

**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. )

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**REPLY BRIEF  
BY  
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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**I. INTRODUCTION**

A diverse group of parties, including the Office of the Ohio Consumers' Counsel ("OCC"), the Staff of the Public Utilities Commission of Ohio ("PUCO"), Columbia Gas, and others, reached a settlement in several ratemaking cases after negotiating for more than five months. The Settlement was reached after case preparation (which included the opportunity for extensive discovery of Columbia's case) had been ongoing for more than a year.

Three environmental groups oppose the Settlement. They are Environmental Law and Policy Center (“ELPC”), Ohio Partners for Affordable Energy (“OPAE”) and the Citizens Utility Board of Ohio (“CUB Ohio”) (collectively “Environmental Groups”). They especially oppose the Settlement’s rate design of high fixed charges – *an issue on which OCC and NOPEC did not take a position and reserved our rights for the future.*<sup>1</sup> The Environmental Groups seem unwilling or unable to recognize the reality that OCC and others have been unable generally to make progress against high fixed charges in recent years at the PUCO.

But the Environmental Groups largely conceded to the revenue increases in the Settlement that are a key driver of higher fixed charges. Indeed, ELPC expressly stated in its brief that it “does not question the amount of the rate increase....”<sup>2</sup> Similarly, CUB Ohio and OPAE seem not to object with a specific proposal in their briefs to reduce the amount of the rate increase. Apparently, despite their complaining about comparisons between the Settlement and Columbia’s original proposal, the Environmental Groups could not improve on the Settlement’s hefty cuts in Columbia’s original, proposed revenue increases.

Further, for all their opposition to high fixed charges, the Environmental Groups seem not to be making an actual proposal. It is clear that they favor volumetric charges instead of fixed charges for billing consumers. It’s not clear what split (if any) between fixed and volumetric charges they are recommending that the PUCO adopt. Maybe in

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<sup>1</sup> Joint Ex. 1 (Settlement) at 3, note 3.

<sup>2</sup> ELPC Brief at 1.

their *environmental advocacy* they are seeking the elimination of fixed charges altogether, to be replaced by volumetric charges.

Moreover, the Environmental Groups write as if the Settlement would not have moving parts if a term such as fixed charges were changed to volumetric charges. For example, if the Settlement had been changed from fixed charges to volumetric charges, would Columbia then have sought a costly decoupling charge for all consumers to pay? Maybe that's not an issue for the Environmental Groups as environmental groups tend to support making consumers pay decoupling charges as a way to justify utility energy efficiency programs. But it would have been an issue for consumer advocates like OCC.

One thing the Environmental Groups are seeking to increase is Columbia consumers' gas bills to subsidize nearly *\$120 million*<sup>3</sup> over five years for demand-side management ("DSM"). Their proposal is to have Columbia use *other people's money* (*consumers' money*) to discount or buy for a subset of consumers the DSM products and services that mostly can be bought online or at a store in the competitive market. And the Environmental Groups apparently would make consumers pay more profits to Columbia (the controversial shared savings for energy efficiency) that the Settlement eliminated<sup>4</sup> as a consumer protection.

If this seems like déjà vu, it is. The PUCO rejected environmental opposition to a recent rate case settlement achieved by AEP, OCC, the PUCO Staff, and others. There, the utility similarly withdrew its proposed energy efficiency program that would have been funded (subsidized) by all consumers. The PUCO wrote: "On the other hand, the

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<sup>3</sup> OCC Ex. 1 (Adkins Supplemental) at 10.

<sup>4</sup> OCC Ex. 1 (Adkins Supplemental) at 10.

Commission may view the differences between an application and a filed stipulation as evidence of the seriousness of negotiations and bargaining between the parties.”<sup>5</sup> In its brief ELPC<sup>6</sup> tried to distinguish the AEP-related precedent, but the precedent is on point.

One of the Environmental Groups (CUB Ohio) even opposes the agreement term that prevents Columbia from undercutting the Settlement by seeking legislation to require demand-side management.<sup>7</sup> But that agreement is an integral part of ensuring good faith and the integrity of the negotiations to protect the benefit of the bargain for interests such as OCC and the consumers it represents.

The Settlement OCC negotiated with others does contain for low-income consumers a sizeable funding (subsidy) of demand-side management (weatherization) programs, at consumers’ expense. The subsidy to help Ohioans in need would be significant at *more than \$70 million over five years*.

But, even here, OPAE (which is an association of weatherization providers, not consumers) expresses dissatisfaction and not gratitude with the Settlement’s considerable consumer funding of weatherization. OPAE wants more weatherization funding. Well, OCC’s preference is for relatively more money to be dedicated to consumers for bill payment assistance, where more at-risk Ohioans can be protected than the costly per-consumer funding of weatherization. But OCC compromised to reach a Settlement.

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<sup>5</sup> *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, *et al.*, Opinion and Order (Nov. 17, 2021), at ¶ 170.

<sup>6</sup> ELPC Brief at 23-24.

<sup>7</sup> CUB Ohio Brief at 28-30.

OPAE even objects to the Settlement’s guardrails against multiple benefits for the same property owner. That term is important for avoiding enrichment of individual property owners at public expense. It is the public’s (consumers’) money, let’s remember.

The Settlement provides numerous benefits to consumers including a significantly reduced revenue increase for Columbia in its rate case, limits on how much Columbia can charge consumers for its massive pipeline replacement program and for other capital expenditures in its rider cases, and the elimination of other riders altogether. These benefits are important given the numerous public comments filed in this case requesting rate relief and consumer testimony at local hearings.<sup>8</sup>

In these times of soaring energy prices and inflation, the Settlement helps protect vulnerable low-income consumers in two ways. As stated, one way is the agreement for all consumers to fund (subsidize) over \$70 million in weatherization services for low-income consumers. The other way is to provide \$3.5 million for bill-payment assistance, mostly at the expense of Columbia’s shareholders. That’s up to \$450 per year for at-risk Ohioans and their families “to avoid disconnection or to get service reconnected.”<sup>9</sup>

The Environmental Groups’ arguments should be rejected. The evidence shows that the Settlement is the product of serious bargaining among diverse and knowledgeable parties. The Settlement as a package benefits consumers and the public interest and does not violate regulatory principles. The PUCO should approve the Settlement without modification.

