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**

OPINION AND ORDER

Entered in the Journal on January 26, 2023

I. SUMMARY

{¶ 1} The Commission modifies and adopts the stipulation resolving all issues related to applications for an increase in rates and for an alternative rate plan filed by Columbia Gas of Ohio, Inc.

II. APPLICABLE LAW

{¶ 2} Columbia Gas of Ohio, Inc. (Columbia or the Company) is a natural gas company and a public utility as defined by R.C. 4905.03 and R.C. 4905.02, respectively. As such, Columbia is subject to the jurisdiction of this Commission pursuant to R.C. 4905.04, 4905.05, and 4905.06.

{¶ 3} The fixation of rates for public utilities in the state of Ohio is governed by R.C. Chapter 4909. The statutory requirements for an application to increase a public utility's rates are enumerated in R.C. 4909.17, 4909.18, 4909.19, and 4909.43. Additionally, pursuant to R.C. 4929.05(A), a natural gas company may request approval of an alternative rate plan by filing an application to establish or change a rate under R.C. 4909.18. After an investigation, the Commission shall approve the alternative rate plan if the natural gas company demonstrates, and the Commission finds, that the company is in compliance with R.C. 4905.35, is in substantial compliance with the policy of the state as set forth in R.C. 4929.02, and is expected to continue to be in substantial compliance with that state policy after implementation of the plan. The Commission must also find that the alternative rate plan is just and reasonable, pursuant to R.C. 4929.05.

III. HISTORY OF PROCEEDINGS

{¶ 4} On May 28, 2021, Columbia filed a notice of intent to file an application for an increase in rates, pursuant to R.C. 4909.43(B) and in compliance with Ohio Adm.Code 4901-7-01, Appendix A, Chapter I of the Commission's Standard Filing Requirements (SFR). Concurrently, Columbia also filed a motion to set a test period and date certain and for a waiver of certain filing requirements.

{¶ 5} On June 30, 2021, Columbia filed its application (Application) to increase its rates pursuant to R.C. 4909.18 (Columbia Ex. 1). Columbia filed direct testimony in support of its Application on July 14, 2021.

{¶ 6} Also on June 30, 2021, Columbia filed a motion for protective order. Columbia filed additional motions for protective order on July 14, 2021, May 13, 2022, and May 19, 2022. These four motions were granted on November 16, 2022 (Tr. at 161).

{¶ 7} By Entry issued on July 7, 2021, the Commission granted in part and denied in part the motion filed by Columbia on May 28, 2021, for a waiver of certain SFR.

The Commission also approved Columbia's proposed date certain of March 31, 2021, and established a test year of the 12 months ending December 31, 2021.

{¶ 8} By Entry dated August 25, 2021, the Commission accepted the Application for filing as of June 30, 2021, and directed Columbia to publish notice of the Application pursuant to R.C. 4909.19.

{¶ 9} Pursuant to R.C. 4909.19, Staff conducted an investigation of the facts, exhibits, and matters relating to the Application. Staff filed a written report of its investigation (Staff Report) on April 6, 2022 (Staff Ex. 1).

{¶ 10} The following entities were granted intervention in these proceedings: Ohio Energy Group (OEG), Ohio Consumers' Counsel (OCC), Ohio Partners for Affordable Energy (OPAE), Interstate Gas Supply, Inc. (IGS), Retail Energy Supply Association (RESA), Northeast Ohio Public Energy Council (NOPEC), Ohio School Council (OSC), Ohio Manufacturers' Association Energy Group (OMAEG), Environmental Law & Policy Center (ELPC), The Kroger Co. (Kroger), Citizens' Utility Board of Ohio (CUB), and Industrial Energy Users-Ohio (IEU-Ohio).

{¶ 11} By Entry dated April 14, 2022, the attorney examiner established a procedural schedule. The procedural schedule was subsequently modified or supplemented by Entries issued on April 28, 2022, May 11, 2022, May 19, 2022, June 3, 2022, July 1, 2022, August 5, 2022, September 9, 2022, October 13, 2022, and November 3, 2022.

{¶ 12} Objections to the Staff Report were filed by various parties on May 6, 2022.

{¶ 13} On May 16, 2022, OSC filed a motion for protective order that seeks to protect the same information as Columbia's May 19, 2022 motion for protective order. No memoranda contra were filed. Both motions sought to protect information Columbia provided to OSC subject to a protective agreement. As Columbia's May 19, 2022 motion was already granted (Tr. at 161), OSC's motion is hereby granted, as well.

{¶ 14} Also on May 16, 2022, Columbia filed a motion to strike the objections of IGS and RESA. On May 23, 2022, RESA and IGS separately filed memoranda contra. On May 27, 2022, Columbia filed a reply. On June 1, 2022, IGS filed a motion to strike Columbia's reply.

{¶ 15} Prehearing conferences were held on June 1, 2022, and October 18, 2022.

{¶ 16} A local public hearing was held at Canton City Hall in Canton, Ohio on June 1, 2022; the Simpson Banquet Room in Bowling Green, Ohio on June 2, 2022; Athens City Building in Athens, Ohio on June 7, 2022; Whetstone Park Shelter House in Columbus, Ohio on June 9, 2022; and Toledo City Council Chambers in Toledo, Ohio on October 14, 2022. Notice of the local public hearings were published in accordance with R.C. 4903.083, and proof of such publication was filed on June 22, 2022, and October 12, 2022, by Columbia. During the local public hearings, some individuals testified in opposition to Columbia's Application for an increase in rates and some individuals testified in support of Columbia's Application. Numerous public comments were also filed, most of which express opposition to Columbia's request to increase its rates.

{¶ 17} On August 5, 2022, Columbia filed a letter stating that it will not exercise its rights under R.C. 4909.42 to put its proposed rates into effect on December 28, 2022, or for ninety days thereafter unless the proposed rates have been approved by the Commission.

{¶ 18} On October 31, 2022, a joint stipulation and recommendation (Stipulation) was filed by Staff, Columbia, OCC, NOPEC, IEU-Ohio, OMAEG, Kroger, OSC, IGS, RESA, and OEG[1] (collectively, Signatory Parties). On November 3, 2022, Columbia filed

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[1] Although OEG did not sign the Stipulation filed on October 31, 2022, OEG filed a letter on November 4, 2022, stating that it supports the Stipulation and should be added as a signatory party.

a corrected version of Stipulation Appendix A. On November 9, 2022, Columbia filed corrections to the Stipulation. On December 16, 2022, Columbia filed Appendix F to the Stipulation. If adopted, the Signatory Parties assert the Stipulation would resolve all of the issues in these proceedings.

{¶ 19} On October 31, 2022, supplemental testimony of Melissa Thompson (Columbia Ex. 20) was filed on behalf of Columbia. On November 7, 2022, testimony in support of the Stipulation was filed by Kerry Adkins (OCC Ex. 1) on behalf of OCC. Staff filed the testimony of David M. Lipthratt in support of the Stipulation (Staff Ex. 8).

{¶ 20} On November 9, 2022, testimony addressing objections to the Staff Report was filed by Krystina Schaefer (Staff Ex. 4), James G. Zell (Staff Ex. 2), Craig Smith (Staff Ex. 3), Jennifer Mocniak (Staff Ex. 5), Dorothy Bremer (Staff Ex. 7), and James Ripke (Staff Ex. 6) on behalf of Staff.

{¶ 21} On November 14, 2022, testimony in opposition to the Stipulation was filed by John Sarver III (OPAE Ex. 1) and Nicole Peoples (OPAE Ex. 2). The testimony of Thomas Bullock (CUB Ex. 1) was filed by CUB, and the testimony of Karl Rábago (ELPC Ex. 1) was filed on behalf of ELPC.

{¶ 22} The evidentiary hearing was called and continued on June 15, 2022, and was resumed on November 21, 2022.[2]

{¶ 23} Initial briefs were filed by the parties on December 9, 2022. Reply briefs were filed on December 23, 2022, and December 27, 2022,[3] respectively.[4]

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[2] At the hearing, the parties introduced a joint stipulation of facts (Jt. Ex. 2), which the Commission will now adopt.

[3] Due to a winter storm, all pleadings due to be filed on December 23, 2022, and docketed on the next business day are considered timely filed. *In re Extension of Filing Dates for Pleadings and Other Papers Due to a Building Emergency*, Case No. 22-92-AU-UNC, Entry (Dec. 22, 2022).

[4] NOPEC and OSC elected not to file initial briefs. The parties who filed reply briefs on these dates are Columbia, ELPC, OMAEG, Kroger, and CUB.

{¶ 24} On December 28, 2022, Staff filed a motion to file its reply brief instanter and requested expedited review. In its motion, Staff notes that it served a copy of its reply brief via email on December 23, 2022, but due to a filing error, the document was not filed in the docket. No party filed a memorandum contra, and the Commission finds good cause to accept Staff's reply brief.

{¶ 25} On December 22, 2022, Columbia filed a limited motion to strike of ELPC's initial brief. ELPC filed a memorandum contra on January 6, 2023.

{¶ 26} On January 6, 2023, OCC filed a motion to strike OPAE's use of non-record information in its reply brief. On January 23, 2023, OPAE filed a memorandum contra to OCC's motion to strike.

IV. Discussion

A. Procedural Issues

1. Motions to Strike

a. Objections

{¶ 27} On May 16, 2022, Columbia filed a motion to strike portions of the objections of IGS and RESA. Columbia argues that certain portions of the objections filed by these two parties are unrelated to the Application and should be struck. Columbia asserts that Ohio Adm.Code 4901:1-19-07(F)(1)(b)-(c) requires parties to cite the specific portions of a staff report and application that are objectionable. Furthermore, Columbia cites previous cases where the Commission struck objections that were not the subject of an application. Specifically, Columbia seeks to strike IGS's objections involving the merchant function and Standard Choice Offer and RESA's objections relating to Section VII of Columbia's tariff and its Choice Program Outline because they are unrelated to the Application and the Staff Report.

{¶ 28} On May 23, 2022, RESA filed memorandum contra. RESA alleges that it properly objected to items that were omitted from the Staff Report. RESA asserts that the

Commission and Staff review utility finances and services as a whole in a rate case, and they are not limited to items in the Application. Additionally, RESA points out that Ohio Adm.Code 4901-1-28(B) expressly permits a party to object to matters that the Staff Report failed to address, and the objections are proper because they relate to existing tariffs and/or charges that were made in the test year.

{¶ 29} Also on May 23, 2022, IGS filed memorandum contra. IGS argues that its objections are proper, as Ohio Adm.Code 4901-1-28 states that objections may relate to the failure to report or address specific items, which is what IGS did. IGS notes that the purpose of objections is to put parties on notice regarding the issues that will be litigated, and the Commission has allowed objections if there is a sufficient nexus between the issues in the objections and those expressly put in issue. IGS argues that there is a sufficient nexus between its objections, the Application, and the Staff Report.

{¶ 30} On May 27, 2022, Columbia filed a reply memorandum. In its reply, Columbia asserts that the objections at issue do not sufficiently relate to the Application and should be struck. Columbia also asserts that although objections can relate to matters that the Staff Report did not address, the objections are still subject to relevancy standards, and a rate case would be unworkable if every aspect of the utility company was up for consideration.

{¶ 31} On June 1, 2022, IGS filed a motion to strike Columbia's reply, noting that the attorney examiners' April 14, 2022 Entry set deadlines for filing motions to strike objections and for filing memoranda contra the motions to strike. However, IGS notes that the scheduling entry did not provide for the filing of reply memos.

{¶ 32} The Commission notes that the Stipulation, filed on October 31, 2022, after the motion to strike was fully briefed, includes an agreement not to pursue objections to the Staff Report. Specifically, the Stipulation states that "With regard to the issues resolved by this Joint Stipulation and Recommendation, the Signatory Parties agree not to pursue their objections to the Staff Report." (Jt. Ex. 1 at 21.) Both RESA and IGS are signatory parties. Because the objections have essentially been withdrawn from this case as a result of the Stipulation, we find that the motions to strike are moot.

b. Initial Brief

{¶ 33} On December 22, 2022, Columbia filed a motion to strike a portion of ELPC's initial brief. Columbia asserts that, during the hearing, the attorney examiner struck portions of Mr. Rábago's testimony, and then ELPC attempted to present the same information in its initial brief. Specifically, Columbia states that information struck from Mr. Rábago's testimony was information about the rates of Columbia's affiliated local distribution companies because it was irrelevant and more prejudicial than probative. In its initial brief, Columbia states that ELPC cites to the same information that was stricken, cites to orders of a utility commission from another state, and adds additional citations to information that was stricken at the hearing. Columbia argues that the information in ELPC's initial brief has the same defect as Mr. Rábago's testimony, and it provides an inaccurate analysis, citing the total revenue requirement rather than the portion of the revenue requirement apportioned to residential customers.

{¶ 34} ELPC filed a memorandum contra on January 6, 2023. In its filing, ELPC asserts that the fixed charge comparison cures the issue identified by the attorney examiner during the hearing. Specifically, ELPC states that the attorney examiner struck the testimony because it did not identify offsetting volumetric rates, which ELPC did include in its initial brief. ELPC also argues that rate design in other states is relevant in this case because it gives the Commission perspective, and the Commission routinely considers utility cases from other states. ELPC asserts that although it cited the incorrect revenue requirement in its initial brief, that insignificant error does not affect the probative nature of information offered by ELPC.

{¶ 35} Consistent with the attorney examiner's ruling at the hearing, the Commission finds that the motion to strike should be granted on two separate and independent grounds. Parties may not supplement the evidentiary record with their briefs, and we affirm the attorney examiner's ruling that the disputed information is irrelevant because the information cited was derived from state processes for determining rates that may be substantially different from Ohio; thus, any probative value is outweighed by the potential prejudice to Columbia.

c. Reply Brief

{¶ 36} On January 6, 2023, OCC filed a motion to strike OPAE's use of non-record information in its reply brief.[5] Specifically, OCC argues that OPAE cites to non-record information in its reply brief, and that information should be stricken from the record. OCC asserts that parties cannot cite facts not in evidence, citing *In re Columbus S. Power Co.*, Case No. 08-917-EL-SSO, Order on Remand (Oct. 3, 2011) at 9-10, and parties cannot cite documents filed in Commission proceedings unless the documents are admitted into the record or administratively noticed, citing *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO (*FirstEnergy ESP IV Case*), Opinion and Order (Mar. 31, 2016) at 37. OCC explains that the brief relies on briefs in separate cases and direct testimony in a separate case, which were not admitted into this evidentiary record. OCC argues that to allow this information into the record would mean that opposing parties have no opportunity for cross-examination or opportunity to refute the evidence.

{¶ 37} On January 23, 2023, OPAE filed a memorandum contra OCC's motion to strike. OPAE notes that under Ohio Rule of Evidence 810, a statement made by a party or adopted by a party is not hearsay if it is offered against that party. OPAE identifies Columbia and OCC as party opponents to OPAE in this proceeding and as a result, statements made or adopted by either Columbia or OCC are not hearsay. Further, OPAE

[5] OCC seeks to strike pages 4-5, beginning with "As Columbia previously," and ending with "gas DSM Program," page 7, beginning with "For example," and ending with "Duke case?," and page 8, beginning with "Again in 2020," and ending with "three years ago". OCC also seeks to strike all related footnotes from these sections.

contends that the language in contention is not being offered to prove the truth of the matter. OPAE also asserts that the Commission is aware of party positions in prior cases, as it decided those cases in which the statements were made. In support of its position, OPAE cites to a case in which the Commission denied a motion to strike the use of information from a prior case where the moving party was a party to both proceedings and the moving party had the opportunity to contest the offered statements in the prior case, citing *In re Columbia Gas of Ohio, Inc.*, Case No. 16-1309-GA-UNC, Opinion and Order (Dec. 21, 2016) at ¶ 31-32. OPAE also notes that the Supreme Court of Ohio has determined that the Commission may take administrative notice of facts outside of the proceedings, citing *In re Ohio Edison Co*., 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218, ¶29; *Canton Storage & Transfer Co*. v. Pub. Util. Comm., 71 Ohio St.3d 1, 8, 647 N.E.2d 136 (1995).

