden of proof in every application proceeding before the Commission”); *In re Application of the Ohio Bell Tel. Co.*, No. 84-1435-TP-AIR, 1985 Ohio PUC LEXIS 7, at *79 (December 10, 1985) (“The applicant has the burden of establishing the reasonableness of its proposals.”).

¹² *In re Application Seeking Approval of Ohio Power Co.’s Proposal to Enter into an Affiliate Power Purchase Agmt. for Inclusion in the Power Purchase Agmt. Rider*, Case No. 14-1693-EL-SSO, Opinion & Order at 18 (March 31, 2016).

¹³ *Duff v. PUCO*, 56 Ohio St.2d 367, 379 (1978).

¹⁴ *Id.* See also Ohio Adm. Code 4901-1-30(E).

¹⁵ *Duff*, 56 Ohio St.2d at 379.

¹⁶ *Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126 (1992).

In considering the first prong, the PUCO may also evaluate the diversity of the signatory parties.¹⁷

III. THE SETTLEMENT SATISFIES THE PUCO’S THREE-PRONG TEST AND IT SHOULD BE APPROVED WITHOUT MODIFICATION.

A. Parties engaged in serious negotiations for over five months to reach the Settlement. The serious bargaining for the Settlement was among capable, knowledgeable parties with diverse interests.

The evidence demonstrates that the Settlement satisfies the first prong of the PUCO’s test for evaluating settlements. That test considers whether the Settlement is the product of serious bargaining among capable, knowledgeable parties.

Serious bargaining is reflected by the signatory parties to the Settlement representing diverse interests. The signatory parties include: OCC; Columbia; the PUCO Staff; NOPEC; Ohio Schools Council; Industrial Energy Users – Ohio; Ohio Manufacturers’ Association Energy Group; The Kroger Co.; Ohio Energy Group; the Retail Energy Supply Association; and Interstate Gas Supply, Inc.¹⁸ Together, these parties represent the interests of the utility, Columbia’s residential and nonresidential

¹⁷ See *In re Application of the Dayton Power & Light Co. to Establish a Standard Serv. Offer*, Case No. 16-395-EL-SSO, Opinion & Order ¶ 21 (October 20, 2017) (“Although diversity of interests among signatory parties is not *necessary* for any stipulation to meet the first prong, it is *helpful* if the signatory parties do represent a variety of interests.”) (emphasis in original); *In re Application of [FirstEnergy] for Approval of [its] Energy Efficiency & Peak Demand Reduction Program Portfolio Plans for 2017 through 2019*, Case No. 16-743-EL-POR, Opinion & Order ¶ 61 (November 21, 2017) (“While the diversity of the signatory parties may be a consideration in determining whether a settlement is a product of serious bargaining among capable, knowledgeable parties under the first prong of the Commission’s test, there is no diversity requirement that the residential customers’ statutory representative be a signatory party for agreements which may result in increased costs for the residential class.”); *In re Application of Ohio Power Co. to Initiate Phase 2 of its gridsmart Project*, Case No. 13-1939-EL-RDR, Opinion & Order ¶ 50 (February 1, 2017) (“In determining whether a settlement is the product of serious bargaining among capable, knowledgeable parties, we consider the extent of negotiations and the diversity of the negotiating parties, but there is no requirement that any particular party be a signatory to satisfy this first prong.”).

¹⁸ Joint Ex. 1 (Settlement) at 24-25.

consumers, governmental aggregators, Ohio schools served by Columbia, a large supermarket chain, and natural gas marketers.

OCC witness Kerry Adkins testified that he participated in the settlement negotiations on behalf of OCC.¹⁹ Mr. Adkins testified that parties spent significant time over the course of about five months negotiating the Settlement.²⁰ According to Mr. Adkins, there were many hours of virtual and in-person meetings where parties were invited to attend and participate.²¹ Mr. Adkins testified that the signatory parties have a history of active participation in proceedings before the PUCO and were represented by experienced and competent counsel.²²

In addition to OCC witness Adkins' testimony, Columbia witness Thompson and PUCO Staff witness Lipthratt testified that the Settlement meets the first prong of the PUCO's settlement test.²³ Ms. Thompson testified that there were *over 40* settlement meetings over five and a half months that resulted in the Settlement.²⁴ According to Ms. Thompson, Columbia scheduled settlement negotiation meetings to occur twice weekly beginning on May 16, 2022 until the settlement was filed on October 31, 2022.²⁵ PUCO Staff witness Lipthratt testified that the "extensive negotiations among the parties and the Stipulation represents a comprehensive compromise of the issues raised by parties with

¹⁹ OCC Ex. 1 (Adkins Supplemental) at 5.