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<sup>8</sup> See e.g. Public Comment of Stacie Shulters (Oct. 17, 2022) (opposing Columbia’s initially proposed rate increase); Public Comment of Angela Sparks (Oct. 14, 2022) (same); Public Comment of Lisa Wentz (June 22, 2022) (same); Public Comment of Albert Gray (June 22, 2022) (same); and Public Comment of Matthew Lorenz (June 16, 2022).

<sup>9</sup> OCC Ex. 1 (Adkins Supplemental) at 10.



## II. ARGUMENT

### A. **The PUCO should reject ELPC's and CUB Ohio's claims that the Settlement was not the product of serious bargaining. Evidence demonstrates that knowledgeable and diverse parties worked for months to reach a comprehensive settlement package.**

ELPC and CUB Ohio claim that the Settlement is not the product of serious bargaining as required by the first prong of the PUCO's three-part settlement test.<sup>10</sup>

Those arguments lack merit. OPAE does not argue that the Settlement violates prong one.

ELPC claims that Environmental Groups were "excluded" from negotiations regarding DSM and the monthly fixed charges and that their positions on these topics were "ignored."<sup>11</sup> But ELPC's claim is not supported by evidence.

Indeed, the evidence adduced at hearing and through testimony shows that parties worked on a weekly basis for over five months to reach a comprehensive settlement package.<sup>12</sup> All parties had the opportunity to participate in settlement negotiations. Drafts of the Settlement, including the provisions regarding demand-side management and monthly fixed charges, were circulated among the parties for review.<sup>13</sup> The Settlement involved serious bargaining among diverse and knowledgeable parties. The PUCO should summarily reject claims that the Settlement violates prong one.

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<sup>10</sup> CUB Ohio Brief at 7-12; ELPC Brief at 6-12.

<sup>11</sup> ELPC Brief at 4, 33-34.

<sup>12</sup> Tr. Vol. I at 76-77.

<sup>13</sup> Tr. Vol. I at 79-80.

**1. ELPC and CUB Ohio assert that Columbia proposed an unreasonable rate increase in the application to begin with, and thus, compromises in the Settlement package are not the result of serious bargaining. These arguments should be rejected.**

ELPC witness Mr. Rábago testified that there was no serious bargaining because, in his view, Columbia's proposed rate increase in the application was "outrageous" to begin with.<sup>14</sup> Notably, ELPC and CUB Ohio did not file litigation testimony prior to the Settlement to express their claimed outrage about Columbia's original proposal. Their argument should be rejected.

Mr. Rábago did not testify in support of ELPC's claim that Environmental Groups were "excluded" from the settlement negotiations. Nor does Mr. Rábago dispute that parties negotiated for over five months. Nothing in Mr. Rábago's testimony indicates that he even participated in or was aware of the settlement negotiations.

To support claims that Columbia's application was unreasonable to begin with, ELPC witness Rábago used the testimonies of OCC witnesses Fortney, Colton, and Zhu. But that testimony was regarding OCC's *litigation* positions before the Settlement.<sup>15</sup> ELPC did not even have its own litigation testimony pre-settlement.

As the Environmental Groups note, it is well known that OCC is on record as opposing high fixed charges. OCC has been a leader in opposing high fixed charges. That OCC leadership for consumer protection included OCC's several appeals of fixed charges to the Ohio Supreme Court, where unfortunately the Court did not overturn the

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<sup>14</sup> ELPC Brief at 6-7; CUB Ohio Brief at 7-9.

<sup>15</sup> See *e.g.* ELPC Brief at 7; ELPC Ex. 1 (Rábago Supplemental Direct) at 11-12, 15.

PUCO's fixed-charge orders.<sup>16</sup> The Environmental Groups seem unwilling or unable to recognize the reality that OCC and others have been unable generally to make progress against high fixed charges in recent years at the PUCO. Contrary to the Environmental Groups' simplistic characterizations of negotiation versus litigation, OCC makes decisions in settlement negotiations for consumer protections against a backdrop of, among other things, PUCO and court precedent on issues. That's what happened in this case.

ELPC argues that "[u]sing [Columbia's] initial proposal as the measuring stick for serious bargaining is flawed when [Columbia's] initial proposal has not been vetted for reasonableness in the first place."<sup>17</sup> Maybe ELPC did not use the year or more of the case timeline for discovery and other case preparation. But Columbia's proposal was being vetted by some parties including OCC.

And ELPC ignores the process in rate cases where the PUCO Staff investigates the utility's application and issues its Staff Report. Under R.C. 4909.19, parties then file objections to the Staff Report and testimony in support of objections. From there, parties work toward compromise and settlement, along with pursuing the parallel litigation track. This was the process followed in this case to achieve a mutually beneficial outcome that benefited consumers. OCC had 39 objections to the PUCO Staff's Report of Investigation. ELPC had a grand total of merely *two objections* to the PUCO's Staff Report.<sup>18</sup>

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<sup>16</sup> See *Ohio Consumers' Counsel v. PUC of Ohio*, 125 Ohio St.3d 57, 2010-Ohio-134; and *Ohio Consumers' Counsel v. PUC of Ohio*, 127 Ohio St.3d 524, 2010-Ohio-6239.

<sup>17</sup> ELPC Brief at 12.