{¶ 38} The Commission finds that the motion to strike should be granted, as it is a well-established rule that parties cannot cite facts not in evidence. *FirstEnergy ESP IV Case* at 37. Parties may not supplement the evidentiary record with their briefs, and OCC's motion to strike is granted in full. With respect to taking administrative notice of these statements, it is well-established that one of the factors the Commission should consider in taking administrative notice is whether the opposing party had prior knowledge of, and had an adequate opportunity to explain and rebut, the facts administratively noticed. *Allen v. Pub. Util. Comm.,* 40 Ohio St.3d 184, 186, 532 N.E.2d 1307 (1988). In this case, we find that taking administrative notice of the disputed statements would be improper. By first raising the disputed statements in their reply brief, OPAE deprived OCC and the other Signatory Parties of an adequate opportunity to explain and rebut the facts administratively noticed.

2. ELPC's Due Process Claims

{¶ 39} In its initial post-hearing brief, filed December 9, 2022, ELPC alleges that the Commission's application of its three-prong test to non-unanimous stipulations violates ELPC's procedural due process rights. First, ELPC states that when the Commission reviews non-unanimous settlements it must make independent findings supported by substantial evidence. ELPC argues that when the Federal Energy Regulatory Commission reviews non-unanimous settlements, it must make "an independent finding supported by 'substantial evidence on the record as a whole,'" citing *Mobil Oil Corp. v. Fed. Power Comm.*, 417 U.S. 283, 314 (1974). ELPC argues that similarly, the Commission cannot properly evaluate a non-unanimous Stipulation based on the "mere conclusory testimony" submitted by Columbia in this case. ELPC notes that in response to this federal precedent, the Illinois Supreme Court directed the Illinois Commerce Commission to ensure that it made its findings supported by "substantial evidence in the whole record," citing *Business and Professional People for Pub. Interest v. Illinois Commerce Comm.*, 136 Il.2d 192, 217 (1989). ELPC states that likewise in Indiana, the Indiana Utility Regulatory Commission determined that it has a duty to make independent decisions giving consideration to "all evidence of record including the Stipulation between parties," citing *In re N. Indiana Pub. Serv. Co.*, 85 P.U.R. 4th 605, 614 (July 15, 1987). ELPC contends that Columbia's provided testimony does not constitute a basis for an independent finding based on substantial evidence. ELPC concludes that Columbia and the Signatory Parties do not conduct the type of analysis of the settlement that allows the Commission to make the finding that the rates meet just and reasonable standards.

{¶ 40} Second, ELPC claims that the Commission's treatment of non-unanimous stipulations violates ELPC's due process rights by failing to analyze the agreement on its merits. ELPC alleges that the test gives a bargaining advantage to the utility bringing the case and that the utility chooses which party or parties should be engaged in bargaining. ELPC argues that negotiation participation does not equate to fairness. ELPC points out that Columbia admitted on cross-examination that it met with OCC and Staff without ELPC present (Tr. at 66). ELPC claims that Columbia cut its Demand Side Management (DSM) programs and raised the fixed monthly charge, knowing that ELPC supports energy efficiency and opposes higher fixed customer charges. Further, ELPC alleges that there is no evidence in the record that indicates that Columbia was concerned about ELPC, CUB, or OPAE's positions on these two issues. ELPC alleges that Columbia chose which parties to partner with and persuaded OCC to agree to high fixed customer charges, despite its opposition to these charges as expressed by OCC witnesses Fortney and Colton. ELPC further contends that because of the way in which the Commission reviews stipulations, ELPC, CUB, and OPAE have no opportunity to create a record on the issues they want to litigate, except in relation to the three-prong test.

{¶ 41} ELPC claims that the second prong of the Commission's test violates the "fundamental fairness" due process standard used by the Ohio courts. *Gross v. State Med. Bd. of Ohio*, 10th Dist. Franklin No. 08AP-437, 2008-Ohio-6826, ¶ 20. ELPC states that the way the Commission applies its stipulation test ignores ELPC's record evidence and its interests on energy efficiency and straight fixed variable rate design by looking only at the Stipulation itself. ELPC contends that the Commission's evaluation of the Stipulation, as a package, is improper and violates the constitutional due process standard. ELPC recommends that the Commission change its approach and evaluate each provision of a stipulation agreement individually, as part of the whole record. ELPC argues that the Commission reinforces an unfair dynamic that advantages the utility when the Commission refuses to analyze each provision of a stipulation, individually, and consequently deprives objecting parties of their opportunity to be heard.

{¶ 42} In its post-hearing reply brief, filed December 27, 2022, Columbia disputes ELPC's claim that the Commission violated the due process rights of ELPC, CUB and OPAE (Opposing Parties). The Company notes that the standard for Commission review of non-unanimous stipulations does require an evaluation of the evidence. Columbia refers to the Supreme Court of Ohio's holding that the Commission may place substantial weight on a stipulation's terms, but "it must determine, from the evidence, what is just and reasonable." *In re Columbus S. Power Co.*, 129 Ohio St.3d 46, 2011-Ohio-2383, 950

N.E.2d 164, ¶ 19, quoting *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Columbia states that because the Commission requires evidence to support the Stipulation, Staff, OCC, and the Company introduced testimony for this purpose. Columbia argues that ELPC received due process during this proceeding because "[t]he objecting parties were provided the opportunity to submit testimony, cross-examine witnesses, and to attack the reasonableness of the stipulation * * *[in which], the objecting parties were afforded ample opportunity to be heard." *In re Cincinnati Gas & Elec. Co.,* Case No. 92-1463-GA-AIR, et al., Opinion and Order (Aug. 26, 1993) at 16. Columbia argues that ELPC had ample opportunity to be heard in this case. In its post-hearing reply brief, Staff reiterates similar sentiments and emphasizes that the Commission's three-prong Stipulation test has been a long-standing practice spanning nearly 40 years, which has been consistently applied and approved by the courts of the state.

{¶ 43} The Commission finds that ELPC's arguments regarding due process are misplaced. The Supreme Court of Ohio has long held that the right to participate in a ratemaking proceeding is a statutory, not constitutional, right and that absent express statutory provision, a ratepayer has no right to notice and hearing under the Due Process Clauses of the Ohio and United States Constitutions. *Consumers' Counsel v. Pub. Util. Comm.,* 70 Ohio St.3d 244, 638 N.E.2d 550 (1994), citing *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 38 Ohio St.3d 266, 269, 527 N.E.2d 777, 780 (1988); *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St.3d 306, 310, 513 N.E.2d 337, 342 (1987); *Armco, Inc. v. Pub. Util. Comm.*, 69 Ohio St.2d 401, 409, 433 N.E.2d 923, 928 (1982); *Cleveland v. Pub. Util. Comm.*, 67 Ohio St.2d 446, 453, 424 N.E.2d 561, 566 (1981); *Commt. Against MRT v. Pub. Util. Comm.*, 52 Ohio St.2d 231, 239, 371 N.E.2d 547, 552 (1977) (P. Brown, J., dissenting). Under Ohio's traditional ratemaking process, the General Assembly provides for quasi-judicial ratemaking hearings in which ratepayers in general may participate pursuant to R.C. 4909.18, 4909.19, and 4903.221. *Consumers' Counsel,* 70 Ohio St.3d at 249. Accordingly, the General Assembly has provided the following provisions, among others, for due process when an application for an increase in rates has been filed: a written application, published public notice of the application, an opportunity for interested persons to intervene, the filing of a staff report, the opportunity to file objections to the staff report, a hearing, and the filing of a written record of the hearing. R.C. 4909.18, 4909.19, and 4903.221. The record of this case demonstrates that each of these provisions has been followed. The Company filed an application for an increase in rates on June 30, 2021 (Columbia Ex. 1). Notice of the local public hearings and evidentiary hearing was published (Columbia Ex. 3). Twelve parties, including ELPC, sought and were granted intervention in this proceeding. The Staff Report was filed on April 6, 2022 (Staff Ex. 1). Parties had the opportunity to file objections to the Staff Report, and ELPC filed two objections to the Staff Report on May 6, 2022. Five local public hearings were held, and the evidentiary hearing was held on November 16, 2022. The testimony of 29 witnesses was introduced, and the witnesses were available for cross-examination. The written record of the hearing was filed on November 21, 2022. Initial post hearing briefs were filed on December 9, 2022 and reply briefs were filed on December 27, 2022.

{¶ 44} Rather than address the statutory due process rights afforded the parties by the General Assembly, ELPC raises claims regarding our consideration of non-unanimous stipulations. First, ELPC claims that the Commission must make an independent finding based upon substantial evidence. The Supreme Court of Ohio has held that the Commission "may place substantial weight on the terms of a stipulation" but "must determine, from the evidence, what is just and reasonable." *In re Columbus S. Power Co.*, 129 Ohio St. 3d 46, 2011-Ohio-2383, 950 N.E.2d 164, ¶ 19 (emphasis in original), quoting *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St. 3d 123, 126, 592 N.E.2d (1992). Further, it is well-established that a stipulation entered into by the parties is a recommendation made to the Commission and is in no sense legally binding upon the Commission. The Commission may take the stipulation into consideration but must determine what is just and reasonable from the evidence presented at the hearing. *Duff* *v. Pub. Util. Comm.*, 56 Ohio St.2d 367, 379, 384 N.E.2d 264 (1978); *FirstEnergy ESP IV Case*, Eighth Entry on Rehearing (Aug. 16, 2017) at ¶ 51.

{¶ 45} Accordingly, we do not disagree with ELPC that the Commission must make an independent finding based upon substantial evidence, and we will make such a finding in the context of our consideration of the Stipulation presented in this case below. However, we also note that the record in this proceeding is replete with evidence regarding the issues in this proceeding. This case was initiated by the filing of the Application by Columbia, which was admitted into the record of the case, along with testimony in support of the Application (Columbia Ex. 1; Columbia Ex. 1A).[6] The Staff Report, which thoroughly addresses Columbia's Application was filed and admitted into the evidentiary record of this case (Staff Ex. 1). Columbia and OCC filed testimony regarding the Staff Report, which was admitted into the record.[7] Moreover, at the hearing, Staff presented the testimony in support of the Staff Report, which was admitted into the record of the proceeding.[8] None of this testimony was impeached or otherwise undermined on cross-examination, as Opposing Parties waived cross-examination of all of these witnesses (Tr. at 83-85, 86-87, 157-160). With respect to the Stipulation, Columbia, OCC, and Staff each presented testimony supporting the Stipulation (Columbia Ex. 35; OCC Ex. 1; and Staff Ex. 8). We note that the Stipulation was built upon the foundation laid by both the Application and the Staff Report, both of which thoroughly addressed all issues in this proceeding (Columbia Ex. 1; Columbia Ex. 1A; Staff Ex. 1).

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[6] Columbia presented 15 witnesses in support of the application in this case (Columbia Ex. 4; Columbia Ex. 5; Columbia Ex. 6; Columbia Ex. 7; Columbia Ex. 7A; Columbia Ex. 8; Columbia Ex. 9; Columbia Ex. 9A; Columbia Ex. 10; Columbia Ex. 11; Columbia Ex. 12; Columbia Ex. 13; Columbia Ex. 14; Columbia Ex. 15; Columbia Ex. 16; Columbia Ex. 17; Columbia Ex. 18; Columbia Ex. 18A; and Columbia Ex. 19).

[7] Columbia also filed testimony on behalf of 15 witnesses regarding the Staff Report (Columbia Ex. 20; Columbia Ex. 20A; Columbia Ex. 21; Columbia Ex. 21A; Columbia Ex. 22; Columbia Ex. 23; Columbia Ex. 24; Columbia Ex. 25; Columbia Ex. 26; Columbia Ex. 27; Columbia Ex. 28; Columbia Ex. 29; Columbia Ex. 30; Columbia Ex. 31; Columbia Ex. 32; Columbia Ex. 32A; Columbia Ex. 33; Columbia Ex. 33A; Columbia Ex. 34; and Columbia Ex. 34A). OCC filed testimony on behalf of three witnesses (OCC Ex. 2; OCC Ex. 3; and OCC Ex. 4).

[8] Staff presented 6 witnesses in support of the Staff Report (Staff Ex. 2; Staff Ex. 3; Staff Ex. 4; Staff Ex. 5; Staff Ex. 6; and Staff Ex. 7).

{¶ 46} We reject ELPC's contention that the Commission's treatment of non-unanimous stipulations violates ELPC's due process rights by failing to analyze the agreement on its merits. The three-part test for the consideration of stipulations is a long-established framework for the Commission to analyze stipulations on the merits of each stipulation. Moreover, the Supreme Court of Ohio has upheld the Commission's use of the three-part test as a means to analyze the merits of stipulations in a manner economical to ratepayers and public utilities. *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,* 64 Ohio St. 3d at 126. In addition, both the Commission's rules and longstanding precedent of the Supreme Court make clear that the Commission is not bound by a stipulation and may modify its terms. *See* Ohio Adm.Code 4901-1-30(E); *Consumers' Counsel,* 64 Ohio St.3d at 125-126, citing *Akron v. Pub. Util. Comm.,* 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). Thus, we will address below the merits of the Stipulation filed in this case, using the three-part test.

{¶ 47} We also are not persuaded that Columbia's bilateral discussions with OCC, or any other party, during the negotiating process violated any parties' due process rights. As discussed above, the General Assembly has established due process rights for parties in rate cases before the Commission. ELPC has identified no statutory authority or Supreme Court precedent for its claim, and ELPC does not claim that an entire class of customers was excluded from the negotiations.

{¶ 48} Finally, we disagree with ELPC's claim that Opposing Parties are constrained in creating a record in this case by the three-part test for stipulations. As discussed above, R.C. 4909.19 sets forth the process for an application for an increase in rates, including an application, published notice, Staff report and objections. These statutory requirements provide the means for parties to create a record. In this case, Opposing Parties each filed objections in this case. OPAE filed testimony of a witness in support of its objection but did not present this testimony at the hearing while neither

ELPC nor CUB filed testimony in support of their objections.[9] ELPC preserved it objections, and we will address those objections next.

B. Objections to the Staff Report

{¶ 49} The parties in opposition to the Stipulation, ELPC, CUB and OPAE filed multiple objections to the Staff Report. However, only ELPC addressed two of its objections in its brief; and the remaining objections filed by ELPC, CUB and OPAE should be deemed withdrawn.[10] Nonetheless, ELPC, CUB, and OPAE did raise arguments similar to their objections in the context of the Commission's three-part test for the consideration of stipulations, and the Commission has addressed those arguments below in our consideration of the Stipulation.

1. ELPC OBJECTION NO. 1

{¶ 50} In its first objection, ELPC objected to Staff's recommendation to deny Columbia's request to continue its DSM Program and increase spending by 2 percent annually for inflation (ELPC Objections to Staff Report at 3).