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Columbia Ex. 35 (Thompson Supplemental Direct (October 31, 2022)) at 3; PUCO Staff Ex. 8 (Lipthratt Settlement Testimony) at 3.

²⁴ Tr. Vol. I (Thompson Redirect) at 76.

²⁵ *Id.*

diverse interests.”²⁶ The major changes from the Application to the final Settlement are the result of these serious negotiations.

Ohio Partners for Affordable Energy (“OPAE”) and Citizens Utility Board of Ohio (“CUB Ohio”) oppose the Settlement. However, neither OPAE nor CUB Ohio presented evidence to challenge the Settlement under prong one of the PUCO’s three-part test.²⁷

The Environmental Law and Policy Center (“ELPC”) also opposes the Settlement. ELPC presented the testimony of Karl Rábago, who claims “there is no objective and verifiable evidence that the proposed settlement is the result of serious bargaining.”²⁸ That is not accurate. As described above, the evidence presented by OCC, Columbia, and the PUCO Staff demonstrates that the Settlement is the product of serious negotiations among knowledgeable, capable parties, who have diverse interests. Accordingly, the PUCO should find that the Settlement meets the first prong of the PUCO’s test.

B. The Settlement as a package benefits consumers and the public interest. The PUCO should approve the Settlement without modification.

There is ample evidence to satisfy the second prong of the PUCO’s test for evaluating settlements, which considers whether the Settlement as a package benefits consumers and the public interest. OCC witness Mr. Adkins testified that the Settlement benefits consumers in the following ways:

²⁶ PUCO Staff Ex. 8 (Lipthrott Settlement Testimony) at 3.

²⁷ Tr. Vol. I (Bullock Cross) at 1-6; Tr. Vol. I (Peoples Cross) at 115-16; and Tr. Vol. I (Sarver Cross) at 127:3-6.

²⁸ ELPC Ex. 1 (Rábago Supplemental Direct) at 8.

- The Settlement's base distribution annual revenue increase of approximately \$68.2 million is approximately \$153.2 million less than the \$221.4 million revenue increase that Columbia initially requested.²⁹ This \$153.2 million reduction will be applicable and will benefit consumers every year until Columbia files and obtains new rates in its next distribution rate case.³⁰ If Columbia files its next rate case to take effect in five years, this benefit to consumers will total \$766 million in reductions from Columbia's original request.³¹
- Columbia's overall annual rate base is reduced by approximately \$55 million from Columbia's proposed rate base of approximately 3.6 billion.³² This reduces the amount of profit charged to all of Columbia's consumers.
- The Settlement reduces the overall rate of return (which includes profits) that consumers will be charged from Columbia's proposed 7.85% to 7.08%.³³

²⁹ Joint Ex. 1 (Settlement) Appendix A, Schedule A-1.

³⁰ OCC Ex. 1 (Adkins Supplemental) at 6.

³¹ *Id.*

³² *Id.*

³³ *Id.*

- Residential and small business consumers in the Small General Service (“SGS”) rate class will be responsible for \$64,507,241 of Columbia’s base rate increase, which is \$138,181,471 less than what Columbia initially proposed.³⁴
- Columbia initially proposed a base residential fixed charge, that consumers would be charged monthly, of \$46.31.³⁵ The Settlement instead sets the monthly residential fixed charge at \$38.62 for 2023, \$39.08 per for 2024, and \$39.30 for 2025 and thereafter until reset in Columbia’s next base rate case.³⁶ This is an increase from the current monthly residential charge of \$16.75.³⁷ However, Mr. Adkins explained that the base customer charge was expected to increase because capital assets (such as pipe replacements) from Columbia’s Infrastructure Replacement Program (“IRP”) rider and Capital Expenditure Program (“CEP”) rider are to be converted from the current rider charges to base rate charges. The base distribution charges in the Settlement still benefit consumers because they are still lower than what Columbia initially proposed.³⁸

³⁴ *Id.* at 7.

³⁵ PUCO Staff Ex. 1 (Staff Report) at 38.

³⁶ Joint Ex. 1 (Settlement) Appendix C.

