

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

Respectfully submitted,

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I. INTRODUCTION

The Public Utilities Commission of Ohio (Commission) should adopt the Stipulation and Recommendation filed on October 31, 2022 (Stipulation) without modification.¹ As demonstrated through record evidence, and explained in the post-hearing briefs filed by the majority of the parties, the Stipulation represents a just and reasonable settlement of this proceeding. 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

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

rate plan, for approval of a demand side management (DSM) program, and to implement various riders (Application).²

Following five months and forty meetings of fair and open settlement negotiations, a large and diverse group of parties agreed upon settlement terms and signed 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 Following an evidentiary hearing, OMAEG and Kroger,⁵ as well as Columbia,⁶ Staff,⁷ OEG,⁸ IEU,⁹ OCC,¹⁰ and RESA and IGS¹¹ all filed post-hearing briefs urging the Commission to adopt the Stipulation in its entirety and without modification. As explained by the Signatory Parties, the Stipulation resolves issues related to Columbia's

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 with its own case number.

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.*

⁵ Joint Post-Hearing Brief of The Ohio Manufacturers' Association Energy Group and The Kroger Co. (Dec. 9, 2022) (OMAEG-Kroger Brief).

⁶ Columbia Gas of Ohio, Inc.'s Post-Hearing Brief (Dec. 9, 2022) (Columbia Brief).

⁷ Initial Post-Hearing Brief Submitted on Behalf of the Staff of Public Utilities Commission of Ohio (Dec. 9, 2022) (Staff Brief).

⁸ Post-Hearing Brief of the Ohio Energy Group (Dec. 9, 2022) (OEG Brief).

⁹ Initial Brief of Industrial Energy Users-Ohio (Dec. 9, 2022) (IEU Brief).

¹⁰ Initial Brief by Office of the Ohio Consumers' Counsel (Dec. 9, 2022) (OCC Brief).

¹¹ Joint Initial Brief of the Retail Energy Supply Association and Interstate Gas Supply, Inc. (Dec. 9, 2022) (RESA-IGS Brief).

Application 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.

Only the Environmental Law & Policy Center (ELPC),¹² Ohio Partners for Affordable Energy (OPAE),¹³ and the Citizens' Utility Board of Ohio (CUB)¹⁴ (collectively, the Opposing Parties) oppose the Stipulation. However, the arguments offered by the Opposing Parties ignore the extensive fair and open bargaining process underlying the Stipulation, and the majority of the terms of the Stipulation, which, as a package, provide benefits to ratepayers and the public interest, and comply with Ohio law and Commission regulations. Instead, the Opposing Parties attempt to argue that certain provisions in the settlement are unreasonable if considered in isolation. But the focus should be on the Stipulation as a package and whether the Stipulation, as a package, benefits ratepayers and the public interest. That is the Commission's test and the precedent.

The manifest weight of the record evidence in this case demonstrates that the Stipulation, is in fact, as a package, just and reasonable and in the public interest, and therefore, the Commission should adopt it.

II. ARGUMENT

The record evidence demonstrates that the Stipulation, as a package, is just and reasonable, and benefits ratepayers. The Commission applies a three-part test to determine whether to adopt a settlement, which asks:

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?

¹² See Initial Post-Hearing Brief of the Environmental Law & Policy Center (Dec. 9, 2022) (ELPC Brief).

¹³ See Initial Brief of Ohio Partners for Affordable Energy (Dec. 9, 2022) (OPAE Brief).

¹⁴ See Initial Post-Hearing Brief of The Citizens' Utility Board of Ohio (Dec. 9, 2022) (CUB Brief).

3. Does the settlement package violate any important regulatory principle or practice?¹⁵

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.”¹⁶ In the present proceeding, a large and diverse group of capable, knowledgeable parties participated in numerous settlement meetings, resulting in a 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. As such, 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.