{¶ 51} In response to ELPC's objections to Staff' recommendation to deny Columbia's request to continue and expand its DSM program, Staff claims that, with the elimination of this program in the Stipulation, this objection is effectively moot. Staff notes that Staff witness Ripke provided testimony in support of Staff's rationale that Columbia historically met its targeted annual energy savings while not fully spending its projected budgets (Staff Ex. 6 at 2-3). Further, Staff states that witness Ripke testified that Staff's recommendations regarding the DSM rider were consistent with state policies (Staff Ex. 6 at 2-3).

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[9] To be clear, OPAE did present testimony regarding the Stipulation by two other witnesses at the hearing (OPAE Ex. 1; OPAE Ex. 2), and ELPC and CUB each presented the testimony of one witness at the hearing (ELPC Ex. 1; CUB Ex. 1). However, OPAE's direct testimony of Robert A. Williams Jr., filed in the docket on May 13, 2022, was not introduced as an exhibit at the hearing.

[10] Pursuant to Ohio Adm.Code 4901-1-28(D), in rate case proceedings, an objection to a staff report is deemed withdrawn if a party fails to address the objection in its initial brief.

{¶ 52} The Commission is not persuaded by the objection raised by ELPC regarding the DSM program. Although Staff initially proposed in the Staff Report that the DSM program be continued and capped at current spending levels, we find that the provisions in the Stipulation providing for the continuation of the WarmChoice Program are supported by the record and are consistent with state policy.

{¶ 53} R.C. 4905.70 provides that the Commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs. Pursuant to this statutory authority, we have long recognized that energy efficiency and DSM programs that are cost-effective, produce demonstrable benefits, and produce a reasonable balance between reducing total costs and minimizing impacts on non-participants are consistent with this state's economic and energy policy objectives. *In re The East Ohio Gas Company dba Dominion East Ohio*, Case No. 07-829-GA-AIR, et al. (*Dominion East Ohio*), Opinion and Order (Oct. 15, 2008) at 22-23; *In re Columbia Gas of Ohio, Inc.*, Case No. 16-1309-GA-UNC, et al., Opinion and Order (Dec. 21, 2016) at 63.

{¶ 54} However, following the repeal of the mandatory energy efficiency programs for electric utilities previously codified at R.C. 4928.66, the Commission conducted a series of public workshops with interested stakeholders to discuss the future of energy efficiency programs implemented by both electric and natural gas utilities in this state; at the conclusion of the workshops, the Commission announced that future decisions regarding energy efficiency programs would be made, on a case-by-case basis, based upon the evidence in the record of each proceeding.

{¶ 55} Under the terms of the Stipulation proposed in this case, Columbia will continue its DSM program, as proposed in its Application and modified by the Staff Report; but Columbia's DSM program shall be limited, beginning on January 1, 2023, solely to Columbia's low-income program, WarmChoice (Jt. Ex. 1 at 11-12). Pursuant to the terms of the Stipulation, the WarmChoice program will provide over $70 million in weatherization service for low-income customers over five years.

{¶ 56} The Commission notes that, as codified at R.C. 4929.02(A), it is the policy of the state to promote the availability of *unbundled* and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs; promote diversity of natural gas supplies and suppliers, by giving consumers *effective choices over the selection of those supplies and suppliers;* and encourage innovation and *market access* for cost-effective supply- and *demand-side natural gas services* and goods. We find that the DSM program as proposed in the Stipulation meets these state policies in three ways. First, with an investment of $70 million over five years, the WarmChoice Program is an appropriate size and scale to provide needed weatherization services to at-risk customers while still mitigating the rate impact on all customers. OCC witness Adkins testified that withdrawal of the provisions of the DSM program related to non-low-income customers will save Small General Service (SGS) customers approximately $120 million between 2023 and 2027 (OCC Ex. 1 at 10). Second, Columbia will receive no shared savings or administrative fee from the program (Staff Ex. 8 at 6). Instead, there is a shared investment between the utility and its customers because the continuation of the WarmChoice Program is paired with a customer bill assistance program, funded by Columbia with funds that will not be recovered from ratepayers. (Jt. Ex. 1 at 19-20; Staff Ex. 8 at 7). Third, the DSM program promotes the competitive market by relying on competitive suppliers to provide energy efficiency services to customers. At the same time, the DSM program provides for the continuation of the WarmChoice program for low-income customers in order to protect at-risk populations who may be unable to afford market-based services. Finally, the Commission notes that the General Assembly codified gas choice over twenty years ago with the enactment of House Bill 9 by the 124th General Assembly. It is time to look to competitive markets to play a more significant role in the provision of energy efficiency services in this state.

2. ELPC OBJECTION NO. 2

{¶ 57} In its second objection, "ELPC object[ed] to Staff's failure to recommend transitioning the delivery charge, Infrastructure Replacement Program (IRP) rate, and Capital Expenditure Program (CEP) rate for the SGS rate class to volumetric charges." (ELPC Objections to Staff Report at 5).

{¶ 58} With respect to ELPC's second objection relating to the straight fixed variable (SFV) design rate, Staff notes that the Commission has long embraced the SFV methodology for residential customers of natural gas companies. In her testimony, Staff witness Bremer explained that Staff only investigates rate and tariff matters when a company proposes modification in its Application (Staff Ex. 7 at 3). However, Staff notes that Columbia did not propose any modification of the straight fixed variable methodology for customers and therefore, follows the approval by the Commission of Columbia's use of straight fixed variable in the prior rate case.

{¶ 59} The Commission finds that the evidence in the record of this case supports the retention of the SFV rate design as recommended by Staff and as agreed to in the Stipulation. Columbia witness Feingold succinctly explained the SFV rate design:

> Under an SFV rate structure, rates are designed so that customers pay a flat monthly fee for the gas delivery services provided by the gas utility. For Columbia, this type of rate design provides for the inclusion of all fixed costs of gas delivery service incurred by Columbia to serve its residential and SGS customers and the recovery of such costs through a single monthly charge. These customers continue to pay on a volumetric basis for the gas volumes used each month based on the commodity price of natural gas charged by either the customer's gas marketer or Columbia. (Columbia Ex. 7 at 35).

{¶ 60} We note that the Commission established that the SFV rate design as the appropriate rate design for natural gas company distribution rates through a series of decisions, beginning with *In re Duke Energy Ohio, Inc.*, Case No. 07-589-GA-AIR, et al., Opinion and Order (May 28, 2008), *aff'd, Ohio Consumers' Counsel v. Pub. Util. Comm.*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261. *See also*, *Dominion East Ohio*, *aff'd, Ohio Consumers' Counsel*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261; *In re Columbia Gas of Ohio, Inc.*, Case No. 08-72-GA-AIR, et al. (*Columbia Rate Case*), Opinion and Order (Dec. 3, 2008); *In re Vectren Energy Delivery of Ohio*, Case No. 07-1080-EL-AIR, Opinion and Order (Jan. 7, 2009), *aff'd, Ohio Consumers' Counsel v. Pub. Util. Comm.*, 127 Ohio St.3d 524, 2010-Ohio-6239, 941 N.E.2d 757. Moreover, we recently affirmed the use of SFV rate design for a natural gas company. *In re Vectren Energy Delivery of Ohio, Inc.,* Case No. 18-298-GA-AIR, et al. (*2018 VEDO Rate Case*), Opinion and Order (Aug. 28, 2019) at ¶ 47-48, 51-52. We see no basis in the record of this case for deviating from these precedents. However, we also note that, notwithstanding our precedents on rate design, Columbia bears the burden of proof in this proceeding, and we find that the weight of the evidence in this case decisively favors retention of the SFV rate design.

{¶ 61} In *Dominion East Ohio*, the Commission recognized that SFV rate design provided a more equitable cost allocation among residential customers because the costs of providing distribution service are principally fixed and each residential customer should bear an equal proportion of the distribution costs. *Dominion East Ohio*, Opinion and Order (Oct. 15, 2008) at 24-25. In this case, Columbia witness Feingold testified that "fixed charges promote fairness to all customers because the customer's bill reflects the actual average cost of providing gas delivery service rather than being based on the volume of gas consumed." (Columbia Ex. 7 at 31). The testimony of Mr. Feingold also demonstrates that SFV rate design results in rates that track embedded costs more accurately, eliminating intra-class subsidies and undue discrimination in the residential and small commercial classes (Columbia Ex. 7 at 36). The record also supports the conclusion that SFV rate design promotes cost causation because the costs incurred by Columbia are relatively uniform across the range of customers in the SGS rate class and SGS customers pay a flat monthly fee for Columbia's fixed costs of distribution service

(Columbia Ex. 7 at 35-36). We note that we are not persuaded that ELPC witness Rábago's vague proposal to collect demand-related costs through volumetric rates would assign cost responsibility more fairly to cost causers (ELPC Ex. 1 at 30). Moreover, SFV rate design eliminates the need for weather normalization in determining base rates that recover fixed costs (Columbia Ex. 7 at 36).

{¶ 62} With respect to arguments raised regarding price signals and conservation, the Commission finds that the SFV rate design sends a true and accurate price signal to customers for the purpose of making energy efficiency investments. Columbia witness Feingold testified that SFV rates minimize the distortion of gas commodity prices and promotes more accurate commodity price signals to the customer (Columbia Ex. 7 at 36).

{¶ 63} Finally, we note that it is the policy of the state to promote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation. R.C. 4929.02(A)(12). The SFV rate design adopted by the Stipulation eliminates any conservation disincentive to Columbia and properly aligns Columbia's interests with consumer interest in energy efficiency and conservation (Columbia Ex. 7 at 36). Increased reliance upon volumetric rates would be inconsistent with R.C. 4929.02(A)(12) because increased reliance on volumetric rates would run the risk of creating a disincentive for Columbia to support energy efficiency and energy conservation efforts, such as WarmChoice and seeking additional, non-ratepayer funding for weatherization projects as provided for in the Stipulation (Jt. Ex. 1 at 12).

C. Summary of the Stipulation

{¶ 64} As previously stated, the Signatory Parties submitted the Stipulation on October 31, 2022, for the Commission's consideration. The Stipulation was intended by the Signatory Parties to resolve all outstanding issues in these proceedings. Below is a summary of the provisions agreed to by the Signatory Parties. This summary is not intended to replace or supersede the Stipulation.

1. Base Rate Case and Revenue Requirement

{¶ 65} The Signatory Parties recommend that Columbia's Application be approved as modified by the recommendations in the Staff Report, unless otherwise modified in the Stipulation, in order to fully resolve all of the issues raised in these proceedings (Jt. Ex. 1 at 2).

{¶ 66} Columbia's rate base, rate of return (ROR), and recommended revenue requirement shall be as set forth in the Stipulated Schedules in Appendix A. Among other changes, the Signatory Parties have agreed to the following components, modifying the Staff Report as applicable:

a. Modifying the Staff Report's proposed $3,463,095,000, the Signatory Parties agree to the value of Columbia's property used and useful in the rendition of distribution of electric power (rate base) is $3,505,491,000.

b. Modifying the Staff Report's proposed $210,455,000, the Signatory Parties agree that Columbia's total operating income for the test year is $194,317,000.

c. Staying within the Staff Report's proposed lower bound or 6.88 percent and upper bound of 7.39 percent, the Signatory Parties agree that Columbia's ROR should be 7.08 percent.

d. Keeping within the Staff Report's proposed lower bound $238,261,000 and upper bound of $255,923,000, the Signatory Parties agree that Columbia's required operating income is $248,189,000.

e. Modifying the Staff Report's lower bound of $35,197,000 and upper bound of $57,554,000, the Signatory Parties agree on a revenue increase of $68,192,000.

f. Modifying the Staff report's lower bound $885,422,000 and upper bound $907,779,000, the Signatory Parties agree on Columbia's calculated revenue requirement of $923,592,000.

(Staff Ex. 1 at Schedule A-1; Jt. Ex. 1 at Schedule A-1.)

{¶ 67} The Signatory parties agree that consumers in the SGS class should be allocated no more than $64,507,241 of the total base rate increase[11] (Jt. Ex. 1 at 3).

a. Revenue Requirement

{¶ 68} The Signatory Parties agree and recommend that the Commission approve a revenue increase for Columbia's natural gas service of $68.192 million, excluding all riders (Jt. Ex. 1 at 3).

b. Return on Equity/Capital Structure

{¶ 69} The Signatory Parties agree to a capital structure of 49.4 percent long-term debt and 50.6 percent equity. The Signatory Parties also agree to an overall ROR of 7.08 percent and a return on equity (ROE) of 9.6 percent. Additionally, the long-term debt rate is set at 4.49 percent. (Jt. Ex. 1 at 3.)

c. Rate Base and Operations and Maintenance Expense

{¶ 70} The Signatory Parties agree that Columbia's rate base related to distribution service is as detailed in Schedules A-1, B-1, B-2, B-2.1, and B-2.2 in Appendix A (Jt. Ex. 1 at 3).

{¶ 71} The Stipulated Schedules include all of the capitalized employee incentive compensation associated with Columbia's plant as of March 31, 2021. The Signatory Parties agree that Columbia may recognize all capitalized incentive compensation with capital in-service as of December 31, 2022, and may accrue all capitalized incentive

[11] OCC and NOPEC take no position with regard to the use of fixed charges and the lack of volumetric charges for the SGS class base rates and rider rates.

compensation up to $4 million for all Construction Work in Progress as of December 31, 2022; provided, however, that such incentive amounts must be recovered under the agreed-upon caps of the IRP rider and the CEP rider in this Stipulation. Columbia agrees to not seek recovery from consumers, for the approved terms of the IRP rider and the CEP rider under this Stipulation, of the capitalized incentive compensation solely attributable to financial performance from all plant-in-service beginning January 1, 2023. (Jt. Ex. 1 at 4.)

{¶ 72} The Stipulated Schedules reflect Staff's recommended depreciation rates, as updated by Staff following the Staff Report to correct the accrual rate for Account 375.70 from 1.7 percent to 2.52 percent, increasing the calculated depreciation expense by $97,869. The depreciation reserve reflects corrections and updates for adjustments that were counted twice in the Staff Report, and the agreed-to adjusted plant in service balances as agreed by the Stipulating Parties. (Jt. Ex. 1 at 4.)

{¶ 73} The Stipulated Schedules reflect the removal of cloud computing software capital from rate base and instead include $717,000 associated with the amortization of the assets as Operations and Maintenance (O&M) Expense (Jt. Ex. 1 at 4).

{¶ 74} The Stipulated Schedules reflect $7.9 million in O&M and Payroll Tax Expenses associated with Columbia's and allocated NiSource Corporate Services Company's (NiSource) labor and benefits, including pension expense, and removing the Supplemental Executive Retirement Plan (SERP) pension expense that was excluded by Staff in its Staff Report (Jt. Ex. 1 at 4).

{¶ 75} The Stipulated Schedules reflect an incremental $1.5 million in O&M Expense for an enhanced Cross Bore Remediation Program (Jt. Ex. 1 at 4).

{¶ 76} The Stipulated Schedules remove $3.866 million of employee incentive compensation solely attributable to financial performance from Columbia's and

NiSource's Long-Term Incentive Plan and SERP pension expense from O&M Expense, meaning Columbia will not charge consumers for it (Jt. Ex. 1 at 5).

{¶ 77} The Stipulated Schedules include a $512,000 pro forma expense associated with field and safety training in calendar year 2022 in O&M Expense. The Stipulated Schedules include $1.139 million of Other Gas Department Revenues that was excluded by Staff in its Staff Report. The Stipulated Schedules reflect Columbia's billing determinants as of March 31, 2021. The Stipulated Schedules include $664,000 of recurring Columbia and allocated NiSource expenses that were excluded in the Staff Report. The Stipulated Schedules include $159,000 associated with public awareness expense that was excluded in the Staff Report. (Jt. Ex. 1 at 5.)