<sup>18</sup> See Objections to the PUCO Staff Report of Investigation File by the Environmental Law and Policy Center (May 6, 2022).

OCC's pre-settlement litigation testimony does not demonstrate that the Settlement fails any part of the PUCO's three-part test. It demonstrates the exact opposite. Given the myriad complex issues in this case, parties worked diligently for over five months to reach a settlement package to avoid the uncertainty of litigation. OCC's litigation testimony, filed prior to the testimony of OCC witness Kerry Adkins in support of the Settlement, reflects that serious bargaining occurred and that the settlement was truly a compromise by diverse interests.

**2. Claims by ELPC and CUB Ohio that footnotes in the Settlement package demonstrate a lack of serious bargaining should be rejected.**

ELPC and CUB Ohio claim that the Settlement's footnotes show that there was no serious bargaining.<sup>19</sup> The PUCO should reject those claims. Where settlements involve numerous complex issues and diverse stakeholders, parties sometimes "footnote out" of certain terms that may not apply to them.<sup>20</sup> Parties may also footnote out of provisions to indicate the limits of their compromise.<sup>21</sup>

CUB Ohio focuses on language agreed to in Section II.A.1 and footnote 3 of the Settlement.<sup>22</sup> In Section II.A.1, parties agreed that residential and small business consumers should be allocated "no more than \$64,507,241" of Columbia's total base rate increase.<sup>23</sup> The provision further protects OCC and NOPEC by our not taking a position on the fixed charges and by confirming rights to argue "against the straight fixed variable

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<sup>19</sup> CUB Ohio Brief at 10-12.

<sup>20</sup> See e.g. Joint Ex. 1 (Settlement) at note 15 (OMAEG and Kroger footnoting out of the DSM provisions because the DSM Rider is paid for only by residential and small business customers).

<sup>21</sup> See e.g. Joint Ex. 1 (Settlement) at note 10 (OMAEG and Kroger "do not support MGP cost recovery, but agree not to oppose it as part of the Stipulation package.").

<sup>22</sup> CUB Ohio Brief at 10-11.

<sup>23</sup> Joint Ex. 1 (Settlement) at 3.

rate design and the use of fixed charges in any future proceeding.”<sup>24</sup> As an organization that claims to advocate for the interests of residential and small business consumers,<sup>25</sup> it is questionable why CUB Ohio would challenge this language.

ELPC and CUB Ohio also take issue with footnote 3 of the Settlement, which states the following:

OCC and NOPEC are not taking a position with regard to the use of fixed charges and the lack of volumetric charges for the Small General Service class base rates and rider rates. Also, nothing in this Stipulation precludes OCC, NOPEC, and other Signatory Parties from taking any position on inter-class allocations in Columbia’s next base rate case.<sup>26</sup>

According to ELPC witness Rábago, this footnote somehow demonstrates that OCC and NOPEC “were not engaged on the full range of issues during the course of settlement negotiations.”<sup>27</sup> That argument is baseless and should be rejected for two reasons.

First, there is no basis for Mr. Rábago’s unsubstantiated testimony regarding OCC’s engagement in settlement negotiations. As noted, there is no evidence that Mr. Rábago even participated in the settlement negotiations or interacted in any way with OCC throughout this proceeding. OCC witness Adkins, by contrast, testified that he *was* a part of the settlement negotiations on behalf of OCC for over five months and that the Settlement is the result of serious bargaining.<sup>28</sup>

Second, the settlement process (as ELPC and CUB Ohio should know) involves give and take. It is axiomatic that settling parties compromise their litigation positions to

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<sup>24</sup> *Id.*

<sup>25</sup> CUB Ohio Brief at 28.

<sup>26</sup> Joint Ex. 1 (Settlement) at 3, note 3.

<sup>27</sup> ELPC Ex. 1 (Rábago Supplemental Direct) at 10, CUB Ohio Brief at 11.

<sup>28</sup> OCC Ex. 1 (Adkins Supplemental) at 5.

reach an overall settlement package. No party (usually) gets everything they want.

Footnote 3 reflects that reality and provides further assurance to preserve OCC's and NOPEC's rights regarding fixed charges in future proceedings. It is not an indicator of a lack of serious bargaining as ELPC and CUB Ohio claim; it reflects serious bargaining as a way to compromise.

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

OCC witness Adkins, Columbia witness Thompson, and PUCO Staff witness Lipthrott identified the many ways in which the Settlement benefits consumers and the public interest, as a package.<sup>29</sup> Environmental Groups argue that the PUCO should ignore these benefits to consumers and reject the Settlement.<sup>30</sup> Environmental Groups' arguments should be rejected instead.

**1. The Settlement package benefits consumers by reducing the charges consumers will pay as compared to the \$221.4 million rate increase Columbia initially requested. The PUCO should reject Environmental Groups' arguments to the contrary.**

OCC witness Adkins testified 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 DSM charges.<sup>31</sup> The Environmental Groups ask the PUCO to ignore this evidence.<sup>32</sup> Environmental Groups claim that reductions in the Settlement are *not* benefits because there is no evidence that Columbia's initially proposed rate increase

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<sup>29</sup> OCC Ex. 1 (Adkins Supplemental) at 6-10; PUCO Staff Ex. 8 (Lipthrott Settlement Testimony) at 4-7; Columbia Ex. 35 (Thompson Supplemental Direct (Oct. 31, 2022)) at 3-4.

<sup>30</sup> ELPC Brief at 13-14; CUB Ohio Brief at 7-9.

<sup>31</sup> OCC Ex. 1 (Adkins Supplemental) at 11.

<sup>32</sup> ELPC Brief at 13-14; OPAE Brief at 6-7.

would be approved by the PUCO.<sup>33</sup> Environmental Groups’ arguments should be rejected.

