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

POST-HEARING REPLY BRIEF OF THE ENVIRONMENTAL LAW & POLICY CENTER

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I. INTRODUCTION

Several parties in this proceeding filed briefs supporting the settlement. However, the parties provide little substantive support for their conclusions that the settlement benefits the public. Similarly, they provide little analysis of the issues the Commission must review to determine whether the Stipulation violates public interest standards or regulatory principles. The Signatory Parties ask the Commission to judge the Stipulation against what the Company initially proposed. However, the Company's initial proposal, including a fixed monthly charge of $80, is not a reasonable benchmark to compare the Stipulation to. At the heart of this case, the Stipulation allows Columbia to raise the fixed monthly charges to $58.01 per month, and that level of monthly charge imposes a huge burden on customers. Moreover, it does this in a package that cancels its non-low-income DSM programs.

Most importantly, the Initial Briefs filed by Columbia and the other Signatories fail to address a key factor in the Commission's policy on straight fixed variable rates (SFV), the connection between fixed charges and the reduced revenues from energy efficiency programs. The rationale Staff and Columbia cite for the Commission's policies on SFV stem from the utilities' concerns back in 2007 and 2008 that running strong efficiency programs will reduce revenues. The Commission implemented SFV rates to offset this concern with a guaranteed source of revenue. Moreover, the parties fail to discuss whether the Commission needs to continue to apply the policy in the same way when Columbia's fixed customer charge starts at $36.15, as compared to $12.16 in 2008.

In evaluating a settlement, the burden of proof remains with the Signatory Parties. R.C. 4909.18; R.C. 4909.19(C); 4929.05(3). As discussed below, they fail to meet that burden.

II. The Commission Should Not Rubber Stamp Prong One

ELPC makes its arguments on this prong in its Initial Brief and will not repeat them here. That said, what stands out in the Signatory Parties' Initial Briefs is the following:

> Aside from the exclusion of a customer class from negotiations, the only instance in which either the Commission or the Ohio Supreme Court has found bargaining not to have been serious was where the resulting agreement was reached because other secret undisclosed side agreements were also executed.

Staff Initial Brief at 6. Staff's assertion means that the Commission has found every single negotiation qualified as "serious bargaining" unless the parties failed to disclose a secret agreement, or they excluded a customer class entirely. Staff's argument does nothing to help make its case.

Staff's substantive argument, "[t]here is no evidence in the record that the process was anything but open, or that the agreement was incomplete by its terms," does not demonstrate "serious bargaining" took place. *Id.* Parties' attendance at meetings does not mean that the utility actually made concessions that it did not plan to make all along, or that it gave up something of value as part of a meaningful bargaining process. If the Commission gives meaning to this prong, it has to consider how the utility determined who and what mattered in the course of these negotiations.

III. The Stipulation As a Package Fails To Deliver Ratepayers Adequate Benefit and is Contrary to the Public Interest

The second prong leaves the Commission significant latitude to determine reasonableness and the public interest. For example, as Staff notes in its brief, Staff generally supports efficiency programs. "While such programs may generally be in the public interest, their elimination does not *ipso facto* render an agreement unreasonable. The well-established criterion, of course, is whether the settlement, *as a package*, benefits ratepayers and the public interest." Staff Initial

Brief at 11. ELPC understands the Commission's approach of assessing the settlement as a package. In our Initial Brief we argued that because the fixed customer charge goes to such extremes, Columbia cancels its non-low-income DSM programs, and the ROE does not correlate to Columbia's risk, the package does not meet the standard. ELPC Initial Brief at 12-13. Likewise, the stipulated rates are unjust and unreasonable. *Id.* at 17, 28-30.

Further, the Company fails to accurately portray the benefits of the Stipulation. In order to properly analyze benefits from the agreement Columbia has to do a real cost-benefit analysis. As the Commission has previously stated:

> because * * * energy savings must be cost-effective, by definition, customers in the aggregate save money when the Companies deliver energy savings opportunities to their customers instead of energy. To the extent the Companies accelerate the delivery of cost-effective energy savings opportunities to their customers, they will also accelerate the net cost savings which customers enjoy. Thus, every kWh of energy that can be displaced through cost-effective energy efficiency programs is a savings, not a cost, to the Companies' customers.

In re Application of FirstEnergy, Case No. 09-1947-EL-POR, et al., Entry on Rehearing (Sep. 7, 2011) at 6. Hence, the Commission has recognized EE programs as "savings" not costs.