Under the first prong of the Commission’s three-part test, the Commission does not require that every party, or the parties most adverse to a stipulation, join a stipulation as a signatory in order for serious bargaining to exist.¹⁷ 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 [s]ettlement negotiations will bargain in support of their own interest in deciding whether to support a stipulation.”¹⁸

¹⁵ *Consumers’ Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125-26 (1992).

¹⁶ *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).

¹⁷ *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).

¹⁸ *Id.*

Testimony from numerous witnesses,¹⁹ as well as the post-hearing briefs filed by the parties,²⁰ demonstrate the extensive bargaining process that led to the Stipulation. The Opposing Parties argue, without merit, that serious bargaining did not occur.²¹ According to the Opposing Parties, the Stipulation did not move certain terms far enough from those proposed in Columbia's Application,²² parties "footnoted" out of certain terms,²³ and parties used Columbia's "desire to settle quickly...as a way to reap concessions and (at times) pecuniary benefit from the utility."²⁴

The Opposing Parties simply ignore that both the Signatory Parties and the Opposing Parties participated in "numerous virtual and in-person meetings spanning many hours, with opportunities for parties to attend and negotiate," over the course of about five months,²⁵ causing Columbia to request a continuance of the evidentiary hearing four separate times.²⁶ It is absurd to suggest that settlement meetings that occurred regularly twice a week over a five-month period constituted a "desire to settle quickly." Contrary to Opposing Parties assertions, the settlement process was a prolonged negotiation process and was not resolved quickly.

¹⁹ See OCC Ex. 1, Supplemental Testimony in Support of the Settlement by Kerry J. Adkins at 5 (Nov. 7, 2022) (Adkins Testimony); Staff Ex. 8, Testimony in Support of Stipulation of David M. Lipthrott at 3 (Nov. 7, 2022) (Lipthrott Testimony); Columbia Ex. 35, Supplemental Direct Testimony of Melissa L. Thompson (Oct. 31, 2022) (Thompson Testimony).

²⁰ See OMAEG-Kroger Brief at 7-8; Staff Brief at 3-7; Columbia Brief at 7-8; OCC Brief at 5-7; IEU Brief at 2; OEG Brief at 3.

²¹ See, e.g., ELPC Brief at 11 ("The Commission cannot reach a conclusion about serious bargaining based on a change in Columbia's initial position.").

²² ELPC Brief at 9; CUB Brief at 7-9.

²³ CUB Brief at 10-12.

²⁴ CUB Brief at 8.

²⁵ OCC Ex. 1, Adkins Testimony at 5.

²⁶ Motion for Continuance and Request for Expedited Ruling (Oct. 7, 2022); Motion for Continuance, Request for Expedited Ruling, and Memorandum in Support (July 28, 2022); Motion for Continuance, Request for Expedited Ruling, and Memorandum in Support (June 29, 2022); Motion for Continuance, Request for Expedited Ruling, and Memorandum in Support (May 20, 2022).

Moreover, the Opposing Parties’ arguments regarding footnotes and the reasonableness of Columbia’s initial proposed terms highlights the fact that extensive bargaining did occur. It also highlights the fact that the Opposing Parties incorrectly focus on individual provisions rather than the negotiating process and the Stipulation as a package. Since the Stipulation is negotiated as a package, and since litigation positions differ from settlement positions, different parties might have different opinions on the reasonableness and importance of the specific terms. The use of footnotes allows the Signatory Parties to state their respective positions on an issue and come to an agreement *as a package* even when they might not agree on the reasonableness or importance of each and every specific term. As Staff noted, it is not “of any consequence that any specific proposal from an Opposing Party, whether or not advanced in negotiations, was not included in the final Stipulation,” because the test “is not determined by the content of the final agreement alone, but also by the process by which it resulted.”²⁷

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 clearly satisfies the first prong of the Commission’s test.

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

The Commission has often reiterated that its focus under the second prong of the three-part test “is not whether there are additional or different mechanisms or provisions that would benefit ratepayers and the public interest, but whether the Stipulation, as a package, benefits ratepayers and the public interest.”²⁸ As such, the Commission has rejected arguments

²⁷ Staff Brief at 6.