While OPAE claims that there is no evidence that the PUCO would ever *approve* Columbia’s “Christmas list” of requests,<sup>34</sup> Columbia nevertheless presented a case to support its application with evidence in support of the application and objections to the Staff Report. Thus, the Environmental Groups are speculating about how the PUCO would rule on Columbia’s requests. Of course, the uncertainty of how the PUCO will rule with respect to any utility application is present in every case. And it is the reason why parties work to settle matters in the first place. Under Environmental Groups’ claims, one could never show benefits unless and until there was a ruling on the utility’s originally filed application. That’s not how the process works. Accordingly, Environmental Groups are wrong to say that the reductions in rates and charges in the Settlement do not benefit consumers and the public interest.

OPAE and ELPC assert that the PUCO must evaluate the merits of each settlement provision in order to determine whether the Settlement benefits consumers.<sup>35</sup> Evaluating the merits of each particular settlement term is contrary to the PUCO’s practice of determining whether the Settlement *as a package* benefits consumers and the public interest.<sup>36</sup> The PUCO has held that “the second part of the three-part test is not whether there are different or additional provisions that would better benefit ratepayers

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<sup>33</sup> OPAE Brief at 6-7; *see also* ELPC Brief at 13.

<sup>34</sup> OPAE Brief at 7.

<sup>35</sup> OPAE Brief at 7; ELPC Brief at 35.

<sup>36</sup> *See e.g. In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, *et al.*, Opinion and Order (Nov. 17, 2021), at ¶ 151.

and the public interest but whether the Stipulation, *as a package*, benefits ratepayers and the public interest.”<sup>37</sup>

In short, the Settlement provides significant reductions in rates and charges that consumers will pay compared to what Columbia initially requested in the application. These reductions will benefit consumers and the public interest, as a package, which is how the PUCO has chosen to evaluate settlements. The PUCO should approve the Settlement without modification.

**2. The Settlement package has benefits for low-income consumers. There is a \$70 million demand side management (“DSM”) program and \$3.5 million of additional bill payment assistance to low-income consumers who need it the most. The Settlement package should be approved without modification.**

Environmental Groups object to the Settlement package because it does not include (and expand) a subsidy for a non-low-income DSM program that Columbia initially proposed in this case. However, the Settlement’s DSM provisions benefit all consumers. There is a reduction in charges to consumers, under the DSM Rider, given the nearly \$120 million that will not be charged to consumers for a non-low-income DSM program. Also, Columbia will not charge consumers for controversial shared savings (profits) in the funding of the programs.<sup>38</sup> OCC has been pursuing this issue for years, to protect consumers from paying even more profit to utilities. Environmental Groups tend to be OK with utilities charging consumers for more profits, regarding energy efficiency.

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<sup>37</sup> *Id.*

<sup>38</sup> Joint Ex. 1 (Settlement) at 11-12; OCC Ex. 1 (Adkins Supplemental) at 7; a Columbia Ex. 35 (Thompson Supplemental Direct (Oct. 31, 2022)) at 5.



The Settlement also guarantees an important DSM program (WarmChoice®) for low-income consumers. As stated, that amounts to more than \$70 million to be funded (subsidized) by all consumers over five years. This considerable program should be appreciated by the Environmental Groups. But apparently it is not. The Settlement should be approved without modification.

The Settlement package benefits consumers by ending the non-low-income DSM programs initially proposed by Columbia. Columbia proposed a cost of “at least \$102 million for five years beginning January 1, 2023, plus inflationary increases and shared savings.”<sup>39</sup> OCC witness Adkins put the cost at nearly \$120 million that consumers will be spared from paying. These non-low-income programs could include home weatherization services, rebates for the purchase of smart thermostats, programmable thermostats, energy efficient shower heads and faucets, and rebates for energy efficient appliances.<sup>40</sup>

These measures are available to consumers in the competitive marketplace. They can be found at big-box stores, smaller stores and through some natural gas marketers, among other sources.<sup>41</sup>

The Settlement package also prevents Columbia from charging consumers its initially proposed \$10 million in shared savings (profits) from the DSM program.<sup>42</sup> The elimination of these non-low-income programs, that would otherwise be charged to Columbia consumers, benefits consumers.

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<sup>39</sup> Joint Ex. 1 (Settlement) at 12.

<sup>40</sup> CUB Ohio Brief at 4.

<sup>41</sup> Tr. Vol. I at 107:13-22.

<sup>42</sup> Joint Ex. 1 (Settlement) at 12.

The Settlement also provides \$3.5 million for bill-payment assistance for Columbia's low-income consumers including at-risk populations (mostly at shareholder expense). This will help Columbia's most vulnerable and at-risk consumers, with up to \$450 annually for consumers to avoid disconnection or obtain reconnection. This bill payment assistance was not a part of Columbia's filed application.

Environmental Groups claim that the Columbia's non-low-income DSM program is necessary given the monthly fixed charges and straight fixed variable rate design agreed to in the Settlement.<sup>43</sup> However, the DSM program Environmental Groups want would include expensive programs for non-low-income consumers that residential and small business consumers would pay (subsidize) through charges under the DSM rider.

Moreover, ELPC's claim that elimination of the non-low-income DSM program "take[s] away customer's [sic] ability to manage their bills"<sup>44</sup> lacks merit. As noted, all consumers will continue to have access to energy efficiency measures if they want them through the competitive marketplace. Furthermore, nothing in the Settlement prevents Columbia from establishing non-consumer-funded DSM programs, *i.e.* programs paid by Columbia's shareholders. Environmental Groups' arguments should be rejected, and the Settlement should be approved without modification.

**3. The PUCO should reject OPAE's criticism that the Settlement's funding (from consumers) of over \$70 million for the WarmChoice® program is not enough.**

The Settlement's WarmChoice® provisions are tailored to provide energy saving weatherization services to low-income consumers most vulnerable to increasing costs for

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<sup>43</sup> ELPC Brief at 14-17; CUB Ohio Brief at 16; OPAE Brief 14-15.