{¶ 78} The Signatory Parties agree that Columbia's base rates will be updated with the actual rate case expense amortized over five years as incurred in this proceeding. Columbia will submit its most recent rate case expense information as a late-filed exhibit following the briefing of these proceedings as Stipulation Appendix B. Columbia will file updated Appendices A, B, C, and D when rate case expense adjusts the base rates filed herein. (Jt. Ex. 1 at 5.)

d. Tariff Provisions

{¶ 79} The Stipulated Schedules keep Columbia's SGS rate class of customers for customers using up to 300 Mcf per year, and Columbia withdraws its proposal to increase the maximum usage from 300 Mcf to 600 Mcf for the SGS rate class (Jt. Ex. 1 at 5).

{¶ 80} The Stipulated Schedules reflect a SGS, General Service (GS), and Large General Service (LGS) base rate discount of 7.5 percent for the school rate schedules in each rate class, which increases the discount from the current 5 percent schools' discount (Jt. Ex. 1 at 6).

{¶ 81} The Signatory Parties agree that Columbia will begin prorating only its SGS class rates in steps over three calendar years, beginning no later than the later of the Opinion and Order in this proceeding or the end of January 2023 (Jt. Ex. 1 at 6).

{¶ 82} The Signatory Parties agree, as is shown on Stipulation Appendix C, that Columbia will remove its meter test charge from its rates and tariffs, will remove the compounding of its late payment charge interest, will remove its proposal to add "pandemics" as a force majeure event, and will withdraw its proposal to add "sole" from its meter location tariff language. Columbia will also include certain language in its tariff concerning service line locations and relocations. (Jt. Ex. 1 at 6-7.)

2. Riders

{¶ 83} The Signatory Parties agree that Columbia will withdraw its proposal to implement the Federal/State Tax Reform Rider, Carbon Reduction Rider, and Federally Mandated Investment Rider. Further, Columbia agrees not to file for approval of similar riders prior to the filing of its next base distribution rate case unless the Commission orders otherwise; provided, however, Columbia shall be permitted to pursue the Pipeline and Hazardous Materials Safety Administration (PHMSA) Capital rider. Columbia also will not adopt Staff's recommendation to implement a carbon offset program as a non-regulated service under its existing Optional Services tariff. The Signatory Parties therefore agree that Staff's recommendation to implement a carbon offset program should not be implemented in this proceeding. (Jt. Ex. 1 at 8.)

{¶ 84} The Signatory Parties agree that Columbia will withdraw its proposal to continue the Regulatory Assessment Rider and that Columbia's existing Regulatory Assessment Rider will cease with the effective date of base rates in this proceeding (Jt. Ex. 1 at 8).

{¶ 85} Columbia agrees to have the approved CEP rider auditor review the methods by which Columbia tracks plant, tags assets, unitizes plant, and retires plant, and the asset accounting process. Columbia may propose to collect from consumers any costs associated with the auditor's recommendations, whether incremental O&M or capital, coming out of this asset accounting audit. However, such costs shall be subject to the CEP rider caps established in this Stipulation, even if such costs are otherwise allowed to be collected from consumers. Any party may support (or oppose) any recommendation of the auditor, provided however, that the adoption of any recommendation that affects the revenue requirement of the CEP will remain subject to the CEP rider caps established herein. The Signatory Parties shall reserve all substantive and due process rights to oppose the recovery of any of these costs. (Jt. Ex. 1 at 8.)

3. Deferral Authority

{¶ 86} The Signatory Parties agree that, to settle this proceeding, Columbia will apply its insurance proceeds towards all environmental remediation costs in this case as outlined in the Stipulation. The remaining insurance proceeds will be applied toward costs incurred post-date certain for Toledo I and for the remaining 14 Manufactured Gas Plant (MGP) sites. Future remediation cost recovery of the environmental remediation costs deferred pursuant to Case No. 08-606-GA-AAM shall be limited to the currently identified 14 MGP sites plus the Toledo I site. (Jt. Ex. 1 at 9.)

{¶ 87} The Signatory Parties agree that Columbia may continue to defer environmental remediation expense, as approved in Case No. 08-606-GA-AAM, capped at $24,997,442.98. Any expense associated with Columbia's Toledo I MGP after March 31, 2021, will be treated as O&M Expense and be deferred as part of Columbia's Commission-approved deferral in Case No. 08-606-GA-AAM. Deferral of these costs does not guarantee recovery of the costs. The Signatory Parties reserve all substantive and due process rights to oppose the recovery (from consumers) of any MGP costs in a future case or any future deferral requests. (Jt. Ex. 1 at 9-10.)

{¶ 88} The Signatory Parties agree that Columbia should only be permitted to seek future cost recovery, if any, for investigation and remediation of the Toledo I and remaining 14 MGP sites identified in Case No. 08-606-GA-AAM if certain conditions are met. Any future remediation cost recovery must be addressed in a future application by Columbia. The Signatory Parties shall reserve all substantive and due process rights to oppose the collection of any of these costs from consumers in a future case.[12] (Jt. Ex. 1 at 10.)

{¶ 89} The Signatory Parties agree that Columbia will end its Pension and Other Post-Employment Benefits deferral. The Signatory Parties agree that by ending its deferral authority, Columbia does not waive the right to request new deferral authority for either of these expenses in the future. (Jt. Ex. 1 at 10.)

{¶ 90} The Signatory Parties agree that Columbia may continue to defer, after the Opinion and Order in this proceeding, up to $10 million per year in Columbia's Commission-approved Pipeline Safety Program (PSP) Deferral, approved in Case No. 14-1615-GA-AAM, through December 31, 2030, to complete the remediation of Columbia's GPS data currently being gathered in its service area. The Signatory Parties agree that the $15 million associated with Columbia's other PSP Programs (Cross Bore Remediation Program, Enhanced Public Awareness Program, and the Training Program) has been embedded in base rates and the deferral for these expenses will cease with the effective date of base rates going into effect in this proceeding. (Jt. Ex. 1 at 10-11.)

{¶ 91} The Signatory Parties agree that Columbia will withdraw its proposed Picarro technology deferral request. The Signatory Parties acknowledge that Columbia is not precluded from requesting a deferral or recovery mechanism in a future proceeding. (Jt. Ex. 1 at 11.)

{¶ 92} The Signatory Parties agree that Columbia will forego adjusting its base rates in January 2024 with the approximately $1.23 million of Unprotected Excess

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[12] OMAEG and Kroger do not support MGP cost recovery but agree not to oppose it as part of the Stipulation package.

Deferred Income Taxes (EDIT). Per the Staff Report, base rates will increase by $5.681 million in January 2024, to reflect the expiration of the Unprotected EDIT amortization. (Jt. Ex. 1 at 11.)

4. DEMAND SIDE MANAGEMENT PROGRAM AND RIDER

{¶ 93} The Signatory Parties agree that Columbia will continue its DSM program,[13] as proposed in its Application and modified by the Staff Report filed in this proceeding; provided, however, that Columbia's DSM program shall be limited, beginning on January 1, 2023, solely to Columbia's low-income program, WarmChoice. Columbia's WarmChoice yearly budget shall be limited to the level of the calendar year 2022 budget. Columbia agrees to withdraw its non-low-income DSM proposal and not charge consumers for non-low-income DSM. Upon the effective date of Columbia's tariffs, any costs incurred for the WarmChoice Program shall be collected through the DSM rider and shall not be collected from consumers in base rates or in any other rider. The Signatory Parties further agree that Columbia will not earn and collect from consumers any shared savings as part of its DSM Program. Columbia will have an opportunity to ramp down its non-low-income DSM Programs until March 31, 2023. Columbia agrees not to pursue consumer-funded, low-income and consumer-funded, non-low-income energy efficiency programs until Columbia files its next base rate case. Columbia agrees to meet with Commission Staff and OCC on a semi-annual basis to discuss other available funding sources (not from consumers) to weatherize low-income properties. On an annual basis, Staff or an auditor, will review and reconcile WarmChoice expenses for accuracy and reasonableness in the annual DSM rider rate adjustment proceeding. An independent auditor hired by the Commission will conduct a management audit of the WarmChoice Program at the mid-point and at the end of the five-year term of the DSM Program. (Jt. Ex. 1 at 11-14.)

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[13] OMAEG, IEU-Ohio, and Kroger do not take a position on the DSM provision of the Stipulation due to the DSM rider being paid solely by the SGS rate class.

5. Non-Residential Customer Exit the Merchant Function Taskforce

{¶ 94} Columbia shall convene a Non-Residential Customer Exit the Merchant Function Taskforce to discuss the specific details of a filing regarding a potential modification or exit by Columbia from the merchant function for non-residential customers (i.e., non-residential customers that consume 300 Mcf or more on an annual basis). Within one year from the approval of the Stipulation, Columbia agrees to make a filing regarding a potential modification or exit by Columbia from the merchant function for non-residential customers.[14] (Jt. Ex. 1 at 14-15.)

6. Infrastructure Replacement Program Rider

{¶ 95} The Signatory Parties agree that the Commission should approve Columbia's alternative rate plan to continue the IRP rider subject to certain conditions. The SGS rate cap shall be $1.51, effective when base rates are effective; $2.77, effective May 2023; $4.05, effective May 2024; $5.35, effective May 2025; $6.70, effective May 2026; and $8.47, effective May 2027. Additionally, the IRP rider should be allocated to the SGS rate class 83.61 percent; to the GS rate class at 11.04 percent; and to the LGS rate class at 5.35 percent. The scope of the IRP rider will remain as previously set in Case Nos. 11-5515-GA-ALT and 16-2422-GA-ALT. If Columbia does not file a rate case on or before September 1, 2027, Columbia shall set the IRP rider rate to $0. The IRP rider will drop to $0 on September 1, 2029, unless the Commission finds otherwise in a future alternative rate plan proceeding. (Jt. Ex. 1 at 15-17.)

7. Capital Expenditure Program Rider

{¶ 96} The Signatory Parties agree that the Commission should approve Columbia's alternative rate plan to continue the CEP rider subject to certain conditions. The SGS rate cap shall be $1.78, effective when base rates are effective; $3.41, effective September 2023; $4.80, effective September 2024; $6.15, effective September 2025; $7.26,

[14] We note that this provision in the Stipulation does not predetermine whether the Commission would approve any such filing.

effective September 2026; and $8.74, effective September 2027. Additionally, the CEP rider should be allocated to the SGS rate class 87 percent; to the GS rate class at 9.21 percent; and to the LGS rate class at 3.79 percent. If Columbia does not file a rate case on or before September 1, 2027, Columbia shall set the CEP rider rate to $0. The IRP rider will drop to $0 on September 1, 2029, unless the Commission finds otherwise in a future alternative rate plan proceeding. (Jt. Ex. 1 at 17-18.)

8. Pipeline and Hazardous Materials Safety Administration Capital

{¶ 97} Columbia may seek Commission approval for recovery of the PHMSA Capital that Columbia is required to spend to be compliant with the PHMSA Mega Rule and iterations stemming from that rule. In any future rider filing regarding PHMSA Capital recovery, the Company shall clearly demonstrate the investments were mandatory for PHMSA compliance. (Jt. Ex. 1 at 19.)

9. Customer Bill-Payment Assistance Program

{¶ 98} Columbia shall offer a $3.5 million customer bill-payment assistance program (without charging to consumers $2.3 million of the program cost, with the balance being recovered through the DSM rider). If agreement cannot be reached between Columbia, Staff, and OCC, the criteria for the bill payment assistance program shall include: 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 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. In 2023, all $700,000 of the program funding will be WarmChoice funded. In 2024, $500,000 of the program funding will be WarmChoice funded, and $200,000 will be Columbia funded, without charge to customers. In each year 2025-2027, all $700,000 of the program funding shall be Columbia funded, without charge to customers. Efforts shall be made to achieve complete distribution of the funds in each year of this program. Columbia will provide regular reporting to OCC, Staff, and NOPEC at least annually. (Jt. Ex. 1 at 19-20.)

10. Electronic Process for Customers to Opt-Out/Opt-Into Columbia's Eligible Customer List for Sharing Customer Contact Information with Certified Retail Natural Gas Suppliers

{¶ 99} Columbia agrees to implement by August 31, 2023, a reasonable electronic online means to allow its consumers to opt-out of Columbia's eligible customer list for disclosing Columbia consumers' contact information to certified retail natural gas suppliers for their marketing. The costs of this provision shall not be borne by consumers. (Jt. Ex. 1 at 21.)

11. Agreement Not to Pursue Objections To The Staff Report

{¶ 100} With regard to the issues resolved by this Stipulation, the Signatory Parties agree not to pursue their objections to the Staff Report. Columbia agrees not to pursue positions contained in its Application, amended Application, testimony, supplemental testimony, objections, and/or filings in this case that would be inconsistent with this Stipulation. (Jt. Ex. 1 at 21.)

12. Additional Terms and Conditions

{¶ 101} This Stipulation is expressly conditioned upon its adoption by the Commission in its entirety and without material modification. Each Signatory Party has the right, in its sole discretion, to determine whether the Commission's approval of this Settlement contains a "material modification." If the Commission rejects or materially modifies all or any part of this Stipulation, any one of the Signatory Parties shall have the right, within thirty days of issuance of the Commission's Order, to file an application for rehearing. The Signatory Parties agree that the Stipulation reflects an overall outcome that reflects a compromise and balancing of competing interests and does not reflect the position that any one of the Signatory Parties would have taken on any individual issue.

The Signatory Parties agree that certain exhibits should be admitted into evidence, including this Stipulation as Joint Exhibit 1. (Jt. Ex. 1 at 21-24.)

D. Consideration of the Stipulation

{¶ 102} Ohio Adm.Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. Although not binding upon the Commission, the terms of such an agreement are accorded substantial weight. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 125, 592 N.E.2d 1370 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is supported or unopposed by the vast majority of parties and resolves all issues presented in the proceeding in which it is offered.

{¶ 103} The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g.*, *Dominion Retail v. Dayton Power and Light*, Case No. 03-2405-EL-CSS, et al., Opinion and Order (Feb. 2, 2005); *In re Cincinnati Gas & Elec. Co.*, Case No. 91-410-EL-AIR, Order on Remand (Apr. 14, 1994); *In re W. Reserve Telephone Co.*, Case No. 93-230-TP-ALT, Opinion and Order (Mar. 30, 1994); *In re Cleveland Elec. Illum. Co.*, Case No. 88-170-EL-AIR, et al., Opinion and Order (Jan. 31, 1989); *In re Restatement of Accounts and Records*, Case No. 84-1187-EL-UNC, Opinion and Order (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the Signatory Parties, is reasonable and should be adopted. In considering the reasonableness of the Stipulation, the Commission has used the following criteria:

(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?

(3) Does the settlement package violate any important regulatory principle or practice?

{¶ 104} The Supreme Court of Ohio has endorsed the Commission's analysis using these criteria to resolve cases in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co.*, 68 Ohio St.3d 559, 629 N.E.2d 423, citing *Consumers' Counsel* at 126. Each of the Signatory Parties urge the Commission to approve the Stipulation in its entirety. ELPC, CUB, and OPAE advocate for a different outcome. The Commission addresses the parties' specific arguments in the context of the three criteria for evaluating the reasonableness of the Stipulation below.