²⁸ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 21-887-El-AIR, et al., Opinion and Order at ¶ 137 (Dec. 14, 2022), citing *In re The East Ohio Gas Co. dba*

that focus on whether individual provisions could be “more or less” beneficial to specific classes of customers, considering that the Commission needs to view provisions “within the context of the remaining provisions of the Stipulation.”²⁹

Through record evidence and their briefs, the Signatory Parties highlighted a number of benefits of the Stipulation. These include a lower overall return on equity, rate of return, and revenue requirement;³⁰ limits on deferrals of environmental remediation costs;³¹ limits on recovery of certain costs through Columbia’s Rider IRP and Rider CEP;³² withdrawal of Columbia’s proposals for a new Federal/State Tax Reform Rider, Carbon Reduction Rider, and Federally Mandated Investment Rider, and existing Regulatory Assessment Rider;³³ and a bill-payment assistance program and weatherization program for low-income residential customers.³⁴ Moreover, the Stipulation moves charges closer to the cost of service, by allocating the natural gas distribution base revenue requirement, the Rider IRP revenue requirement, and the Rider CEP revenue requirement based on Columbia’s updated cost-of-service study.³⁵

Dominion Energy Ohio, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73 (Dec. 30, 2020); *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order at ¶ 63 (Apr. 21, 2021).

²⁹ *Id.* (“[W]e agree with the parties that it would be splitting hairs to find OCC’s proposal more or less gradual, especially considering we need to view this allocation within the context of the remaining provisions of the Stipulation”).

³⁰ OMAEG-Kroger Brief at 9; Staff Brief at 8-9; Columbia Brief at 9-10; OCC Brief at 8-9; IEU Brief at 2-3; OEG Brief at 3-4.

³¹ OMAEG-Kroger Brief at 9; Staff Brief at 9; Columbia Brief at 12.

³² OMAEG-Kroger Brief at 9-10; Staff Brief at 9; Columbia Brief at 9-10; OCC Brief at 9-11; IEU Brief at 3; OEG Brief at 4.

³³ OMAEG-Kroger Brief at 10; Staff Brief at 9; OCC Brief at 11.

³⁴ OMAEG-Kroger Brief at 10; Staff Brief at 11-12; Columbia Brief at 11-13; OCC Brief at 15; OEG Brief at 4.

³⁵ OMAEG-Kroger Brief at 9; Columbia Brief at 8; *see also* Joint Ex. 1, Stipulation at 3, 15-18.

Essentially, the Opposing Parties argue that specific terms of the Stipulation could be change to benefit a specific subset of customers from a particular rate class.³⁶ However, as described above, whether or not specific terms could be “more or less” beneficial to specific classes of customers is not the Commission’s analysis for the second prong of the test.³⁷ The briefs filed by the Opposing Parties ignore the benefits of the Stipulation as a package, including to residential customers, and whether the Opposing Parties’ proposed changes would have negative impacts on other classes of customers.

Moreover, it is illogical for the Opposing Parties to argue that the Stipulation is not beneficial to customers because Columbia’s initial proposals were unreasonable. Numerous Signatory Parties, including OMAEG³⁸ and Kroger,³⁹ opposed Columbia’s initial positions. However, a litigation position is distinct from a settlement position, and by agreeing to the Stipulation as a package, the Signatory Parties avoided *any* risk of the originally proposed terms being imposed on customers. The Signatory Parties should not have to prove the reasonableness of terms of Columbia’s Application that they originally opposed in order to demonstrate the reasonableness of the Stipulation.

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

³⁶ ELPC Brief at 8-20; OPAE Brief at 3-17; CUB Brief at 12-23.

³⁷ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case Nos. 21-887-El-AIR, et al., Opinion and Order at ¶ 137 (Dec. 14, 2022), citing *In re The East Ohio Gas Co. dba Dominion Energy Ohio*, Case No. 19-468-GA-ALT, Opinion and Order at ¶ 73 (Dec. 30, 2020); *In re Duke Energy Ohio, Inc.*, Case No. 19-791-GA-ALT, Opinion and Order at ¶ 63 (Apr. 21, 2021).