<sup>44</sup> ELPC Brief at 15.

utility services. To protect consumers, the Settlement package provides over \$70 million for weatherization services for low-income consumers through Columbia's WarmChoice® program – a considerable amount of money at consumer expense.<sup>45</sup> The Settlement also expands eligibility criteria for consumers with incomes 200% of the federal poverty level.<sup>46</sup>

OPAE (which is a group of weatherization providers) does not oppose an expansion in the income eligibility requirements. But OPAE argues that the budget for WarmChoice® is insufficient and it criticizes other consumer protection provisions.<sup>47</sup> OPAE's arguments should be rejected, and the Settlement package should be approved without modification.

As an initial matter, it is important to note that WarmChoice® is not the only weatherization funding source available to consumers. OPAE witness Peoples testified that:

WarmChoice providers in the state also operate the United States Department of Energy's Home Weatherization assistance program which is coupled with the HWAP Enhancement program, the HWAP Weatherization Readiness Program and the USF Electric Partnership program. Some of which operate to prevent deferral situations in a home to allow weatherization measures to take place. Another program that assists is the Housing Trust Fund/HAGP and CHIP programs.<sup>48</sup>

OPAE witness Peoples further testified that:

Most, if not all, WarmChoice administrators coordinate their weatherization efforts with other available funding sources upon intake as they bring new clients into the WarmChoice program. This can, and often

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<sup>45</sup> Joint Ex. 1 (Settlement) at 11-12.

<sup>46</sup> Joint Ex. 1 (Settlement) at 12.

<sup>47</sup> OPAE Brief at 8-9.

<sup>48</sup> OPAE Ex. 1 (Peoples Direct) at 8-9.

is, done as the home is inspected and evaluated to determine the measures needed to safely weatherize the home and provide safe appliances.<sup>49</sup>

According to OPAE's own testimony, these additional sources of funding are available for weatherization services on top of the more than \$70 million provided through WarmChoice® under the Settlement. In light of the available funding sources for weatherization, it is difficult to understand how the Settlement's WarmChoice® provisions, as part of a package, could not benefit consumers as OPAE claims. It does benefit consumers.

OPAE also opposes the Settlement's provision that limits property owners to "receiving weatherization assistance for one rental premise per calendar year for the five-year term of the DSM program."<sup>50</sup> OPAE claims that this provision is "discriminatory" against renters because, if a property has been weatherized under WarmChoice® within a year, then another renter would not also be able to receive weatherization.<sup>51</sup>

However, once a premise is weatherized, the benefits of that weatherization should continue for subsequent renters as well. OPAE witness Peoples testified that while the tenant is the beneficiary of the WarmChoice® program (because the tenant pays the utility bills), "[w]e are not seeing a high turnover in renters. Folks are not moving around as much as they used to."<sup>52</sup>

But this guardrail in the Settlement avoids concentrating multiple program benefits in individual property owners. It should be prohibited that these public funds

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<sup>49</sup> *Id.* at 9.

<sup>50</sup> Joint Ex. 1 (Settlement) at 13; OPAE Brief at 11-12.

<sup>51</sup> OPAE Brief at 11.

<sup>52</sup> OPAE Ex. 1 (Peoples Direct) at 9.

could be used in reality or in appearance to enrich fewer property owners rather than more property owners. This Settlement term would help diversify benefits to more rather than fewer property owners.

It's the public's money that is funding this program. There should be guardrails, including the Settlement's terms, protecting how the public's money is spent.

OPAE further claims the Settlement's audit provisions for the WarmChoice® program are an unnecessary expense to the WarmChoice® budget.<sup>53</sup> Those arguments should be rejected too. Specifically, the Settlement requires annual audits to ensure the accuracy and reasonableness of WarmChoice® expenses.<sup>54</sup> In addition, the Settlement requires a management audit at the mid-point and end of the five-year term.<sup>55</sup>

These audits are appropriate as guardrails to ensure that the use of public funds for the WarmChoice® program is reasonable and that the program is operated prudently. The audit provisions protect consumers. They act as a safeguard for consumers to help assure that the public's funds are being expended prudently. Audits are a typical regulatory practice. This program that is funded with public money should be transparent, as furthered by the Settlement with the audits.

In short, OPAE's lack of gratitude and its criticisms of the Settlement's term for more than \$70 million in WarmChoice® funding are out of line and are not a reason to reject the Settlement. If anything, the significant program funding for low-income consumers is another reason to approve the Settlement.

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<sup>53</sup> OPAE Brief at 9-10.

<sup>54</sup> Joint Ex. 1 (Settlement) at 13.

<sup>55</sup> *Id.*

As noted, the PUCO has held “the second part of the three-part test is not whether there are different or additional provisions that would better benefit ratepayers and the public interest but whether the Stipulation, as a package, benefits ratepayers and the public interest.”<sup>56</sup> The Settlement, including the WarmChoice® provisions, benefits consumers as a package and should be approved.

**4. The Settlement’s bill payment assistance program, as part of the package, will benefit low-income consumers who struggle to stay connected to their essential natural gas distribution service.**

The Settlement provides for a \$3.5 million bill payment assistance program for qualifying low-income residential natural gas consumers, a program not in Columbia’s original application.<sup>57</sup> Of the \$3.5 million, \$2.3 million will be paid for by Columbia’s shareholders. The other \$1.2 million will be paid by consumers and absorbed by the WarmChoice® program (\$700,000 in 2023 and \$500,000 in 2024).<sup>58</sup> OPAE (the weatherization group) and CUB Ohio oppose the Settlement’s bill payment assistance program for Ohioans in need because OPAE/CUB don’t want the more than \$70 million program to absorb a small amount for bill payment assistance.<sup>59</sup> But the bill payment assistance program compromise in the Settlement benefits consumers as part of the package – and will help keep them connected to utility service. The Settlement should be approved.