³⁷ OCC Ex. 1 (Adkins Supplemental) at 7.

³⁸ *Id.*

- The Settlement also protects low-income consumers by preserving over \$70 million for weatherization services for low-income consumers through Columbia’s WarmChoice® program.³⁹ WarmChoice® is a demand-side management program. Under the Settlement, annual funding for the program will be more than \$14 million per year.⁴⁰ The Settlement requires management audits of the program, which will be conducted by an independent auditor.⁴¹ Further, the Settlement maximizes the number of consumers served by WarmChoice® by limiting consumers to one weatherization benefit per year. Columbia agreed in the Settlement not to charge consumers for profits (shared savings) in the funding of the program.⁴²
- The Settlement lowers the amount that Columbia can charge consumers annually under the IRP (pipeline replacement) rider⁴³ as compared to what Columbia initially proposed. Note that Columbia filed two different types of rate increase cases, the base rate case under R.C. 4909.18 and 4909.19 described above and the rider cases that the legislature allowed under R.C. Chapter 4929. This IRP rider settlement can result in an estimated \$125 million reduction in Columbia’s cumulative charges to consumers for the five years of 2023 – 2027, compared to Columbia’s original proposal.⁴⁴

³⁹ *Id.* at 8.

⁴⁰ *Id.*

⁴¹ Joint Ex. 1 (Settlement) at 11-14.

⁴² OCC Ex. 1 (Adkins Supplemental) at 8.

⁴³ Joint Ex. 1 (Settlement) at 15.

⁴⁴ OCC Ex. 1 (Adkins Supplemental) at 8.

- Similarly, the Settlement lowers the amount Columbia can charge consumers annually under the CEP rider⁴⁵ (general capital expenditures) as compared to what Columbia initially proposed for the SGS class of consumers. This can result in an estimated \$357 million reduction in Columbia’s cumulative charges to consumers for the five years of 2023 – 2027, compared to Columbia’s original proposal.⁴⁶
- Mr. Adkins testified that Columbia agreed to withdraw its proposed Federally Mandated Investment Rider (“FMIR”) charge to consumers.⁴⁷ Instead, the Settlement includes a more limited provision that allows Columbia to seek PUCO approval for recovery of capital expenditures required under the Mega Rule of the Pipeline and Hazardous Materials Safety Administration (“PHMSA”).⁴⁸ Columbia’s withdrawal of the FMIR could result in residential and small business consumers avoiding approximately \$320 million in cumulative charges over the 2023 – 2027 period.⁴⁹

⁴⁵ Joint Ex. 1 (Settlement) at 17.

⁴⁶ OCC Ex. 1 (Adkins Supplemental) at 9.

⁴⁷ *Id.*

⁴⁸ Joint Ex. 1 (Settlement) at 8 and 19.

⁴⁹ OCC Ex. 1 (Adkins Supplemental) at 9.

- As a result of the Settlement negotiation, Columbia will provide \$3.5 million in bill-payment assistance to low-income consumers. OCC originally proposed such an assistance program (albeit for a higher amount). The program will be largely funded by Columbia's shareholders.⁵⁰ Under the program, eligible consumers may receive up to \$450 per year to avoid disconnection or to get service reconnected.⁵¹
- As part of the Settlement package, Columbia is withdrawing the proposal for a DSM program for non-low-income consumers.⁵² OCC witness Adkins testified that withdrawing the non-low-income DSM program will result in eliminating approximately \$119 million in Columbia charges (program costs and shared-savings profits) to residential and small business consumers for the 2023 - 2027 period.⁵³
- Under the Settlement, Columbia will implement an online privacy feature to allow consumers to more easily opt out of having their personal contact information disclosed by Columbia to energy marketers.⁵⁴ The online opt out will benefit consumers by giving them more control over their personal information and will allow consumers to avoid sales contacts by energy marketers if that is their preference.

⁵⁰ Joint Ex. 1 (Settlement) at 19.

⁵¹ *Id.*

⁵² *Id.* at 11-12.

⁵³ OCC Ex. 1 (Adkins Supplemental) at 10.

⁵⁴ Joint Ex. 1 (Settlement) at 20.