1. Is the Stipulation the Product of Serious Bargaining Among Capable, Knowledgeable Parties?

{¶ 105} In its initial brief, Columbia, in addition to OEG, OMAEG, and Kroger, claim that the Stipulation was the product of a comprehensive, open, and transparent process in which all parties were invited to attend multiple settlement discussions and that all parties were represented by able counsel, experienced in public-utility cases (Columbia Ex. 35 at 3). IEU-Ohio, OCC, and the Company represent that there were multiple settlement negotiations with the parties that began on May 16, 2022, which occurred more than five months before the Stipulation was filed with the Commission on October 31, 2022 (Columbia Ex. 35 at 3). Columbia and OCC assert that the negotiation process involved twice-a-week meetings of in-person and virtual meetings, and the initial and final drafts of the proposed Stipulation were circulated to all parties for review and comment (Tr. at 76, 80). Ms. Thompson testified that multiple components of the Stipulation, including the allocation-of-cost-percentages and caps for the CEP rider were negotiated among all parties (Tr. at 33-34). Columbia notes that during the negotiations, the Company and the other participants presented a range of settlement positions that were considered and discussed (Columbia Ex. 35 at 3).

{¶ 106} Further, Columbia, OCC, OMAEG, and Kroger, claim that the Signatory Parties represent a broad range of interests.[15] Columbia represents that the wide range of interests as reflected by the Signatory Parties indicates that serious bargaining took place for months to develop the final terms. For the abovementioned reasons, Columbia asserts that the Stipulation meets the first prong of the Commission's three factor test.

{¶ 107} In its brief, Staff emphasizes that the Commission has previously determined there is no requirement that a stipulation be executed by all parties or even a diverse group of stakeholders, and that the decision of some parties to oppose the stipulation is not determinative of the first prong. *See, e.g., In re Ohio Power Company.,* Case No. 14-1693-EL-RDR, et al. (*Ohio Power PPA Rider Case*), Opinion and Order (Mar. 31, 2016) at 52-3. Staff also highlights that, in this case, no intervenor or customer class was excluded from settlement discussions. Staff notes that there is no evidence in this case that undisclosed side agreements were executed; nor was there any indication that the negotiation process was anything but open; or that the Stipulation was incomplete by its terms (Tr. at 59). For these reasons, Staff asserts that the Stipulation meets the first prong of the Commission's test (Staff Ex. 8 at 3).

{¶ 108} On reply, ELPC disagrees with Staff's assessment that serious bargaining occurred so long as there is no evidence in the record that indicates the process was anything but open or that the agreement was incomplete. ELPC contends that parties' attendance at settlement meetings does not demonstrate that Columbia made concessions that it did not already plan to make from the outset, or that it gave away something of value as part of a meaningful bargaining process. ELPC claims that if the Commission

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[15] Columbia states that OCC represents Columbia's 1.4 million residential customers; NOPEC represents interests of governmental aggregators; IEU-Ohio, OMAEG, and Kroger represent Columbia's commercial and industrial customers; OEG represents Columbia's large, energy-intensive customers; IGS and RESA represent competitive retail natural gas supplier (CRNGS) providers; and the Ohio School Counsel represents the schools served by the Company (OCC Ex. 1 at 4; Columbia Ex. 35 at 3). *See In re Ohio Power Siting Board's Report to the General Assembly Regarding the Power Transmission System*, Case No. 21-796-EL-UNC, Entry (Nov. 18, 2021) at Appendix A at 6.

intends to give meaning to the first prong of its test, that it must "consider how the utility determined who and what mattered in the course of these negotiations."

{¶ 109} ELPC claims that the Stipulation does not meet the first prong. ELPC asserts that numerous settlement negotiations do not necessarily indicate that parties engaged in serious negotiations. Further, ELPC argues that Columbia never justified its $80/month charge for residential customers and that no party submitted evidence that Columbia bargained on this issue. ELPC indicates that Columbia's discussion with OCC, outside of a settlement meeting attended by the parties, and agreement to remove the DSM programs is insufficient to demonstrate serious bargaining occurred (Tr. at 66).

{¶ 110} In reply to ELPC's concerns, Columbia asserts that the Stipulation is the product of serious bargaining. Columbia contends that ELPC ignores witness Thompson's testimony describing the open settlement process, extensive negotiations that occurred, and various positions discussed by the parties (Columbia Ex. 35). Columbia claims that OCC and Staff also testified that the Stipulation was a result of serious bargaining. Columbia refers to OCC witness Adkins' testimony, which states the negotiations resulted in a number of concessions by the Signatory Parties, and Staff witness Lipthratt's testimony that the Stipulation represents a comprehensive compromise of issues raised by parties with diverse interests and that they were represented by experienced and competent counsel (OCC Ex. 1 at 5; Staff Ex. 8 at 3). During the hearing, Columbia witness Thompson testified that over 40 in-person and virtual settlement meetings were held over more than five months (Tr. at 76). OMAEG and Kroger support this point, emphasizing that testimony from numerous witnesses demonstrate the extensive bargaining process that resulted in the Stipulation. Columbia argues that holding a large number of settlement meetings itself indicates that serious bargaining took place in order to arrive at the stipulation, citing *In re Duke Energy Ohio, Inc.*, Case No. 14-375-GA-RDR, et al., Opinion and Order (Apr. 20, 2022) at ¶ 102.

{¶ 111} Moreover, Columbia claims that no class of customers was excluded during the negotiation process and that all parties were invited to each of the more than forty all-party settlement meetings (Tr. at 79, 5). Columbia argues that engaging in negotiations with OCC without other parties in attendance should not negate the fact that serious bargaining occurred. Columbia refers to the Commission's prior ruling that the Commission "will continue to allow parties to decide the form and manner of settlement negotiations, provided parties are able to demonstrate no entire class of customers is excluded from such negotiations," citing *In re the Filing by Ohio Edison Co., The Cleveland Elec. Illum. Co. and the Toledo Edison Co. of a Grid Modernization Business Plan*, Case No. 16-481-EL-UNC, et al. *(Ohio Edison),* Opinion and Order (July 17, 2019) at ¶ 61. Lastly, Columbia notes that the final version of the Stipulation was presented to all parties, including those in opposition, for consideration before it was executed.

{¶ 112} ELPC also claims that giving Columbia a very large increase in fixed charges guarantees that it will recover 70 percent of its revenue requirement, even though the record does not indicate that the Stipulation's ROE negotiations were reasonable (ELPC Ex. 1 at 6 n. 3, 10-11).

{¶ 113} In reply, Staff emphasizes that the Stipulation contains numerous compromises and concessions achieved through negotiation, as detailed by witness Lipthratt. Staff also asserts that the record contains no evidence that the results of the negotiations regarding the ROE were unreasonable. Staff states that ELPC relied upon witness Rábago, who performed no fundamental analysis of his own in concluding that Columbia has "little market risk" (ELPC Ex. 1 at 11). Staff points out that the stipulated ROE of 9.60 percent is not only a significantly lower percentage than that originally proposed, but it is also well within the range proposed in the Staff Report. Staff argues that there is ample evidence that serious negotiations happened, and the resulting recommendation is reasonable.

{¶ 114} ELPC then contends that the Commission is unable to review whether serious bargaining took place. ELPC claims that the Commission erroneously applies its stipulation test in a manner inconsistent with Ohio Rule of Evidence 408 (Evid. R. 408 or Rule 408) concerning the disclosure of material during settlement discussions. ELPC emphasizes that the rule does not require the exclusion of evidence when it is offered for another purpose other than to prove what occurred during settlement discussions. ELPC states that during the evidentiary hearing, the Commission only allowed parties to speak as to how many meetings took place and that Columbia invited parties to such settlement meetings. ELPC takes issue with the fact that the attorney examiner did not allow discussion on the record concerning the nature of settlement discussions, implicating Evid. R. 408. (Tr. at 51-67.) ELPC claims that the attorney examiner erroneously blocked ELPC's questions regarding the substance of the bargaining amongst the Signatory Parties by stating that "Rule 408 doesn't strictly apply to the Commission" (Tr. at 54). ELPC alleges that the attorney examiner and Commission precedent "misread Ohio Rule of Evidence 408" regarding the substance of settlement bargaining. ELPC states that its line of questioning did not involve proving liability or invalidity of a claim or amount, rather that of "another purpose" under Evid. R. 408. ELPC contends that the question of serious bargaining is at issue under the Commission's three-prong test, and thus, objecting parties must be allowed to present evidence supporting their position and that the only way to do so is to ask questions about the substance of settlement negotiations.

{¶ 115} Columbia refutes ELPC's argument that the Commission should require a "close examination of settlement negotiations" and require parties to identify negotiation positions and bargaining that occurred for each of the Stipulation's provisions. Columbia argues that the adoption of this position would discourage parties from engaging in confidential settlement negotiations if they knew that their negotiations positions would be subject to cross-examination during hearing. Columbia notes that the serious-bargaining requirement is procedural, not substantive, as the Commission and the Ohio Supreme Court have previously rejected similar arguments to further examine the substance of settlement communications exchanged by parties during stipulation negotiations, citing *In re Ohio Power Co.* Case No. 20-585-EL-AIR (*Ohio Power Co. Rate Case)*, Opinion and Order, (Nov. 17, 2021) at ¶ 107-108 (rejecting a request to "closely examine settlement negotiations to determine whether serious bargaining occurred" or "evaluate the negotiation process" because "that is not an aspect of part one of the three-part test"*); In re Application of Ohio Edison Co.*, 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218, ¶ 45 ("NOPEC's assignment of error would require this court to review the negotiations in their entirety * * *. NOPEC cites no authority for the proposition that this court must undertake such a review nor any compelling reason why it would be revelatory."). Furthermore, Columbia notes that the Supreme Court of Ohio has repeatedly held that the Ohio Rules of Evidence do not apply to Commission proceedings, and ELPC's argument that the attorney examiner did not properly apply Rule 408 is *non sequitur.* Columbia concedes that the Commission's rules allow evidence relating to settlement negotiations for a purpose other than to provide liability of invalidity of a dispute, but Columbia emphasizes that the rules do not allow parties to seek specific details of the settlement negotiations.

{¶ 116} Similarly, Staff contends that the Commission is not required to investigate the negotiation process. Staff adds that there were no side agreements, as ELPC suggested during hearing (Tr. at 53, 55). Staff distinguishes the case ELPC cited during hearing, as that case involved a discovery motion and not an attempt to offer evidence during the hearing. Additionally, Staff contends that there is no evidence on the record that indicates there was any "separate undisclosed agreement." Staff asserts that counsel's questions during the hearing specifically cited to language in the Stipulation (Tr. at 53, 57). Staff notes that Columbia witness Thompson also affirmed there were no side agreements in this case (Tr. at 59, 60). Staff concludes that ELPC was therefore not entitled to inquire into the substance of the negotiations.

{¶ 117} ELPC also claims that the Commission cannot conclude that serious bargaining occurred during the settlement process just because Columbia changed its initial position. ELPC notes that the Commission may "view the difference between an application and a filed stipulation as evidence of the seriousness of negotiations and bargaining between the parties," citing *Ohio Power Co. Rate Case* at 44. However, ELPC argues that the Commission should abandon this approach, as it is improper and that a utility's initial proposal should not be viewed as a baseline for measuring a stipulation's reasonableness. ELPC claims this particular method is flawed, since the Company's initial proposal is not vetted for reasonableness at the outset of the process. ELPC witness Rábago claims that Columbia appeared to request "far more in rates that it needed to move forward and provide adequate service" (ELPC Ex. 1 at 15).

{¶ 118} Like ELPC, CUB contends that it is improper for the Commission's analysis to use the proposed rates in the Application as the reference point for comparing the final Stipulation. CUB reasons that the Stipulation indicates Columbia should be able to provide adequate service under a revenue requirement regime that is one-third less of its initial $221.4 million request under the Application; and that under the Application, Columbia stated that it needed 325 percent more than their initial request to maintain operations. CUB also supports the conclusions of ELPC witness Rábago, who states that Staff witness Lipthratt offers no evidence whether the differences between the Application and Stipulation were the product of Columbia "relinquishing unreasonable positions or compromising" during serious bargaining (EPC Ex. 1 at 15).

{¶ 119} Staff disputes related arguments, reasoning that differences between the initial request and Stipulation may not be conclusive evidence of serious bargaining on its own, but they are certainly evidence that bargaining occurred during the process.

{¶ 120} CUB further contends that in the Stipulation, some parties refused to accept certain provisions and "hide" behind footnotes to indicate this. CUB claims that if a party is signing onto the Stipulation, it is signing to the terms of the entire Stipulation.

CUB states that the Stipulation includes multiple footnotes that "throw doubt" onto whether the Signatory Parties agree to the Stipulation they signed. CUB cites footnotes in the Stipulation on pages 3, 21, and 22, as particularly confusing regarding the status of certain parties' support of Stipulation provisions. For instance, both CUB and ELPC argue that it is "inconceivable" that OCC would take no position with regard to the use of fixed charges and the lack of volumetric charges, as NOPEC and OCC indicated via the footnote in the Stipulation on page 3. CUB also emphasizes that the use of footnotes to indicate that certain parties may negate their support of Stipulation provisions, demonstrates that serious bargaining did not happen.

{¶ 121} In response, Columbia claims that Signatory Parties reserving their rights does not reflect a lack of serious bargaining. Columbia emphasizes that the Commission has previously rejected challenges to stipulations that focused on their inclusion of opt-out provisions, *citing Ohio Edison,* Opinion and Order (July 17, 2019) at ¶ 61; *Ohio Power PPA Rider Case*, Second Entry on Rehearing (Nov. 3, 2016) at ¶21. Further, Columbia notes that the Commission and the Ohio Supreme Court have approved numerous stipulations that included take-no-position and reservations-of-rights footnotes by signatories, citing *In re Columbia Gas of Ohio, Inc.,* Case No. 16-1309-GA-UNC, et al. Opinion and Order (Dec. 21, 2016) at ¶ 52; *Ohio Power Co. Rate Case,* Opinion and Order (Nov. 17, 2021) at ¶ 166; *In re Ohio Edison Co*., 146 Ohio St.3d 222, 2016-Ohio-3021, 54 N.E.3d 1218. Columbia also notes that the Commission has rejected the argument that a party opting out of a portion of a stipulation does not truly support the stipulation in *Ohio Power PPA Rider Case*, *supra*, Second Entry on Rehearing (Nov. 3, 2016) at ¶ 24.

{¶ 122} Staff also addresses CUB's argument. Staff states that it is unsurprising that OCC and NOPEC did not take any position on the fixed charges in this Stipulation. Staff notes that these parties have consistently and persistently opposed straight fixed variable rate design. Staff claims that the fact that these parties were willing to accept that rate design in this case indicates that they were satisfied by the Stipulation as a whole.

Staff concludes that the suggestion that OCC and NOPEC were not engaged on the full range of issues during the settlement negotiations, as suggested by CUB, does not accurately reflect the negotiations that occurred in this case. Moreover, Staff disputes CUB's argument that footnote 22 in the Stipulation evidences a lack of serious bargaining on Staff's part. Staff notes that for years it has insisted on including language in stipulations to prohibit actions taken by signatory parties from voiding agreements. Staff contends that it would not have agreed to stipulate this case with such a provision without believing that it received benefits of very serious bargaining.

{¶ 123} In a joint reply brief, RESA and IGS argue that not every Signatory Party has to sign onto every term in the Stipulation in order for serious bargaining to occur. Similar to the arguments raised by Columbia and Staff, RESA and IGS emphasize that the record in this case indicates that a settlement was reached after extensive effort and time involving serious bargaining. RESA and IGS also claim that the footnotes in the Stipulation demonstrate that multiple parties seriously considered the terms in the Stipulation and ultimately concluded that they could not support certain terms but could join the "vast majority" of the Stipulation as a whole. RESA and IGS assert that CUB did not cite to any Commission precedent to support its argument there must be unanimous support for all settlement terms.