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<sup>56</sup> *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, *et al.*, Opinion and Order (Nov. 17, 2021), at ¶ 151.

<sup>57</sup> Joint Ex. 1 (Settlement) at 19-20.

<sup>58</sup> Joint Ex. 1 (Settlement) at 19-20.

<sup>59</sup> See OPAE Brief at 12-14; CUB Ohio Brief at 19-21.

OPAE claims that there is no evidence that a bill payment assistance program is necessary.<sup>60</sup> That is not true. OPAE witness Sarver testified that “[b]ill payment assistance is a useful and necessary tool” that should be reserved for “emergency situations.”<sup>61</sup> At the evidentiary hearing, Mr. Sarver testified unequivocally that OPAE does not oppose Columbia consumers receiving \$3.5 million in bill payment assistance.<sup>62</sup> Mr. Sarver further testified that the coronavirus pandemic that has plagued Ohioans for the past couple of years constitutes an “emergency situation.”<sup>63</sup> Mr. Sarver further conceded that energy prices and inflation have increased.<sup>64</sup> Bill payment assistance will benefit consumers.

OPAE further claims that the bill payment program in the Settlement should be rejected because it lacks details.<sup>65</sup> That is also incorrect. The Settlement lists specific criteria including:

1) Availability for all residential low-income customers with delinquent Columbia bills; 2) Household income eligibility at or below 200 percent of the federal poverty guidelines; 3) Benefits available once per year per eligible customer; 4) Benefits available on a first-come-first-served basis until funds are annually depleted; 5) Assistance limited to up to \$450.00 per consumer annually to avoid disconnection or get services reconnected; and 6) Participation does not limit access to any other state or federal assistance program.<sup>66</sup>

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<sup>60</sup> OPAE Brief at 12.

<sup>61</sup> OPAE Ex. 2 (Sarver Direct) at 11.

<sup>62</sup> Tr. Vol. I (Sarver Cross) at 130:21-23.

<sup>63</sup> Tr. Vol. I (Sarver Cross) at 137:22-25.

<sup>64</sup> Tr. Vol. I (Sarver Cross) at 138:1-7.

<sup>65</sup> OPAE Brief at 12.

<sup>66</sup> Joint Ex. 1 (Settlement) at 19.

The Settlement also provides for yearly audits and oversight of the bill payment assistance program by the PUCO. OPAE witness Sarver conceded that the PUCO and Columbia are capable of implementing and overseeing the bill payment assistance plan.<sup>67</sup>

Finally, OPAE claims that the PUCO has in the past rejected OCC's requests to shift funds from weatherization service to bill-payment assistance and that the PUCO should do so here as well.<sup>68</sup> OPAE cites several PUCO orders that purportedly support OPAE's argument.<sup>69</sup> However in two of orders cited by OPAE, in Case Nos. 20-637-GA-UNC and 20-649-GA-UNC (which involved the COVID-19 emergency plans of Columbia and Vectren respectively), the PUCO *expressly declined to rule on the issue*.<sup>70</sup>

The other two orders cited by OPAE in Case Nos. 19-1940-GA-RDR and 19-2084-GA-UNC also do not preclude the PUCO from approving the bill payment program provisions in the Settlement. Case No. 19-1940-GA-RDR involved the annual audit of Columbia's DSM rider, which the PUCO found was "not the appropriate forum for such considerations."<sup>71</sup> In Case No. 19-2082-GA-UNC the PUCO approved a settlement

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<sup>67</sup> Tr. Vol. 1 (Sarver Cross) at 132:2-6.

<sup>68</sup> OPAE Brief at 13.

<sup>69</sup> *Id.* at note 30.

<sup>70</sup> *In the Matter of the Motion of Columbia Gas of Ohio, Inc. to Suspend Certain Procedures and Process During the COVID-19 State of Emergency and Related Matters*, Case No. 20-637-GA-UNC, Finding and Order (May 20, 2020), at ¶ 46 ("While the Commission is mindful that there is likely to be an increased need for bill payment assistance for Columbia's customers, the Commission declines to address OCC's recommendation in this proceeding."); *In the Matter of the Motion of Vectren Energy Delivery of Ohio, Inc. to Suspend Certain Procedures and Process During the Declared State of Emergency and Related Matters*, Case No. 20-649-GA-UNC, at ¶ 46 ("While the Commission is mindful that there is likely to be an increased need for bill payment assistance for Vectren's customers, the Commission declines to address OCC's recommendation in this proceeding.").

<sup>71</sup> *In the Matter of the Application of Columbia Gas of Ohio, Inc. for an Adjustment to Rider IRP and Rider DSM Rates*, Case No. 19-1940-GA-RDR, Opinion and Order (Dec. 2, 2020), at ¶ 51.



regarding Vectren's DSM program, which OCC opposed.<sup>72</sup> But nothing in the PUCO's order in that case precludes the PUCO from approving the Settlement here, including the bill payment program for consumers.

If anything, OPAE and CUB Ohio should recognize that the Settlement represents an OCC compromise, in their favor, of OCC's positions. As they note, OCC's position (reflected in OCC's litigation position) is for there to be relatively more bill payment assistance instead of the expensive weatherization, so as help many more at-risk Ohioans than occurs with costly weatherization.

The PUCO should reject OPAE's and CUB Ohio's opposition to the bill payment program and approve the settlement without modification.

