BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbia Gas 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.	)))	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 CITIZENS' UTILITY BOARD OF OHIO

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I. INTRODUCTION

On December 9, 2022, in the above-captioned cases, parties in this proceeding filed initial briefs addressing the proposed Joint Stipulation and Recommendation ("Stipulation") that Signatory Parties, including Columbia Gas of Ohio, Inc. ("Columbia" or "Company"), filed to resolve this rate case. Citizens Utility Board of Ohio ("CUB Ohio") filed a brief in opposition to the Stipulation, urging the Public Utilities Commission of Ohio ("PUCO" or "Commission") to reject the Stipulation as filed, and instead modify the Stipulation based on recommendations to protect residential consumers and the public. Fellow opposing parties, Environmental Law & Policy Center ("ELPC") and Ohio Partners for Affordable Energy ("OPAE") filed briefs in opposition urging similar objections to the Stipulation. Signatory Parties also filed briefs looking to support their agreement based on mere conclusory statements feebly masked as evidence. In this reply brief, CUB Ohio responds to the main arguments that those Signatory Parties raise.

As has been pointed out in a number of briefs in this and many other proceedings, the burden of proof is on the applicant and on a Stipulation's Signatory Parties. In a distribution rate case, "the burden of proof to show that the increased rates or charges are just and reasonable shall be on the public utility." R.C. 4909.18; R.C. 4909.19(C); 4929.05(3); see also Ohio Edison Co. v. Pub. Util. Comm., 63 Ohio St.3d 555, 558 (1992) ("Our holding is consistent with the provision of R.C. 4909.18 which places the burden upon the applicant to prove all issues raised in its application."). The utility continues to bear the burden after a settlement agreement has been reached. In re Ohio Energy Company, Case No. 20-585- EL-AIR, et al., Opinion and Order (Nov. 17, 2021) at ¶ 190; In re Vectren Energy Delivery of Ohio, 18-298-GA-AIR, et al., Opinion & Order (Aug. 28, 2019) at ¶47. The Signatory Parties, here, responded with not a scrap of evidence, but a mere gesture to the Stipulation's terms and a scoff to the Commission's three part test.

II. ARGUMENT

A. The Signatory Parties Have Failed to Meet Their Burden of Proof Under the Three-Prong Test.

1. The Signatory Parties erroneously rely on Columbia's outrageous initial revenue proposal as the basis for the Stipulation's reasonableness

As CUB Ohio pointed out in our initial brief, it has been the Commission's position that the Commission may view the differences between an application and a filed stipulation as evidence of the seriousness of negotiations and bargaining between the parties. See CUB Br. at 7 citing *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates, Case No. 20-0585-EL-AIR et al, Opinion and Order (November 17, 2021) at 40 (citing* FirstEnergy 2014 ESP Case, Opinion and Order (Mar. 31, 2016) at 44. CUB also noted that such a method of review is problematic and creates a perverse incentive for a utility to apply for a revenue requirement, return on equity, and/or high fixed charge (all present in the Application) that it knows the Commission would not approve as unreasonable, and is unnecessary to provide reliable service and provide reasonable profit, knowing that any movement less than that will automatically pass the Commission's first test. CUB Br. at 8.

Putting the issue at hand a different way, and quoting its expert Witness Karl Rábago, fellow Opposing Party ELPC points out that "[s]erious bargaining is not required to move a utility from an outrageous position…" ELPC Br. at 4 (citing ELPC Ex. 1 at 9). Nevertheless, OCC concludes that because Columbia's agreed upon revenue requirement is $153.2 million less than the $221.4 million they proposed, and residential customers would pay $138.181 million less than proposed, that that gap is *prima facie* evidence of serious bargaining. OCC Br. At 2. CUB Ohio, as well as other parties opposed to the Stipulation, however, contend that this gap is not evidence of anything other than a negotiation *tactic* and certainly not a conclusion that the Stipulation is

reasonable. ELPC states that using the Company's initial proposal as the measuring stick for serious bargaining is flawed when the Company's initial proposal has not been vetted for reasonableness in the first place. ELPC Br. at 4. Therefore, we reiterate our call from our initial brief, and further join ELPC in urging the Commission to abandon this improper approach to analyzing the first prong because the Utility's initial proposal should not be the baseline against which the Commission measures the reasonableness of the resulting stipulation. *See* CUB Br. at 9; *See also* ELPC Br. at 11.