Columbia describes the elimination of non-low-income DSM as a benefit by eliminating $119 million in Columbia charges to SGS customers. Columbia Initial Brief at 10-11. However, the $119 million Columbia spends on DSM produces savings. As Columbia Witness Poe's direct testimony states, energy efficiency provides significant customer savings for participants and non-participants. She describes these savings on pages two and three of her direct testimony, and highlights the savings the individual programs have produced on pages four and five, then describes the benefits of the proposed programs on pages six through eight, before concluding:

> Columbia is proposing a portfolio of energy efficiency programs for the period of January 1, 2023, through December 31, 2027, which has a proposed average budget of $30.9 million annually. The overall DSM Portfolio has been determined to be cost-effective, as shown in Appendix A to the Application. The proposed portfolio of energy

> efficiency programs generated a Utility Cost Test ("UCT") score of 2.37 excluding the low income program, WarmChoice, and a UCT score of 1.52 including the WarmChoice program.

Columbia Ex. 19 (Poe Direct Testimony) at 9, ln. 19-26. The Company ignores all of this evidence that the programs produce customer benefits when it argues that eliminating the cost of the programs constitutes a savings. The UCT demonstrates that the programs save customers more than double what they cost.

Moreover, while Columbia eliminates the non-low-income programs it preserves the WarmChoice programs that provide EE savings. The Company touts that "[t]he Stipulation preserves over $70 million in funding ($14,867,329 per year) to continue Columbia's award-winning WarmChoice program…" Columbia Initial Brief at 10. Again, this highlights Columbia's inconsistency between its pre and post settlement positions. In Columbia's Initial Brief it analyzes WarmChoice in terms of savings, and the other award-winning DSM programs in terms of costs. The non-low-income Columbia customers, many of whom may be customers that barely miss qualifying as low-income, should receive the same benefits Ms. Poe describes. Characterizing the elimination of a small monthly charge for EE programs as savings, when those costs actually produce benefits, contradicts Columbia's own facts in the record.

IV. The Stipulation Violates Important Regulatory Principles

ELPC argues this prong extensively in its Initial Brief and will not repeat those arguments here. Columbia's Initial Brief summarily concludes that the Stipulation does not violate any regulatory principles, and then argues that the Stipulation actually promotes regulatory principles. Columbia Initial Brief at 14. ELPC addresses two arguments that stand out from Columbia's Initial Brief. First, Columbia argues, "[t]he continuation of its WarmChoice program and DSM Rider, moreover, '[p]romote[s] and alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation.' R.C. 4929.02(A)(12)." Columbia Initial Brief at 15. But, that law and principle don't just apply for low-income customers. R.C. 4929.02 and R.C. 4905.70 do not distinguish between customer classes or single out low-income customers. In fact, Columbia Witness Thompson, who later supports the Stipulation, points out in her initial testimony that the entire DSM program will help comply with those statutes. Columbia Ex. 4 (Thompson Direct Testimony) at 32, ln. 22-23.

Second, Columbia argues that, "[t]he Stipulation also promotes important regulatory principles by maintaining a straight fixed variable (SFV) rate design for the SGS class." Columbia Initial Brief at 15. Hence, it argues SFV qualifies as an important regulatory principle in of itself. *Id*. It then goes on to explain that "for nearly fifteen years, the Commission has consistently approved SFV rate designs for natural gas utilities." *Id.* It continues with numerous citations to a variety of these cases, including the 2018 *Vectren* rate case, which all included an energy efficiency program. Ohio gas companies have consistently run efficiency programs, and the Commission noted the relationship between the programs and SFV when approving SFV rate design in the first place:

> There is also a societal benefit to engage Columbia to promote conservation. This is best accomplished by removing from rate design the current built-in incentive that Columbia has to increase revenues through increased gas sales. The SFV rate design, which decouples recovery of fixed costs from sales of gas, clearly eliminates any disincentive that Columbia has to promote conservation. OCC presented testimony opposing Columbia's proposed SFV rate design.

In re Columbia Gas, Final Opinion and Order, 08-72-GA-AIR, et al. (Dec. 3, 2008) at 20. The Commission justified the introduction of SFV as a means to offset negative incentives of DSM programs. The Commission should reject Columbia's attempt to turn the fixed customer charge increase into a positive regulatory principle.