- The Settlement includes a provision that implements a discussion group to explore Columbia exiting the merchant function (meaning an end to the Columbia standard offer) for non-residential consumers. However, Mr. Adkins explained that the Settlement precludes the discussion group from discussing the elimination of the standard choice offer for residential consumers.⁵⁵ The availability of a competitive standard offer is a key consumer protection for the residential consumers who OCC represents.⁵⁶

These features of the Settlement clearly benefit consumers and the public interest. The overwhelming evidence establishes that the Settlement as a package satisfies the second prong of the PUCO's test.

C. The Settlement as a package does not violate any regulatory principles or practices.

The Settlement satisfies the third prong of the PUCO's test for evaluating settlements because as a package it is consistent with Ohio's regulatory principles and practices.⁵⁷

The rates charged to consumers as a result of the Settlement package are just and reasonable, supporting the regulatory principles and practices under R.C. 4905.22, R.C. 4909.15, R.C. 4909.19, R.C. 4929.02(A)(1), and R.C. 4929.05. The rates agreed to in the Settlement will allow Columbia to provide safe and adequate service to consumers⁵⁸

⁵⁵ OCC Ex. 1 (Adkins Supplemental) at 10.

⁵⁶ *Id.*

⁵⁷ OCC Ex. 1 (Adkins Supplemental) at 11; Columbia Ex. 35 (Thompson Supplemental Direct (October 31, 2022)) at 5; PUCO Staff Ex. 8 (Lipthrott Settlement Testimony) at 7.

⁵⁸ R.C. 4905.22, *See also Dayton Power & Light Co. v. Pub. Util. Com.*, 4 Ohio St.3d 91, 100, 447 N.E.2d 733, 741 (1983).

while allowing Columbia to earn a fair return on investment.⁵⁹ The adjustments to the revenue requirement and other benefits under the Settlement are also the result of traditional rate setting policies and the resulting rates from the non-traditional alternative regulation (riders) are just and reasonable as required under R.C. 4929.05(A)(3).

Under ratemaking principles for base rate cases, the Settlement as a package makes adjustments to significantly reduce the revenue requirement initially proposed in Columbia's application. OCC witness Adkins testified that the settlement reflects nearly \$1.7 billion in reductions for consumers from Columbia's proposed base rates, fixed charges, riders, and DSM charges included in its Application.⁶⁰ This results in just and reasonable rates for all consumers who pay for Columbia's distribution service.

While the base customer charge will increase for consumers, Mr. Adkins testified that the increase is expected because Columbia's investment in capital assets under IRP and CEP riders (prior to its rate case filing) will now be included in base rate charges, rather than in separate rider charges.⁶¹ Thus, the base distribution charges in the Settlement are higher than what consumers currently pay, but they are nonetheless fair, reasonable, and lower than what consumers would have to pay under Columbia's application.

Moreover, as stated, the Settlement reduces the amount Columbia can charge consumers annually under the IRP and CEP riders as compared to what Columbia initially proposed to charge consumers under these riders. Mr. Adkins testified the IRP rider settlement can result in an estimated \$125 million reduction in Columbia's

⁵⁹ R.C. 4909.15(A)(2).

⁶⁰ OCC Ex. 1 (Adkins Supplemental) at 11.

⁶¹ *Id.* at 7.

cumulative charges to consumers for the five years of 2023 – 2027.⁶² And the CEP rider settlement can result in an estimated \$357 million reduction in Columbia’s cumulative charges to consumers for the five years of 2023 – 2027.⁶³

In addition to reducing the charges to consumers, the Settlement is nondiscriminatory, consistent with regulatory principles in R.C. 4905.33 and R.C. 4928.02(A). All consumers within their respective rate classes pay the same rates for the same service. The Settlement also protects residential and low-income consumers consistent with policy set forth in R.C. 4928.02(L) by providing bill payment assistance. And the Settlement separately protects at-risk populations by providing a weatherization program for low-income consumers (through Columbia’s WarmChoice® program).⁶⁴

Accordingly, the Settlement satisfies the third prong of the PUCO’s test to evaluate settlements.

IV. CONCLUSION

The Settlement satisfies the PUCO’s three-prong test for evaluating settlements. The Settlement is the product of serious bargaining among capable, knowledgeable parties with diverse interests. As a package, the Settlement provides significant benefits to Columbia’s consumers and does not violate regulatory principles or practices. The PUCO should approve the Settlement without modification.

⁶² *Id.* at 8.

⁶³ *Id.* at 9.

⁶⁴ *Id.*

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Initial Brief was served on the persons stated below via electronic transmission, this 9th day of December 2022.

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