{¶ 124} The Commission finds that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. The Signatory Parties assert that the Stipulation is the product of serious bargaining among knowledgeable, capable, and diverse parties to resolve the issue (Jt. Ex. 1 at 2). Columbia witness Thompson and Staff witness Lipthratt each testified that the Stipulation was the product of an open process and that all parties were represented by experienced and able counsel (Columbia Ex. 35 at 3; Staff Ex. 8 at 3). Ms. Thompson and OCC witness Adkins testified that negotiations were held in numerous in-person and virtual meetings over a period of over five months and that the Signatory Parties represent a range of diverse interests, including the utility, residential customers, commercial and industrial customers, retail suppliers and schools (Columbia Ex. 35 at 3; OCC 1 at 5). The record is clear that no party was excluded from the negotiating process; all parties were invited to meetings scheduled twice a week for over five months of negotiations and all parties were provided with both the initial draft agreement and the final draft agreement (Tr. at 76, 78, 79-80).

{¶ 125} In addition, we are not persuaded that the fact that bilateral negotiations occurred during the negotiations process demonstrates that serious bargaining did not occur (Tr. at 80). Given that there were 12 intervenors to this case, in addition to Columbia and Staff, it is unsurprising that some bilateral discussions would take place among the Signatory Parties prior to reaching an agreement, particularly in light of the fact that over 40 negotiating sessions took place involving all of the parties (Tr. at 66, 77). However, the record is clear that no undisclosed side agreements were reached (Tr. at 59-60) and that no class of customers were excluded from the negotiations.

{¶ 126} Further, we are not persuaded by the claim that serious bargaining has not occurred because some Signatory Parties have opted out of certain specific provisions in the Stipulation. Signatory parties may choose to opt out of specific provisions of a stipulation for any number of reasons, including pending appeals or other pending matters before the Commission, and it is up to the other parties to determine if such opt outs are acceptable in reaching a stipulation. It is all part of the bargaining process, and there is no basis to infer that such opt outs are evidence of a lack of serious bargaining. The relevant question is whether the Signatory Parties support the Stipulation as a package. As Staff notes, the Commission has held that:

> [A] signatory party's decision to opt out of a particular provision or provisions, and simultaneous election not to oppose the provision, merely reflects the signatory party's support of the stipulation as a total package and supports the likelihood that other parties to the case negotiated for certain provisions of the stipulation that were not of particular interest.

Ohio Edison, Opinion and Order (July 17, 2019) at ¶ 61, citing *Ohio Power PPA Rider Case*, Second Entry on Rehearing (Nov. 3, 2016) at ¶ 26.

{¶ 127} In addition, we are not persuaded that the Commission cannot refer to the parties' litigation positions to infer whether serious bargaining has occurred. The Company's Application is certainly a legitimate comparison point for the Stipulation, but the Staff Report is also a legitimate comparison point, as are the intervening parties' litigation positions as set forth in their objections to the Staff Report and supporting testimony. The parties' positions on ROR and ROE present an example of this dynamic.

{¶ 128} Initially, the Company, Staff, and OCC each proposed a different ROR. In its Application, Columbia proposed a ROR of 7.85 percent as supported by the testimony of its witness Moul (Columbia Ex. 1 at Schedule A-1 and Schedule D-1A; Columbia Ex. 17 at 1, 4-5, 13, 32). On the other hand, OCC witness Zhu proposed a ROR of 6.59 percent (OCC Ex. 4 at 4-5). The Staff Report provided a range of reasonable rates of return of 6.88 percent to 7.39 percent (Staff Ex. 1 at 26, Schedule A-1, Schedule D-1A). Ultimately, the Signatory Parties agreed to a ROR of 7.08 percent. ELPC witness Rábago claims that the stipulated ROE is excessive and claims that this is evidence of a lack of serious bargaining, but Mr. Rábago performed no independent analysis of the ROE, relying solely on the testimony of OCC witness Zhu. (ELPC Ex. 1 at 12-13). We note that the stipulated ROR of 7.08 percent is below the midpoint of the range provided by the Staff Report and below the average of the ROR proposed by the Company and by OCC. Thus, it is manifestly fair to compare the stipulated ROR of 7.08 percent with the initial proposals of Columbia, OCC, and Staff and conclude that serious bargaining occurred.

{¶ 129} Further, the Commission rejects ELPC's arguments that the Commission should investigate the nature and substance of the settlement negotiations in determining whether serious bargaining occurred, and we affirm the attorney examiner's rulings excluding such evidence. As ELPC acknowledges, the ruling of the attorney examiner precluding the cross-examination of witnesses regarding the content of settlement negotiations is entirely consistent with Commission precedent. *Ohio Edison*, Opinion and Order (July 17, 2019) at ¶ 19 (questioning aimed at the content of settlement negotiations was wholly inappropriate). Further, ELPC is simply wrong when it asserts that R.C. 4903.22 requires that the Ohio Rules of Evidence strictly apply to Commission proceedings.[16] The Supreme Court of Ohio has long established that the Commission is not strictly confined by the Ohio Rules of Evidence. *Greater Cleveland Welfare Rights Org., Inc., v. Pub. Util. Comm.,* 2 Ohio St. 3d 62, 442 N.E. 2d 1288 (1982); *see also, Ohio Bell Tel. Co. v. Pub. Util. Comm.,* 14 Ohio St.3d 49, 50, 471 N.E.2d 475 (1984); *Chesapeake & Ohio Ry. Co. v. Pub. Util. Comm.,* 163 Ohio St. 252, 263, 126 N.E.2d 314 (1955). Moreover, we find that, even if Evid. R. 408 strictly applied to the Commission, which it does not, we would not construe Evid. R. 408 to allow the introduction of evidence regarding the content of settlement negotiations, as allowing such evidence would run too great a risk of chilling settlement discussions in cases before the Commission.

{¶ 130} Evid. R. 408 states, in relevant part:

> Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept, a valuable consideration in compromising or attempting to compromise a claim which was disputed as to either validity or amount, is not admissible to prove liability for or invalidity of the claim or its amount. Evidence of conduct or statements made in compromise negotiations is likewise not admissible. * * * This rule also does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negativing a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

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[16] As Columbia observes in its reply brief, ELPC misquotes R.C. 4903.22 in its initial brief by deleting four relevant, material words without providing an ellipsis to indicate that language had been deleted.

Evid. R. 408 is similar to Ohio Adm.Code 4901-1-26(E), which actually governs the admission of evidence regarding settlement negotiations in Commission proceedings, and which states, in relevant part:

> Evidence of (1) furnishing or offering or promising to furnish, or (2) accepting or offering or promising to accept a valuable consideration in compromising or attempting to compromise a disputed matter in a commission proceeding is not admissible to prove liability for or invalidity of the dispute. * * * This rule also does not require exclusion when the evidence is offered for another valid purpose.

ELPC advocates that the Commission construe the exception "offered for another purpose" contained in the final sentence of the Evid. R 408 (and Ohio Adm.Code 4901-1-26(E)) to permit the introduction of evidence regarding the actual content of the settlement negotiations. We decline to adopt ELPC's recommendation.

{¶ 131} The Commission notes that practice before the Commission frequently involves multiple parties in a proceeding; this proceeding has 12 intervenors as well as the Company and Staff. In addition, the same parties frequently intervene in various Commission proceedings, and separate Commission proceedings may have similar issues. Given the overlap in parties and issues, we are concerned that allowing the disclosure of the actual content of settlement negotiations will have a chilling effect on those negotiations, as counsel will need to be sure that statements made in settlement negotiations in one case are not able to be used against their client in a subsequent case. Moreover, as noted above, Commission precedent on this issue is well-established. *Ohio Edison*, Opinion and Order (July 17, 2019) at ¶ 19. Thus, we find that such a dramatic reversal in our interpretation of Ohio Adm.Code 4901-1-26(E) would require that it be raised and considered in our periodic review of the rules of practice before the Commission contained in Ohio Adm.Code Chapter 4901-1-26, which would provide the opportunity for a broader range of stakeholders to comment on this issue. Moreover, if the Commission were to make such a change in the rule or in our interpretation of the rule, addressing the matter in the rule review would allow the parties in Commission proceedings to be prepared for such change and act accordingly.

{¶ 132} Finally, the Commission notes that the only opposing party witness who provided testimony regarding the first prong was ELPC witness Rábago. However, we are not persuaded by his testimony that, in order to establish that there was serious bargaining among the parties, it is necessary for there to be (1) a public record of how minority positions were aired or (2) evidence that the process of composing a comprehensive outcome for the issues kept the public interest front and center. The Commission has previously rejected a similar proposal to modify the first prong of the three-part test to provide for more rigorous scrutiny of the substance of the settlement negotiations. *Ohio Edison*, Opinion and Order (July 17, 2019) at ¶ 62. As we have stated previously, we expect that parties will represent their interests in the settlement negotiations and that the parties themselves are best positioned to determine their own best interests and whether any potential benefits outweigh any potential costs. *FirstEnergy ESP IV Case*, Opinion and Order (Mar 31, 2016) at 44. Moreover, our consideration of the second prong of the test for stipulations will thoroughly examine whether the Stipulation, as a package, benefits ratepayers and the public interest.

2. DOES THE STIPULATION, AS A PACKAGE, BENEFIT RATEPAYERS AND THE PUBLIC INTEREST?

{¶ 133} In its brief, Columbia claims that the Stipulation benefits ratepayers and the public interest, and that some of the Stipulation's aspects even exceed the benefits in settlements of other natural gas rate cases the Commission has approved. The Company and OEG emphasize the Stipulation's revenue increase of $68.192 million and that the increase is significantly lower than the proposed $221.4 million increase requested in the Application (Jt. Ex. 1 at 3; Columbia Ex. 35 at 1). Staff confirms that the reduction of the revenue increase was a key benefit of the Stipulation (Staff Ex. 8). Columbia, as well as IEU-Ohio, note that the Signatory Parties agreed to a lower ROE and ROR and a reduced rate base from $3,560,230,000 to $3,505,491,000 (Columbia Ex. 1 at Sch.A-1; Columbia Ex.

29 at 10; Columbia Ex. 17 at 1). Columbia claims that the combination of the lower ROR and reduced revenue requirement results in a $3.76 monthly increase to the fixed charge billed to residential consumers that is lower than the $11.66 monthly increase to the fixed charge proposed in its Application (Columbia Ex. 35 at 3).

{¶ 134} Next, Columbia emphasizes that the Stipulation preserves over $70 million in funding ($14,867,329 per year) to continue Columbia's WarmChoice program (Jt. Ex. 1 at 12; Columbia Ex. 35 at 4). Columbia states that eligibility for the WarmChoice program is expanded under the Stipulation, and the Company also commits to regularly collaborate with OCC and Staff to discuss program parameters, potential program improvements, and alternative funding sources (none from consumers) to weatherize low-income properties (Jt. Ex. 1 at 12-13). Columbia confirms that the discontinuation of its non-low-income DSM programs will eliminate approximately $120 million in Columbia charges to SGS for the 2023-2027 period (OCC Ex. 1 at 10).

{¶ 135} From a safety and reliability perspective, Columbia notes that the Stipulation continues the Company's IRP, which systematically replaces bare steel and cast-iron mains, along with replacing hazardous service lines (Jt. Ex. 1 at 15-16; Columbia Ex. 35 at 4). In addition, Ms. Thompson states that the Stipulation maintains the CEP rider, which allows the Company to invest in capital maintenance and betterment of its facilities (Jt. Ex. 1 at 18; Columbia Ex. 35 at 4). Columbia highlights that the Stipulation also requires the continued deferral of $10 million per year through December 31, 2030, to allow the completion of the remediation of the Company's GPS data of its facilities (Jt. Ex. 1 at 10-11; Columbia Ex. 35 at 4). Finally, Columbia states that the Stipulation reflects an incremental $1.5 million in funding for an enhanced Cross Bore Remediation Program and that its WarmChoice program will continue to mitigate several health and safety issues (Columbia Ex. 35 at 4).

{¶ 136} Columbia, OMAEG, and Kroger note that the Stipulation further benefits all consumer classes by limiting increases to its CEP rider and IRP rider. The Company notes that its continuation of the IRP rider, with SGS rate caps that are $0.48 lower on an annual basis of what was originally requested, could result in an estimated $125 million reduction in Columbia's cumulative charges to consumers from 2023-2027 (OCC Ex. 1 at 8). In addition, Columbia agreed to continue the CEP rider with caps lower than what was proposed in the Application, and OCC witness Adkins notes that this cap could result in an estimated $357 million reduction in Columbia's cumulative charges to consumers from 2023 to 2027 (Staff Ex. 8 at 7; OCC Ex. 1 at 9). OMAEG and Kroger highlight that the Stipulation moves closer to the cost of service by allocating the natural gas distribution base revenue requirement, the IRP rider revenue requirement, and the CEP rider revenue requirement based on Columbia's updated cost-of-service study. Lastly, Columbia, OMAEG, and Kroger represent that the Stipulation entails that if the Company does not file a rate case on or before September 1, 2027, then it will file revised tariff sheets where the IRP rider and CEP rider rates charged to customers will be adjusted to $0 (Jt. Ex. 1 at 16).

{¶ 137} In its brief, Columbia emphasizes other beneficial aspects of the Stipulation. The Company states that the Stipulation limits deferral of environmental remediation costs at former manufactured gas plant sites and that it restricts the number of sites to 15. Columbia also notes that the Stipulation imposes stricter requirements for recovering these environmental remediation costs (Jt. Ex. 1 at 9-10). Further, Columbia points out that the Stipulation reduces the amount customers will pay for incentive compensation as compared to what was proposed in the Application and that the Stipulation also removes $3.866 million of employee incentive compensation from various components of O&M, in which customers will not be charged for it. (Jt. Ex. 1 at 4.) Further, Columbia highlights the Stipulation's other benefits for residential customers which include: the adoption of a bill assistance program, free meter tests every three years, implementing an online method for customers to opt out of having their personal contact information disclosed to the competitive retail natural gas supplier (CRNGS) market, and Columbia will begin prorating its SGS base rates over three calendar years (Jt. Ex. 1 at 6, 19, 21; Columbia Ex. 35 at 3).

{¶ 138} Lastly, Columbia notes that the Stipulation provides additional benefits for non-residential customers, in which its tariff will reflect a SGS, GS, and LGS base rate discount of 7.5 percent for the school rate schedules in each rate class. In addition, the Company indicates that the Stipulation adopts a unique percentage surcharge for the IRP rider and CEP rider rates for GS, and LGS customers. Columbia notes that any customer served by the GS or LGS rate schedules will have the option to locate or relocate its service line or other Columbia facilities in a manner different than that proposed by Columbia[17]. (Jt. Ex. 1 at 6, 7, 16).

{¶ 139} In response to Columbia's arguments, ELPC alleges that the Company ignores all of its evidence, including Company witness Poe's testimony, which indicates that energy efficiency programs provide customer savings for participants and non-participants. ELPC claims that Columbia contradicts itself by arguing that eliminating the cost of these programs constitutes a savings. ELPC states that the Utility Cost Test demonstrates that the energy efficiency programs save more than double what they cost. (Columbia Ex. 19 at 9.)