**5. The PUCO should reject ELPC's reliance on OCC's litigation testimony to demonstrate that the Settlement package does not benefit consumers or the public interest.**

The Settlement reduces Columbia's initially proposed return on equity ("ROE") from 10.95% to 9.6%.<sup>73</sup> That is a benefit to consumers.<sup>74</sup> ELPC argues that the PUCO should reject the Settlement because the agreed-upon ROE is against the public interest.<sup>75</sup> ELPC's argument should be rejected, because it improperly relies on the testimony of OCC witness Zhu in support of OCC's *litigation* position.<sup>76</sup> As explained above, OCC's litigation testimony is not about whether the Settlement satisfies the PUCO's three-part test for evaluating settlements.

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<sup>72</sup> *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval to Continue its Demand Side Management Program for its Residential, Commercial, and Industrial Customers*, Case No. 19-2084-GA-UNC, Opinion and Order (Feb. 24, 2021).

<sup>73</sup> PUCO Staff Ex. 8 (Lipthrott Settlement Testimony) at 5.

<sup>74</sup> *Id.*

<sup>75</sup> ELPC Brief at 17-18.

<sup>76</sup> *Id.*

ELPC wrongly states that Dr. Zhu “concluded that the stipulated ROE is excessive, especially in light of the increase in guaranteed recovery.”<sup>77</sup> Dr. Zhu made no such claim. Dr. Zhu presented *no testimony* at all regarding the Settlement, the stipulated ROE, or whether the stipulated ROE is reasonable as part of an overall settlement package. There is no evidence that Dr. Zhu agrees with ELPC’s assertion in its brief. ELPC attempts to bootstrap OCC’s *litigation position* testimony into evidence in opposition to the Settlement. ELPC’s attempts in this regard should be flatly rejected.

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

OCC explained in its initial brief how the Settlement package is consistent with Ohio law and established regulatory principles and practices.<sup>78</sup> OCC has already addressed in its brief some of the Environmental Groups’ arguments and OCC will not repeat those arguments here. Environmental Groups’ arguments that the Settlement violates regulatory principles and practices should be rejected for the following additional reasons.

**1. The Settlement’s DSM provisions do not violate R.C. 4905.70 or R.C. 4929.02.**

Environmental Groups argue that the Settlement’s elimination of the Columbia’s non-low-income DSM program violates state energy policy and regulatory principles under R.C. 4929.02(A)(4) and (12) and R.C. 4905.70.<sup>79</sup> Those arguments should be rejected.

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<sup>77</sup> ELPC Brief at 29.

<sup>78</sup> OCC Initial Brief at 13-15.

<sup>79</sup> See OPAC Brief at 15; CUB Ohio Brief at 24-26; ELPC Brief at 21-22, 25-26.

The PUCO has rejected virtually identical claims by ELPC and OPAE in AEP's most recent rate case.<sup>80</sup> In the AEP rate case, the PUCO approved a settlement that removed AEP's initially proposed DSM program *in its entirety*. That is similar to Columbia's withdrawal of its non-low-income program in this Settlement. (And here, the Settlement preserves over \$70 million in low-income weatherization through the WarmChoice® program.)

In the order approving the AEP rate case settlement, the PUCO found that:

OPAЕ and the Environmental Advocates have not shown that, by omitting a DSM plan from its provisions, the Stipulation fails to comply with the third part of the three part test. We agree with the Signatory Parties that there is no basis, under current Ohio law, to conclude that electric distribution rates are inherently unjust or unreasonable if they do not include a DSM component. ***Contrary to the position of OPAЕ and Environmental Advocates, no portion of R.C. 4905.70 requires the Commission to mandate the implementation of a DSM plan as part of a distribution rate case. Neither does R.C. 4928.02 dictate such an outcome.*** Further, Environmental Advocates have not supported their contention that the Stipulation will result in customers paying for electricity that they do not need. ***No part of the Stipulation precludes customers from undertaking energy efficiency measures on their own initiative through market-based products or services.*** Although we find that OPAЕ and Environmental Advocates have not sustained their position here, we note that the Commission has announced its intention to hold a series of energy efficiency workshops to solicit the views of interested stakeholders on whether cost-effective energy efficiency programs are an appropriate tool to manage electric generation costs and how such programs fit into Ohio's competitive retail electric and natural gas markets. We, therefore, plan to fully consider these issues in a broader context than the distribution rate case of a single electric distribution utility.<sup>81</sup>

Here, Environmental Groups have also failed to demonstrate that the Settlement will result in consumers paying for more energy than they need. And just like the AEP

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<sup>80</sup> *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, *et al.*, Opinion and Order (Nov. 17, 2021), at ¶ 173.

<sup>81</sup> *Id.* (Emphasis Added).

settlement, nothing in the Settlement here precludes consumers from taking advantage of energy efficiency programs available through the competitive market.<sup>82</sup> Thus, the Settlement, as a package, does not violate regulatory policy set forth in R.C. 4929.02 or R.C. 4905.70 as Environmental Groups claim.

Environmental Groups acknowledge the AEP rate case order.<sup>83</sup> However, they argue that the PUCO should reject the Settlement here because the energy efficiency workshops referenced in the AEP rate case order have since occurred and the PUCO has encouraged stakeholders to pursue energy efficiency initiatives.<sup>84</sup> But, as CUB Ohio concedes, the energy efficiency workshops “were not definitive of a statewide policy.”<sup>85</sup> In addition, neither R.C. 4929.02 nor R.C. 4905.70 has changed. Thus, Ohio law still does not require the PUCO to mandate the implementation of a DSM plan through Columbia’s distribution rates.

Moreover, and despite ELPC’s claims to the contrary,<sup>86</sup> the parties did work “collaboratively and cooperatively” through the settlement process in this case. That is consistent with the PUCO statements cited by ELPC<sup>87</sup> to preserve over \$70 million in low-income weatherization through the WarmChoice® program. While the Settlement did not include the entire DSM portfolio Columbia initially proposed (or the expansion of DSM at consumer expense that Environmental Groups want), the considerable funding of

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<sup>82</sup> Tr. Vol. I (Sarver Cross) at 107.