V. The Commission Should Consider Additional Issues in Its Analysis

A. The Commission Should Not Use the Company's Initial Proposal as a Benchmark To Assess the Stipulation

Throughout their Initial Briefs, Signatory Parties argue for a false standard against which the Commission should judge the reasonableness of the Stipulation. Each brief compares what parties agreed to in the Stipulation to what the Company initially proposed. Columbia Initial Brief at 9; Staff Initial Brief at 8-10; OCC Initial Brief at 7-13. However, as discussed in detail in ELPC's Initial Brief, the Signatories never demonstrate that the Company's initial $80 fixed customer charge proposal met any reasonableness test that would qualify it as a benchmark. As ELPC Witness Rabago argued, "[i]f a utility asks for more revenue than it really needs and settles for less than that amount, that fact does not constitute 'evidence'." ELPC Ex. 1 (Rabago Direct Testimony) at 15, ln. 12-14. OCC Witness Fortney specifically states, "[i]f the application was approved as filed, a consumer taking service on the SGS rate class would be paying in excess of $80.00/month, even if the consumer doesn't use a molecule of gas. This is not just and reasonable." OCC Ex. 3 (Fortney Direct Testimony) at 8, ln. 6-8. The Commission should reject this approach to assessing the validity of a settlement agreement. It encourages Ohio's utilities to propose ever more extreme starting position, to demonstrate the reasonableness of the ensuing bargain.

B. Staff Ignores the Connection Between SFV and Efficiency

Staff's brief, like its testimony, continues to ignore both the magnitude of the fixed charge increase and the Commission's conscious decision to connect DSM programs to the introduction of SFV rates. They admit they did no analysis of the current proposed fixed charge increase. "Columbia did not propose any modification of the SFV methodology for SGS customers. Consequently, Staff followed the Commission's approval of Columbia's use of SFV in its prior rate case." Staff Initial Brief at 16. That past history from 2008 does not justify an increase to $58 with the elimination of the efficiency programs.

C. OCC Fails to Explain Its Radical Shift in Position

OCC also supports the fixed charge increase to $58. But the change in OCC's position on SFV between its initial testimony in this case and its Stipulation testimony and brief, as well as its position in other recent rate cases, raises questions about the weight the Commission should give it. OCC argues that, "[t]he base distribution charges in the Settlement still benefit consumers because they are still lower than what Columbia initially proposed." OCC Initial Brief at 9. But this goes back to the point ELPC has repeatedly emphasized, and what OCC initially argued, that what Columbia proposed was never a reasonable point for comparison.

The Commission's recent Duke Rate Case Order puts OCC's position on the fixed customer charge issue in perspective. *In re Duke Energy Ohio,* Case No. 21-887-EL-AIR, et al., Opinion and Order (Dec. 14, 2022) at 51. Two things stand out in this case. First, the Duke case provides context for the magnitude of Columbia's proposed increase. Duke requested a fixed charge increase from $6.00 to $8.00 compared to Columbia's request to go from $37 to $58. *Id.* at 54-56. Second, OCC strongly opposes that small increase, noting that the $2 increase will negatively impact low-use consumers as well as function as a disincentive for conservation. "OCC argues that the increase in the fixed customer charge from its current charge of $6.00 to $8.00 represents an increase of 33.33 percent and will negatively impact low-use consumers as well as functions as a disincentive for conservation, all of which is not a benefit to consumers and is against the public interest." *Id.* at 51.

OCC is entitled to change its position in order to reach a deal with Columbia, but it still has to demonstrate how that deal complies with law. OCC should have used its Initial Brief to explain its new position if it wanted the Commission to give its position weight.

VI. CONCLUSION

The Signatory Parties have the burden of proof to demonstrate that Columbia is entitled to a rate increase, and that the subsequent rates are just and reasonable. R.C. 4909.18; R.C. 4909.19(C); 4929.05(3). The Company failed to carry this burden in its testimony or in its Initial Brief. They fail to justify increasing the fixed charge to $58.01, and they fail to justify the elimination of the non-low-income DSM when they focus on the costs and ignore the benefits. They also fail to even address the Commission's long-standing connection between the DSM programs and the move towards SFV.

In terms of basic reasonableness, the parties' failure to justify the magnitude of the fixed customer charge increase to $58.01 in terms of promoting efficiency and benefiting ratepayers stands out. Back in 2008 the Commission allowed Columbia to increase the fixed charge to $17.81, which is less than 1/3 of $58. *In re Columbia Gas*, Final Opinion and Order, 08-72-GA-AIR, et al. (Dec. 3, 2008) at 21. At some point, Columbia needs to analyze the effects of that charge on its customers. The public comments indicate that customers strongly oppose this increase. CUB of Ohio Initial Brief at 21-23.

In the final analysis, the Signatory Parties fail to meet their burden of proof. As we argue in our Initial Brief, ELPC continues to urge the Commission to reject the Stipulation, or require Columbia to accept a lower fixed customer charge and reinstate its DSM program as proposed in its Application.

Dated December 23, 2022 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Post-Hearing Reply Brief* submitted on behalf of the Environmental Law & Policy Center was served by electronic mail upon the following Parties of Record on December 23, 2022.

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