Yet, even with such a problematic stance presumably because of the pride each felt in their serious bargaining prowess, OCC, Staff, and the Company continue to use this faulty reasoning based on the gap between what was proposed and what was agreed upon to support the other parts of the three-part test. *See* OCC Br. at 8-10. Commission staff, too, attempts to expand the use of the gap between proposed and stipulated provisions to support all three of the prongs of the test.

Specifically, OCC states that the base distribution charges in "the Settlement still benefit consumers because they are still lower than what Columbia initially proposed." *Id.* at 9. What OCC does not acknowledge, but is dispositive, is that the proposed rates and costs were never borne of the customers and may or may not have been approved by the Commission. The test for benefit is not based on what customers get or are saved based on the utility's greedy initial bid, but what customers and the public get and save without the Stipulation.

Commission Staff, preempting ELPC's argument contends that the difference in the original compared with the Stipulation is not outrageous because the Company gave up a number of Riders and Programs. *See* Staff Br. at 8-9. also makes the claim in support of this Stipulation's benefit to the public and ratepayers that "stipulations offer efficiencies when compared to fully

litigated cases." Staff Br. at 8. While speedy stipulations benefit the utility, interveners with attorneys' fees, and the Commission staff, customers and the public do not care whether a case is determined through litigation or settlement. Of the 715-plus public comments on this docket, not a single one started off with, "I hope the parties do not litigate this case, because that would be more efficient." Those public comments spoke about frustration on higher and higher fixed costs. The issue with efficiency was the need to see more energy efficient programs from their providers. None of those actual concerns of the public were heard in this "efficient" stipulation. Customers and the public want a fair rate not negotiation games.

Not surprisingly, the Company led the effort to extoll the fact that its Stipulation benefits the public because *it* agreed on a discount -- not of its current costs to customers, but to *its* high *proposed* costs. Nowhere is the Company saying that due to the $153 million decrease in the Stipulated revenue requirement means that services will be lost, reliability is greatly sacrificed, or that Company staff will be laid off. Why? Because the original proposal and the need for the $221 million was a façade; or as OPAE put it, 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. OPAE Br. at 16.

To the third prong of the Commission's test, OCC uses the gap between what was proposed and what was stipulated to be the lynchpin of all three prongs of the three-part Stipulation reasonableness test. OCC states that: "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." OCC Br. at 14. While that number is very big, their logic holds no water. There is no regulatory practice or principle that says approved rates should be based on whether they are less than what the utility asked for in an application. There are regulatory practices and principles that, however, that are negatively implicated with this high SFV rate. As ELPC points out the Commission must find utility rates to be just and reasonable rates. R.C. 4909.18; R.C. 4909.19(C); R.C. 4929.05(3). ELPC Br. 8. ELPC, following Witness Rabago's testimony, concludes that the Stipulation is unduly discriminatory, it improperly apportions costs, it fails to promote efficient use of energy or the system, and it overcompensates Columbia with an excessive ROE. *Id.* at 20.

Still not to be outdone using the Company's negotiation parlor trick as a replacement for evidence, OCC also argues that the *third* prong is passed because all consumers within their respective rate classes pay the same rates for the same service, and that the Settlement protects residential and low-income consumers consistent with policy set forth in R.C. 4928.02(L) by providing bill payment assistance. OCC Br. at 15. The OCC supported their argument that the Stipulation did not violate any consistent with Ohio's regulatory principles and practices by stating that "the rates charged to consumers as a result of the Settlement package are just and reasonable" and "the Settlement is nondiscriminatory." *See* OCC Br. at 13-15.