<sup>83</sup> CUB Ohio Brief at 26; ELPC Brief at 23-24.

<sup>84</sup> *Id.*

<sup>85</sup> CUB Ohio Brief at 26.

<sup>86</sup> *See* ELPC Brief at 33-34 (claiming that Environmental Groups were excluded from discussions regarding DSM).

<sup>87</sup> ELPC Brief 23-24.

the WarmChoice® program with public money is a reasonable compromise as part of an overall settlement package beneficial to consumers and consistent with regulatory principles.

**2. Certain of the Settlement’s DSM provisions preserve the integrity of the bargained-for result and do not improperly “silence” Columbia in violation of public policy as claimed by CUB Ohio.**

CUB Ohio claims that the Settlement’s DSM provisions violate public policy because they operate as a “gag order” to keep Columbia from pursuing energy efficiency initiatives at the PUCO or the General Assembly.<sup>88</sup> That argument should be rejected.

The language CUB Ohio objects to states:

Columbia *agrees* not to pursue (and not to support others’ pursuit of) *consumer-funded*, low-income and *consumer-funded*, non-low-income energy efficiency programs (including demand side management programs) through legislation or other regulatory initiatives until Columbia files its next base rate case.<sup>89</sup>

That is a good protection for consumers that helps preserve the benefit of the bargain. By its express terms, and contrary to CUB Ohio’s claims, this language does not “gag” or “silence” Columbia regarding energy efficiency. Rather, Columbia has *agreed*, for purposes of resolving the issues in this case through settlement and to live up to the intent of the Settlement, not to pursue “consumer-funded” energy efficiency initiatives until its next rate case. That serves good faith and integrity of the settlement process by avoiding an attempted circumvention of the Settlement that would deny others such as OCC the benefit of the bargain.

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<sup>88</sup> CUB Ohio Brief at 28-29; CUB Ohio Ex. 1 (Bullock Direct) at 8.

<sup>89</sup> Joint Ex. 1 (Settlement) at 12. (Emphasis added).

Further, CUB Ohio witness Bullock conceded on cross-examination that he has no reason to believe that Columbia did not voluntarily sign the Settlement.<sup>90</sup> In other words, Columbia plainly agreed to this provision as a compromise to reach an overall settlement package. The parties should not be denied their compromise.

Moreover, nothing in the Settlement prevents Columbia from pursuing or implementing energy efficiency initiatives funded by Columbia shareholders or by other organizations (like CUB Ohio, OPAE, and ELPC).<sup>91</sup> CUB Ohio also argues that the PUCO cannot enforce this provision of the Settlement.<sup>92</sup> But CUB Ohio cites no authority to support its claim. CUB Ohio plainly does not like this language in the Settlement. But that does not mean that the Settlement as a package violates regulatory principles. The Settlement should be approved without modification.

**3. ELPC and CUB Ohio improperly rely on OCC's litigation testimony to argue that the Settlement violates regulatory principles. Their arguments should be rejected.**

ELPC and CUB Ohio argue that the Settlement's monthly fixed charges through the straight fixed variable rate design violate regulatory principles regarding cost allocation and just and reasonable rates.<sup>93</sup> OCC is flattered that, to make their arguments, ELPC and CUB Ohio rely almost exclusively on the litigation testimony of OCC witnesses Dr. Zhu, Robert Fortney, and Roger Colton.<sup>94</sup>

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<sup>90</sup> Tr. Vol. I (Sarver Cross) at 101-102.

<sup>91</sup> Tr. Vol. I (Sarver Cross) at 102:3-9.

<sup>92</sup> CUB Ohio Brief at 30.

<sup>93</sup> CUB Ohio Brief at 31-32; ELPC Brief at 25-29.

<sup>94</sup> *Id.*

Unlike OCC did, ELPC and CUB Ohio did not even develop and file litigation testimony pre-Settlement. OCC's pre-Settlement testimony reflects that OCC is a leader in opposing high fixed charges. But the Settlement addresses many other consumer issues in addition to fixed charges. OCC compromised in order to give consumers the benefit of the Settlement package. That's how compromise works at the PUCO, under the PUCO's settlement standards. ELPC's and CUB Ohio's arguments should be summarily rejected.

Specifically, OCC's litigation, pre-Settlement testimonies in support of its Objections to the Staff Report – upon which the environmental advocates rely – are obviously not about whether the Settlement as a package satisfies the PUCO's three-part test. Indeed, Dr. Zhu, Mr. Fortney, and Mr. Colton presented no testimony regarding the Settlement. ELPC's and CUB Ohio's reliance on OCC litigation testimony is misplaced and does nothing to support their arguments in opposition to the Settlement.

On the other hand, OCC witness Kerry Adkins did present testimony on the Settlement. Mr. Adkins, who did participate in settlement negotiations (apparently unlike ELPC's witness) testified that the Settlement satisfies the PUCO's three-part test. As explained in OCC's initial brief, Mr. Adkins testified that the Settlement reflects nearly \$1.7 billion in reductions from Columbia's initially proposed base rate case, fixed charges riders case and DSM charge case.<sup>95</sup> As he testified, the charges to consumers under the Settlement are "just and reasonable" as a package, as required under R.C. 4905.22, R.C. 4909.15, R.C. 4909.18, R.C. 4909.19, and R.C. 4929.05.<sup>96</sup>

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<sup>95</sup> OCC Ex. 1 (Adkins Supplemental) at 11.

<sup>96</sup> *Id.*

### III. CONCLUSION

For the reasons set forth above and in OCC's initial brief, the PUCO should approve the Settlement package without modification. 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.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply Brief was served on the persons stated below via electronic transmission, this 27<sup>th</sup> day of December 2022.

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