{¶ 140} Staff represents that the Stipulation meets the second prong of the Commission's test. It emphasizes that the significant change between the stipulated revenue increase $68.192 million and the proposed $221.5 million Application request reflects significant adjustments consistent with Commission policy and practice. Further, Staff notes that $2.3 million of the $3.5 million bill assistance program to provide low-income customers financial assistance will not be charged to consumers. In addition, Staff recognizes that one of the key focal points of the Opposing Parties' opposition to the

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[17] Provided that the customer's preferred alternative is safe, meets Columbia's internal gas standards, does not impede or adversely impact any other customer's service, and does not pose any additional hazard (Jt. Ex. 1 at 7).

Stipulation is the elimination of Columbia's DSM program and that even though Staff generally supports such programs, its elimination does not ipso facto render an agreement unreasonable.

{¶ 141} In reply, CUB reemphasizes its disagreement with the Commission's approach to consider the differences between an application and a filed stipulation as evidence of the seriousness of negotiations and bargaining between the parties. CUB highlights its position that such a method of review is flawed and creates a "perverse incentive" for a utility to apply for a revenue requirement, ROE, and/or high fixed charge that it knows the Commission would not approve, while being aware of the fact that any settlement agreement lower than that will automatically pass the second prong. Further, CUB supports ELPC's argument that because the Company's initial proposal has not been vetted for reasonableness in the first place, the Commission should not use it as a reference point for evaluating the Stipulation's reasonableness. OPAE raises similar arguments to CUB, claiming that the Commission should reject these "disingenuous" comparisons and review the Stipulation compared to what is currently authorized by the Commission to determine if the Stipulation, as a package, benefits customers.

{¶ 142} OCC also claims that the Stipulation meets the second prong of the Commission's test. In addition to Columbia and Staff's rationale discussed above, OCC highlights that the Stipulation includes a provision that implements a taskforce to explore Columbia ending its standard offer for non-residential consumers. OCC witness Adkins explains that the Stipulation also precludes the group from discussing the elimination of the standard choice offer for residential consumers, as the availability of a competitive standard offer is a key consumer protection for the residential consumers represented by OCC (OCC Ex. 1 at 10).

{¶ 143} OEG represents that the Stipulation meets the second prong due to similar points already raised. In addition, OEG cites that the withdrawal of Columbia's proposed Federal/State Tax Reform Rider, Carbon Reduction Rider, Federally Mandated

Investment Rider, and Picarro Deferral request indicates that the Stipulation benefits the public interest and consumers. For these reasons, OEG asserts that the Stipulation satisfies the second prong. (Jt. Ex. 1 at 8, 11.)

{¶ 144} RESA and IGS, in a joint brief, emphasize the benefits of particular provisions in the Stipulation. The parties first claim that Section II.E of the Stipulation is intended to further the development of the retail market in Ohio and is in the public interest. Second, RESA and IGS state that the withdrawal of the Carbon Reduction Rider presented multiple benefits, including avoiding utility engagement in the CRNGS market and violating state policy as to natural gas services and goods. In addition, IGS and RESA expressed their approval of Section II.J of the Stipulation that establishes an online option for Columbia customers to address their inclusion on the eligible customer list, and they claim that such a provision is beneficial. IGS and RESA note that the abovementioned provisions are reasonable and infer the Stipulation's benefits with these provisions included.

{¶ 145} ELPC says the Stipulation doesn't satisfy the second prong of the Commission's test and claims that the Stipulation fails to send efficient price signals to consumers, thereby discouraging the prudent use of gas. First, ELPC argues that the Commission must conduct a more comprehensive evaluation of the Stipulation's benefit to the public, compared to the Signatory Parties' assessments. Similar to its previous arguments, ELPC implores the Commission to not reference the Application's original requests as the "measuring stick" for evaluating the Stipulation's benefit to the public interest and ratepayers. In its reply brief, OPAE supports this sentiment, disagreeing with the comparison approach used by the Commission. Additionally, ELPC further claims that the Supreme Court of Ohio used a different baseline when evaluating the benefit to ratepayers in *Ohio Consumers' Counsel v. Pub. Util. Comm. of Ohio*, 110 Ohio St.3d 394, 398, 2006-Ohio-4706, 853 N.E.2d 1153, 398, by determining that because the per-bill fee agreed to was lower than current charges, ratepayers were benefitted. ELPC attests that the testimonial evidence offered by Signatory Parties does not properly demonstrate that the Stipulation benefits ratepayers nor serves the public interest, and the evidence only indicates that the Stipulation constitutes an improvement from the requests in the Application.

{¶ 146} Second, ELPC argues that the Stipulation does not provide benefits to ratepayers and is contrary to the public interest because residential customers are burdened by the "vast majority" of the rate increase via higher fixed charges, while the Signatory Parties agreed to remove non-low-income DSM programs from Columbia's offerings. ELPC states that Signatory Parties argue that the fixed charge could have been higher, and the rate increase could have been larger, so the public interest is benefitted. ELPC disagrees with such a rationale to measure the benefit and emphasizes that allocating about 70 percent of the revenue requirement to the residential customer charge disincentivizes customers to reduce usage (ELPC Ex. 1 at 21). ELPC states that this allocation means there is only a small portion of the bill to be determined by volumetric gas usage and consequently, provides little incentive to curtail gas usage because it will have minimal impact on their overall bill. ELPC also contends that the elimination of the non-low-income DSM programs exacerbates the effect of allocating the revenue increase to residential consumers. ELPC claims that in combination with the increased fixed customer charges, the elimination of the non-low-income DSM programs strikes a "double blow against customers and the public interest" (ELPC Ex. 1 at 24). ELPC states that the 'double blow' will have an outsized effect on low-volume users, who are often low-income consumers. (ELPC Ex. 1 at 7.)

{¶ 147} ELPC adds that raising the straight fixed variable rates, while eliminating the DSM program, is unsound rate design that does not benefit ratepayers nor the public interest. ELPC highlights that the approved rate in *Columbia Rate Case*, Opinion and Order (Dec. 3, 2008), included a fixed charge of $6.50 per month and increases were authorized to $12.16 and ultimately $17.81. ELPC highlights that only 14 years later, Columbia's Stipulation increases the charge to $58.01 by 2027. ELPC recognizes that Staff witness Bremer relies on *Columbia Rate Case*, Opinion and Order (Dec. 3, 2008) to support fixed charge increases (Staff Ex. 7 at 2-3). ELPC disputes Staff's reliance on this precedent because Columbia is also cancelling all but the low-income WarmChoice program.

{¶ 148} CUB also claims that the Stipulation, as a package, does not benefit the public interest or ratepayers. CUB emphasizes that high fixed charges hurt low usage customers more than high usage customers and argues that both low and high use customers lose in this case (CUB Ex. 1 at 5). OPAE raises a similar argument to this point. CUB also states that high fixed charges can significantly reduce incentives for consumers to reduce their consumption of natural gas and consequently, low-income customers will experience a greater percentage increase when fixed charges are higher. CUB concludes that it is not in the public interest to charge a rate that targets those who use less energy and at the same time, discriminate against low- and moderate-income customers. Further, CUB recommends that the Commission modify the Stipulation's fixed monthly charges on residential customers. CUB also advocates for an investigation into whether the fixed charges are reasonable when considering the issue of racial and societal equity.

{¶ 149} Additionally, CUB agrees that customers are going to lose out on important cost and energy saving benefits with the elimination of the DSM programs. CUB witness Bullock testifies that the Stipulation removes a critical savings program that is demonstrated by Columbia's data to be effective and deliver consumer benefits (Tr. at 94-95). CUB recognizes that the attorney examiner sought clarification during the hearing about whether the Stipulation precludes consumers from seeking to invest in energy efficiency and the DSM elsewhere (Tr. at 107-108). However, CUB argues that even though the Stipulation does not explicitly preclude this opportunity for consumers, market-based approaches cannot achieve the same results or reach the same number of customers as utility programs. CUB claims that utility programs are more advantaged because they have a direct connection with all of its customers that a retailer provider does not, and the utilities are accountable to the Commission in a way that non-utility providers are not (OPAE Ex. 1 at Ex. JFS-2). Further, CUB argues that a utility DSM program even benefits customers who do not sign up for a specific efficiency program because the programs save money for all customers by reducing peak electricity demands that drive costs. CUB recommends that the Commission modify the Stipulation by reinstituting the DSM program for its non-low-income consumers.

{¶ 150} Lastly, CUB encourages the Commission to look at the public comments to determine whether the Stipulation's provisions are in the public interest. CUB claims that public comments are often overlooked during these types of proceedings. CUB notes the frustration and concern felt by customers as well as industry professionals. For all of these reasons, CUB asserts that the Stipulation does not satisfy the second prong of the Commission's test.

{¶ 151} In reply to the Opposing Parties, Columbia asserts that the Stipulation's fixed charges for residential customers are just and reasonable. Columbia contends that CUB and OPAE offer no evidence to substantiate their arguments that Columbia's fixed rates are high for the services that Columbia is providing. Columbia notes that witness Feingold, an independent consultant and former Vice President of Black & Veatch Management Consulting LLC, performed a cost-of-service study that determined the cost to serve the SGS rate class was $42.78, which is significantly more than the current monthly delivery charge for the SGS class or the Stipulated monthly delivery charges (Columbia Ex. 7 at 34, Attachment RAF-3). Columbia argues that OPAE and CUB do not oppose the necessary services that the fixed charges will allow the Company to provide, but simply assert that the fixed charges are too high.

{¶ 152} Next, Columbia disputes the Opposing Parties' position that recovery of the monthly delivery charge, the IRP rider, and CEP rider should be done via volumetric rates. Columbia argues that the costs to deliver natural gas to residential customers do not vary by usage. Columbia explains that the delivery service costs of a gas distribution utility are primarily fixed costs and do not vary as a function of the volume of gas consumed by customers. Columbia asserts that fixed charges promote fairness to all customers because the customer bill will reflect the average cost to provide customers gas service. (Columbia Ex. 4 at 8, 31 fn. 8, 31.) Further, Columbia notes that the Commission and Ohio Supreme Court have rejected OPAE's arguments that cost shifting from high use to low-use customers is unfair. Columbia emphasizes that in *Ohio Consumers' Counsel*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261, at ¶ 30, the Supreme Court of Ohio determined that "virtually all" of the utility's distribution costs are fixed, and residential customers' costs are largely the same, despite gas usage levels. Lastly, Columbia refutes ELPC and CUB's argument that the use of an SFV rate design will not incentivize customers to reduce their consumption of natural gas. The Company asserts that residential consumers will reduce consumption in response to high natural gas commodity costs.

{¶ 153} OCC also notes that the Stipulation benefits customers by reducing the charges consumers will pay, as compared to the $221.4 million rate increase that was initially requested. OCC disagrees with the Opposing Parties' related claims that one could never demonstrate a stipulation's benefits unless there was a ruling on the utility's originally filed application. Further, OCC argues that OPAE and ELPC's proposals for the Commission to evaluate the merits of each settlement provision to determine benefit is contrary to the Commission's practice of determining whether the Stipulation as a package benefits consumers and the public interest.

{¶ 154} Staff also addresses the Opposing Parties' concerns related to the Commission's standard for evaluating "benefits ratepayers and the public interest." Staff asserts that the analysis of this standard is not a particular comparative process as CUB describes in its brief, nor is it characterized as using the Application as a measuring stick to the Stipulation. Staff also contends that ELPC's claim that the Supreme Court of Ohio used a different baseline when evaluating the benefit to ratepayers is incorrect. Rather, Staff emphasizes that this standard involves an examination of the Stipulation as a package, in which the revenue requirement and rate design are intended to lead to new distribution rates that are reasonable and consistent with cost-causation principles, citing *Ohio Power Co. Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶ 150.

{¶ 155} OCC disputes the Opposing Parties' opposition to Columbia's elimination of the non-low-income DSM programs. OCC witness Adkins stated that consumers will be spared from paying nearly $120 million under this provision (OCC Ex. 1 at 10). Further, OCC claims that the Stipulation also prevents the Company from charging consumers $10 million in shared savings (profits) from the DSM program as initially proposed. OCC refutes ELPC's argument that the elimination of the non-low-income DSM program eliminates customers' ability to manage their bills, and OCC states that all consumers will continue to have access to energy efficiency measures if they want them via a competitive marketplace.

{¶ 156} In a joint reply, RESA and IGS reject the argument that comparing the Application with the Stipulation is improper. Specifically, they address OPAE's argument on brief that calls a comparative approach "inappropriate." RESA and IGS emphasize that there were real and tangible benefits from the withdrawal of certain proposals. They claim that if the Commission did not take a comparative approach between the Application and Stipulation, then widespread, negative repercussions would occur, and the bargaining process would be frustrated. RESA and IGS argue that if there was a finding that there are no benefits from the stipulated withdrawal of multiple rider proposals, this would establish a precedent that would require parties to resolve every part of an application substantively, because a stipulation with withdrawals would not pass the Commission's test.

{¶ 157} In addition to arguments that the Stipulation, as a package, does not benefit ratepayers or the public interest, Opposing Parties raise a number of specific issues which Opposing Parties contend are not in the public interest.

a. Return on Equity

{¶ 158} ELPC claims that the ROE agreed upon by the Signatory Parties, when viewed in the entire context of the Stipulation, is over compensatory. ELPC states that the combination of the increase to the fixed customer charge and elimination of the non-low-income DSM programs "effectively" minimizes Columbia's risks. Witness Rábago claims that the ROE is very high for a "monopoly service provider" that charges straight fixed variable rates and 70 percent of its revenues are guaranteed via fixed charges (ELPC Ex. 1 at 11). ELPC argues that consequently, the Stipulation should be accompanied by a corresponding reduction in the Company's ROE. Due to these reasons, ELPC argues that the Stipulation does not satisfy the second prong of the Commission's test.

{¶ 159} In response, Columbia argues that its originally proposed ROE was not excessive, as alleged, but rather Company witness Moul arrived at his 10.95 percent ROE recommendation by utilizing the Discounted Cash Flow, Capital Asset Pricing Model, and Risk Premium methodologies (Columbia Ex. 17 at 32). Columbia notes that even when Mr. Moul supplemented his testimony to account for changes in financial conditions from inflation and recommended raising the ROE to at least 11.30 percent, the Signatory Parties stipulated to an ROE that was significantly lower at 9.6 percent (Columbia Ex. 29 at 10; Jt. Ex. 1 at 2). Further, Columbia argues that the Commission should not give any weight to ELPC witness Rábago's opinions about Columbia's financial risk or the stipulated ROE, stating that witness Rábago was unaware of Ohio law and Commission precedent. In addition, Columbia claims that there is no evidence to support ELPC's assertions that fixed customer charges and eliminating non-low-income DSM programs lowers Columbia's risk, as those arguments ignore the competitive marketplace. Columbia asserts that the stipulated ROE was much closer to Staff's proposed range, which was developed by "using a cost of capital approach which reflects a market-derived cost of equity and the actual cost of debt for the Applicant" (Staff Ex. 1 at 26-27). Columbia acknowledges that OCC, Staff, and it reached different ROE calculations. However, the Company argues that it is evident that the parties that conducted cost of capital analyses came together during negotiations and agreed upon a reasonable ROE for the Stipulation that is near the midpoint of Staff's originally recommended range and below the average of OCC and Columbia's recommendations.

b. Bill Assistance

{¶ 160} Additionally, CUB argues that bill payment assistance is not a reasonable mitigating factor for high fixed charges. CUB asserts that reallocation of the Stipulation's designated $3.5 million bill assistance to the DSM programs would be better for the public (Jt. Ex. 1 at 19). CUB agrees with OPAE witness Sarver, who testified that bill payment assistance should be reserved for emergency situations (OPAE Ex. 1). In addition, witness Sarver highlights that there are other options available to customers in need of bill payment assistance (OPAE Ex. 1 at 9-10). Moreover, CUB disagrees with the Stipulation's provision that the bill payment assistance plan's first investment will be funded by the DSM program budget.