This is interesting considering OCC's statements and position on not the amounts, but on the validity of the SFV *itself*. ELPC quotes in its brief OCC Witness Fortney, the former Chief of the Rates and Tariffs Division, who rejected any increase in the fixed monthly customer charge. ELPC Br. at 7 (citing OCC Ex. 3 at 11). It is this very requirement for all customers to pay the

same rate that is unreasonable and discriminatory. OCC Witness Fortney further describes the unfair nature of the fixed charge, stating "I still don't understand why a consumer who lives in a 5,000 square foot house, 27 heats with gas, has a gas water heater, and a multitude of gas appliances should pay the same distribution bill as a consumer living in a 500 square foot apartment with gas heat." OCC Ex. 3 at 16.

Thus, the fatal flaw of the SFV rate structure is that it, contrary to OCC's recent current position to support this settlement, discriminates against low use customers and greatly benefits high use customers. As OPAE points out in its brief, 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. Still the Signatory Parties laud putting this high charge on low use consumers to presumably benefit high users, as a good regulatory practice. 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. OPAE at 5. The further impacts of the SFV on Columbia's low-income customers was highlighted earlier in the proceeding by OCC Witness Colton. Witness Colton emphasized that "[l]ow-income consumers use less gas, period." OCC Ex. 2 at 8, ln. 9. And that "as usage decrease, the percentage bill increase proposed by Columbia increases." Id. at 7, ln. 16-17. Colton ultimately concluded that "[b]y dramatically increasing the portion of the Columbia bill that is unavoidable as a fixed monthly charge, Columbia is impeding, if not outright preventing, the ability of its low-income consumers to reduce their bills to more affordable levels." Id. at 41.

Furthermore, the high fixed charge is just for the *privilege* of being connected to Columbia's system. As pointed out by OPAE and according to Columbia Witness Thompson, "the only way a customer could avoid these charges is to cancel their service with Columbia," and "if customers wished to reconnect later, they would be subject to a $52 fee." OPAE at 4. When the paying your bill, even with a bill payment assistance plan that, as OPAE states benefits the Company as much or more than the customers, the decision to shut off service is you best option, you cannot with a straight face call that good regulatory practice.

2. The Removal of the Non-Low Income DSM Programs is Not a Benefit to Consumers

To support the contention that the Stipulation is beneficial to ratepayers and the public, however, OCC points to the removal of the non-low-income DSM program as a benefit. OCC suggests that the removal of the program will save customers $119 million of Columbia charges and shared savings. OCC Br. at 12. However, the OCC fails to juxtapose the investments in DSM with the benefits, which include energy savings of over 113.1 BcF of natural gas over the life of the measures and a total annual customer cost savings of approximately $780 million. *See* CUB Br. at 16. Determining the benefits to ratepayers is not a simple exercise of arithmetic in a vacuum. When considering the second prong of the test, it is not just determining the money that will or will not be charged to customers, but what they get back in return. Columbia's 40 years of DSM Programs show that benefit side of the cost benefit analysis. As CUB Ohio Witness Bullock stated, and in CUB's initial brief, thee DSM programs "help tens of thousands of customers save millions of dollars, improve health and safety, and the common public benefit of reduced emissions, carbon emissions." CUB Br. at 16. And thus, the Commission must not turn its bac on these benefits that far outweigh the cost cited by OCC.

Staff, too, weighed in on DSM Programs in connection with prong two. In its brief Staff acknowledges that they are generally supportive of energy efficiency and DSM programs. They follow that with the statement, however, that "while such programs may generally be in the public interest, their elimination does not *ipso facto* render an agreement unreasonable." Staff Br. at 11. While generally we may agree that the removal of an efficiency program may not in and of itself result in an unreasonable agreement, CUB Ohio, respectfully, begs to differ with Staff as it relates to this Stipulation. These are not brand-new programs that do not have a track record of success, or no data to determine their cost-effectiveness. Customers, at a time when they need more control over usage and spending, will be losing programs they have depended. This detriment is doubled when you add the fact that there are ever increasing fixed charges. As ELPC explained, as viewed as a package, "the reduction in rate payer and public interest benefits from the settlements means the proposal strikes a double blow against customers and the public interest." ELPC Br. at 15 (citing ELPC Ex. 1 at 24). Thus, the removal of these programs not only are a loss to customer, but they exacerbate the larger detriments to residential customers – the higher SFV rate.