³⁸ See generally Objection to the Application and Objections to the Staff Report of the Ohio Manufacturers’ Association Energy Group (May 6, 2022).

³⁹ See generally Objection to the Staff Report and Columbia Gas of Ohio’s Application by The Kroger Co. (May 6, 2022).

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.

Finally, the Signatory Parties, through testimony⁴⁰ and post-hearing briefs,⁴¹ demonstrated that 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.⁴² As noted by Staff, “there is no ‘checklist’... that enumerates which ‘regulatory principles or practices’ are important,” and every “stipulation must be evaluated on a case-by-case basis.”⁴³ Overall, the terms of the Stipulation “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.’”⁴⁴

The Opposing Parties again argue that the Stipulation does not pass this prong of the test because they believe that certain provisions of the Stipulation could be changed to promote specific interests for specific subclasses of customers.⁴⁵ These arguments simply ignore the bulk of the

⁴⁰ OCC Ex. 1, Adkins Testimony at 11; Staff Ex. 8, Lipthratt Testimony 7; Columbia Ex. 35, Thompson Testimony at 4-5.

⁴¹ OMAEG-Kroger Brief at 10-11; Staff Brief at 14-15; Columbia Brief at 14-16; OCC Brief at 13-15; IEU Brief at 3; OEG Brief at 5.

⁴² 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. 19-468-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.).

⁴³ Staff Brief at 14.

⁴⁴ OCC Ex. 1, Adkins Testimony at 11.

⁴⁵ See ELPC Brief at 26 (arguing against SFV rate design for low-usage, low-income residential customers compared to higher usage customers in the same class); CUB Ohio Brief at 23 (arguing the Stipulation does not go far enough

Stipulation’s terms and the bulk of Ohio law and Commission precedent. These arguments also ignore the fact that these terms *do* satisfy the principles and practices the Opposing Parties focus on.

For example, the Stipulation does “[p]romote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation” by continuing the WarmChoice Program.⁴⁶ Moreover, the return on equity, rate of return, 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. This satisfies “the state policy to ‘[p]romote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods.’”⁴⁷ The Stipulation also satisfies regulatory principles such as gradualism through yearly rider caps, and cost causation by more closely aligning rates with the cost to serve. Overall, by providing for a reasonable revenue requirement and rate design, the Stipulation “helps ‘[f]acilitate the state’s competitiveness in the global economy’ by keeping rates low and preserving Columbia’s ability to maintain and expand its distribution infrastructure.”⁴⁸

Again, the Opposing Parties improperly focus on whether specific terms could individually be changed to satisfy certain regulatory principles, while ignoring the key question of whether the Stipulation, taken as a package, complies with Ohio law and Commission regulations. The record evidence demonstrates that the Stipulation does comply with Ohio law and Commission

to promote energy conservation); OPAE Brief at 18 (arguing that Columbia should lobby for increased energy conservation provisions).

⁴⁶ R.C. 4929.02(A)(12); Columbia Brief at 15.

⁴⁷ Columbia Brief at 15, *citing* R.C. 4929.02(A)(1).

⁴⁸ *Id.*, *citing* R.C. 4929.02(A)(10).

regulations. As such, the Stipulation passes the third part of the Commission's three-part test and should be adopted.

III. CONCLUSION

The 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 resulting in a Stipulation, which equitably resolves all of the issues in this proceeding, serves the public interest, and complies with important regulatory principles and practices. Arguments by the Opposing Parties improperly focus on individual terms of the Stipulation rather than the Stipulation as a package, and ignore the manifest weight of the record evidence, which demonstrate the reasonableness of the Stipulation. As such, the Commission should reject the Opposing Parties' arguments. OMAEG and Kroger respectfully request that the Commission adopt the Stipulation in its entirety, without modification.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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