A potential saving grace in the Stipulation, as it related to this "double blow against consumers" was the maintenance of at least the low-income DSM investments. In fact, Signatory Parties claim that a benefit of the Stipulation is maintaining the low-income DSM program, WarmChoice. *See* OCC Br. at 10; *See also* Staff Br. at 11-12; *See also* Columbia Br. at 10. However, the low-income advocate, OPAE, shines a light on the detriments to low income customers from the Stipulation's treatment of WarmChoice and how it would restrict the ability to provide sufficient service to low-income Ohioans. Specifically, the Stipulation would:

- 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% - thus diluting the budget;
- raid 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; and
- 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. *See* OPAE Br. at 8.

Moreover, OPAE Witness Peoples identifies how the amendments made to the WarmChoice program that betrays the 40 – year success story. First, the Stipulation maintains the 2022 budget levels which Witness Peoples suggests will negatively impact the low-income customers it is meant to otherwise benefit. Weatherization is not immune from increased costs for both materials and labor. In fact, the 2022 budget levels were set in 2016 in the prior DSM case, without predicting or otherwise accounting for recent soaring inflation. Therefore, without account for inflation in the WarmChoice budget, low-income customers will receive less with the WarmChoice program with a reduction in the types of weatherization that can be provided, the number of customers that can be served, and the number of skilled employees those doing the weatherization can keep on staff. OPAE Ex. 2 at 3. The real-world implications to these amendments to the WarmChoice program are far from beneficial compared to the applied-for plan.

The Stipulation's removal of the non-low-income DSM program, and its backward-looking amendments to the WarmChoice program – all mixed with the never ending upward climb of fixed charges -- are patent examples of how this Stipulation is not beneficial to customers and the public. Thus, we urge the Commission to modify the Stipulation's treatment of DSM.

B. The Commission must modify the Stipulation for the ratepayer and public interest

As CUB Ohio outlined in its initial brief, the Commission must exercise its authority to modify this Stipulation to benefit the public interest. Therefore, CUB Ohio reiterates and incorporates, here, its recommendations, including:

- reinstituting the DSM Program for its non-low-income customers;
- rejecting the Stipulation's "gag order" agreement that Columbia may not support future legislation or regulatory initiatives that promote DSM and energy efficiency as against good public policy.
- reconsidering its policy goal of requiring SFV distribution rates for residential customers and that the revenue requirement should be recovered through partially a fixed charge and partially through volumetric charge; and
- conducting a targeted inquiry into the implications (benefits and harms) of higher and higher fixed prices on residential customers cuts along economic, social, racial, and urban/suburban/rural lines is reasonable to fully understand the implications of the fixed charges.

IV. CONCLUSION

For the reasons set forth above and in CUB Ohio's Initial Post-Hearing Brief, the Commission should conclude that the Stipulation fails the PUCO's three-part test for evaluating Stipulations. The Signatory Parties' rationale for the reasonableness of their Stipulation is akin to the shopkeeper doubling its prices, and giving out a half price coupon, and the customer thinking they got a great deal. That is not evidence of serious bargaining. That is not evidence of a public benefit. That is not what makes good regulatory practice.

Therefore, to protect consumers, the PUCO should reject the Stipulation and modify it by adopting the recommendations discussed in this brief.

CERTIFICATE OF SERVICE

I hereby certify that a copy of this filing will be electronically served today, December 23, 2022, via the Public Utility Commission of Ohio's e-filing system on all parties referenced in the service list of the docket.

/s/ Trent Dougherty
Trent Dougherty

Summary: Brief Post Hearing Reply Brief of Citizens Utility Board of Ohio electronically filed by Mr. Trent A. Dougherty on behalf of Citizens' Utility Board of Ohio