{¶ 161} OPAE also contends that there is a problem with the proposed bill payment assistance program because it lacks program administration details. OPAE witness Sarver testified that the Stipulation leaves the program open ended with administration criteria "to be agreed between Columbia, Staff, and OCC" (OPAE Ex. 1 at 9-10). OPAE notes that the minimum criteria language is not definitive, leaving the possibility for additional criteria to be added to the agreement. OPAE argues that the Stipulation fails to cite to any statutory authority that grants OCC the power to direct and dispense customer funds. Lastly, OPAE notes that the Commission has previously and repeatedly rejected attempts to shift funds from weatherization services to bill payment assistance, citing *In re Columbia Gas of Ohio, Inc.*, Case No. 19-1940-GA-RDR, Opinion and Order (Dec. 2, 2020) at ¶ 52*; In re the Motion of Columbia Gas of Ohio, Inc. to Suspend Procedures and Process During the Declared State of Emergency,* Case No. 20-637-GA-UNC, Finding and Order (May 20, 2020) at ¶ 46*; In re the Motion of Vectren Energy Delivery of Ohio, Inc. To Suspend Procedures and Process During the Declared State of Emergency*, Case

No. 20-649-GA-UNC, Finding and Order (June 3, 2020) at ¶ 46; *In re Vectren Energy Delivery of Ohio, Inc.,* Case No. 19-2084-GA-UNC, Opinion and Order (Feb. 24, 2021) at ¶ 66. (Jt. Ex. 1 at 20; OPAE Ex. 1 at 4-5.) Due to all of these reasons, OPAE argues that the Stipulation, as a package, does not satisfy the second prong of the Commission's test.

{¶ 162} In response, OCC disagrees with OPAE and CUB's opposition to the bill payment assistance program. OCC states that if anything, these two groups should recognize that the Stipulation represents a compromise in their favor. OCC notes that its position was for more bill payment assistance instead of expensive weatherization, so as to help more at-risk Ohioans.

c. WarmChoice Program

{¶ 163} OPAE also alleges that the Stipulation is not in the ratepayers' or public's interest. OPAE asserts that the Commission should reject the WarmChoice budget cap at 2022 levels as well as the inclusion of new, unnecessary, and uncapped audits. OPAE notes that with the expansion of income eligibility for the WarmChoice program, the greater participation will be "strangled" by a budget meant for participation at a lower eligibility level. OPAE points out that Columbia does not track how many of its customers fall within 150 percent and 200 percent of the Federal Poverty Guidelines and consequently, the Company does not know how many more customers will be eligible or seek service (OPAE Ex. 2 at 8). OPAE claims that it is likely that new customers who are now eligible for these services will apply. Therefore, OPAE concludes that capping the WarmChoice budget at 2022 levels, while also expanding eligibility, will put undue strain on the program and will limit the number of customers served. In addition, OPAE objects to the additional audit provisions, as there has yet to be a clear showing of additional substantive benefit to be gained from the audits.

{¶ 164} In response to OPAE's opposition to Columbia's WarmChoice budget, OCC emphasizes that OPAE witness Peoples testified that there are additional sources of funding that are available for weatherization (OPAE Ex. 1). In addition, OCC notes that the audit provisions "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."

{¶ 165} Columbia also points out that the Opposing Parties do not dispute that the Stipulation's proposal to continue Columbia's WarmChoice program and provide bill payment assistance would benefit customers. Columbia acknowledges the comments offered by the Opposing Parties as to the operation of the bill payment assistance program and WarmChoice program, but Columbia notes that no party opposes this kind of programming. Columbia points out that the Commission's task in evaluating a stipulation under its three-part test is not to determine whether it reflects the best possible result for customers, but to ensure the Stipulation as a package benefits ratepayers and the public interest.

d. WarmChoice Program Renters Provision

{¶ 166} Next, OPAE disagrees with the Stipulation's limitation on renters' ability to receive service under WarmChoice and states that low-income renters are disadvantaged, as they may not receive service if any other renter who shares the landlord already received service. OPAE claims that the Stipulation does not define "rental premise," which leads to confusion as to interpreting the limitation in which property owners are restricted to receiving weatherization assistance for one rental premise per calendar year (Jt. Ex. 1 at 13).

{¶ 167} In reply, OCC notes that once a premise is weatherized, the benefits of that weatherization should continue for subsequent renters as well. OCC states that the safeguard for capping the numbers of renters avoids concentrating multiple program benefits in individual property owners. OCC argues that this Stipulation term would help diversify benefits to more property owners.

{¶ 168} OMAEG and Kroger disagree with the Opposing Parties' argument that the Stipulation does not meet the second prong of the Commission's test, mirroring arguments discussed above. OMAEG and Kroger note that the Opposing Parties argue that the Stipulation should be changed to benefit a specific subset of customers from a particular rate class. OMAEG and Kroger contend that position does not comport with the second prong's analysis to evaluate the Stipulation as a package in terms of its benefit to customers and the public interest.

{¶ 169} The Commission finds that evidence in the record demonstrates that the Stipulation, as a package, benefits ratepayers and the public interest. Company witness Thompson, OCC witness Adkins, and Staff witness Lipthratt each testified that the Stipulation, as a package, benefits ratepayers and the public interest, and each witness identified numerous provisions that benefit the public (Co. Ex. 35 at 3-4; OCC Ex. 1 at 5-10; Staff Ex. 8 at 4-7). We note that the Stipulation in this case substantially reduces Columbia's requested rate increase while providing Columbia with the opportunity to obtain a reasonable return on its investment (OCC Ex. 1 at 6; Staff Ex. 8 at 4-5). The Stipulation provides for important funding to promote the reliability and safety of natural gas service in Columbia's service area (Columbia Ex. 35 at 4). The Stipulation also provides for significantly lower rider caps than proposed by Columbia and for the filing of a new rate case in 2027 (OCC Ex. 8 at 8-9; Staff Ex. 8 at 6-7).

{¶ 170} The Commission notes that 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. *Ohio Power Co. Rate Case,* Opinion and Order (Nov. 17, 2021) at ¶ 151, citing *In re The East Ohio Gas Co. dba Dominion Energy Ohio,* Case No. 19-468-GA-ALT, Opinion and Order (Dec. 30, 2020) at ¶ 73 and *In re Duke Energy Ohio, Inc.,* Case No. 19-791-GA-ALT, Opinion and Order (Apr. 21, 2021) at ¶ 63. Further, the Stipulation must be viewed as a package for purposes of part two of the three-part test used to evaluate stipulations. *See, e.g., In re Ohio Power Co.*, Case No. 94-996-EL-AIR, et al., Opinion and Order (Mar. 23, 1995) at 20-21; *In re Columbus Southern Power Co. and Ohio Power* Co., Case

No. 99-1729-EL-ETP, et al., Opinion and Order (Sept. 28, 2000) at 44. We have repeatedly found value in the parties' resolution of pending matters through a stipulation package, as an efficient and cost-effective means of bringing the issues before the Commission, while also avoiding the considerable time and expense associated with the litigation of a fully contested case. *See, e.g., In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.,* Case No. 12-1230-EL-SSO, Opinion and Order (July 18, 2012) at 42*; In re Columbus Southern Power Co. and Ohio Power Co.,* Case No. 11-5568-EL-POR, et al., Opinion and Order (Mar. 21, 2012) at 17. We, therefore, reaffirm that the Stipulation offered by the Signatory Parties in these proceedings must be viewed as a whole.

{¶ 171} ELPC, CUB, and OPAE each oppose the elimination of the non-low-income DSM programs as well as the spending caps on WarmChoice. However, we note that OCC witness Adkins testified that ratepayers would save $120 million with the elimination of the non-low-income DSM programs (OCC Ex. 1 at 10). Further, the Stipulation prevents the Company from collecting $10 million in shared savings; instead, the Company will make a substantial contribution to a bill assistance program (Staff Ex. 8 at 6, 7). Moreover, customers who wish to manage their usage will continue to have access to energy efficiency measures through the competitive marketplace. At the hearing, CUB witness Bullock acknowledged that nothing in the Stipulation precludes a customer from getting DSM services from a competitive natural gas supplier and that nothing in the Stipulation precludes a competitive natural gas supplier from offering demand-side management services to their customers (Tr. at 107).

{¶ 172} ELPC, CUB and OPAE also oppose the continued use of SFV rate design for SGS customers. The Commission thoroughly addressed whether the use of SFV rate design should be continued in response to ELPC's second objection above. However, we will reiterate the key factors supporting our conclusion that SFV design benefits ratepayers and the public interest. We agree with the testimony of Columbia witness Feingold, who testified that "fixed charges promote fairness to all customers because the customer's bill reflects the actual average cost of providing gas delivery service rather than being based on the volume of gas consumed." (Columbia Ex. 7 at 31). The testimony of Mr. Feingold also demonstrates that SFV rate design results in rates that track embedded costs more accurately, eliminating intra-class subsidies and undue discrimination in the residential and small commercial classes (Columbia Ex. 7 at 36). The record also supports the conclusion that SFV rate design promotes cost causation because the costs incurred by Columbia are relatively uniform across the range of customers in the SGS rate class, and SGS customers pay a flat monthly fee for Columbia's fixed costs of distribution service (Columbia Ex. 7 at 35-36). Moreover, SFV rate design eliminates the need for weather normalization in determining base rates that recover fixed costs (Columbia Ex. 7 at 36).

{¶ 173} We also reiterate that the SFV rate design sends a true and accurate price signal to customers for the purpose of making energy efficiency investments. Columbia witness Feingold testified that SFV rates minimize the distortion of gas commodity prices and promote more accurate commodity price signals to the customer (Columbia Ex. 7 at 36). We are not persuaded by the testimony of CUB witness Bullock that increased fixed charges, alone, reduce the incentive to conserve energy because customers would see little impact of those volumetric reductions on their monthly bill (CUB Ex. 1 at 8). We find that customers still have a substantial incentive to manage their usage to reduce their overall bills because natural gas commodity prices are volatile and are high at this point in time, as ELPC witness Rábago points out (ELPC Ex. 1 at 7-8).

{¶ 174} With respect to the arguments raised by ELPC regarding the ROE, we find that the evidence in the record supports the stipulated ROE of 9.60 percent and the stipulated ROR of 7.08 percent. In support of its Application in this case, Columbia provided testimony through its witness Moul, who supported a ROE of 10.95 percent (Columbia Ex. 17 at 1, 4-5, 13, 32). A ROE of 10.95 percent would result in a ROR in this case of 7.85 percent (Columbia Ex. 1 at Schedule A-1, Schedule D-1A). On the other hand, OCC proposed a ROE of 8.65 percent resulting in a ROR of 6.59 percent (OCC Ex. 4 at 4-5). The Commission notes that neither Mr. Moul's testimony in support of a ROE of 10.95 percent nor Dr. Zhu's testimony in support of a ROE of 8.65 percent was impeached or otherwise undermined through cross-examination by any party. The Staff Report provided a range of reasonable rates of return of 6.88 percent to 7.39 percent, and the stipulated ROR of 7.08 percent is within that range. (Staff Ex. 1 at 26, Schedule A-1, Schedule D-1A).

{¶ 175} The Commission further notes that the ROR of 7.08 percent recommended by the Stipulation is below the midpoint of the range provided by the Staff Report and is supported by the testimony of Staff witness Lipthratt (Staff Ex. 8 at 4-5). We also note that a ROE of 9.60 percent is less than the average of OCC's recommendation of 8.65 percent and Columbia's proposed ROE of 10.95 percent. Accordingly, we find that the ROR is a reasonable compromise and, as part of the entire settlement package, is in the public interest.

{¶ 176} With respect to the funding for the WarmChoice program, we note that OPAE witness Peoples provided compelling testimony regarding the need for additional funding for weatherization efforts (OPAE Ex. 2). The Commission is mindful of the need for funding for weatherization, particularly with respect to at-risk populations, and we expect Columbia to diligently pursue additional, non-ratepayer funding for weatherization for low-income customers, as required by the Stipulation (Jt. Ex. 1 at 12). However, the record is clear that the WarmChoice program is not the only source of funding for weatherization programs (Tr. 120-121), and the Commission must balance the need for additional weatherization resources with the impact upon the customers who fund such resources. The Stipulation provides for WarmChoice funding in the amount of $14.9 million per year for five years. This represents a significant commitment of ratepayer funding. Further, Ms. Peoples also acknowledges that, due to circumstances beyond their control related to the pandemic and to workforce reductions, Ms. Peoples' agency has been unable to meet its weatherization goals even with existing resources (OPAE Ex. 2 at 6-7). Further, although Ms. Peoples testified that her agency is already subject to audits (OPAE Ex. 2 at 11), we are not persuaded that the management audits for the WarmChoice program provided for by the Stipulation are unnecessary or overly burdensome.

{¶ 177} Moreover, we note that OPAE witness Sarver is critical of the lack of detail for the bill assistance program and of the use of Rider DSM to fund the bill assistance program (OPAE Ex. 1 at 5-7, 8-10). Based upon the testimony of Mr. Sarver and Ms. Peoples, we find that funds for the proposed bill payment assistance program should not be recovered through Rider DSM, which should exclusively recover funds for DSM programs. Instead, we will modify the Stipulation to provide that the entire $3.5 million for the bill payment assistance program be provided by Columbia, with no recovery from ratepayers, rather than the $2.3 million proposed by the Stipulation. Mr. Sarver also is particularly critical of OCC and its capability to provide meaningful input on the bill assistance program (OPAE Ex. 1 at 6, 15). We find that criticism to be unnecessary and of minimal probative value regarding whether the Stipulation, as a package, benefits ratepayers and the public interest. Moreover, we note that CUB witness Bullock calls upon the Commission to review the hundreds of customer comments filed in this proceeding opposing the rate increase proposed by Columbia before approving the Stipulation (CUB Ex. 1 at 9-10). Although Mr. Bullock specifically notes a small number of comments regarding the use of fixed charges, the vast majority of comments, as well as the testimony at the five local public hearings held in this case, demonstrate understandable concern for any rate increase at this time, rather than a specific concern for rate design. The Commission appreciates the concerns of ratepayers over any increase in rates during this period of global inflation and high natural gas commodity prices (Zanesville Tr. at 17-18, 26; Toledo Tr. at 17-18; ELPC Ex. 1 at 7-8).

{¶ 178} Accordingly, for the reasons set forth in detail above, the Commission finds, based upon the evidence in the record of this case, that the Stipulation, as modified by the Commission, benefits ratepayers and the public interest.

3. DOES THE STIPULATION VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE?

{¶ 179} Columbia asserts that the Stipulation does not violate any important regulatory principle or practice. The Company emphasizes that with the continuation of the IRP rider and CEP rider, these aspects of the Stipulation fulfill state policy to promote the availability of adequate, reliable, and reasonably priced natural gas goods and services. Columbia claims that this availability helps facilitate the state's competitiveness in the global economy by keeping rates low and preserving the Company's ability to maintain and expand its distribution infrastructure. Columbia also notes that the continuation of the WarmChoice program and DSM rider promotes alignment of natural gas company interests with consumer interests in energy efficiency and energy conservation. Lastly, Columbia contends that the Stipulation promotes important regulatory principles by maintaining a straight fixed variable rate design for the SGS class, during which for nearly 15 years, the Commission has consistently approved SVF rate designs for natural gas utilities. For these reasons, Columbia concludes that it meets the third prong of the Commission's three-prong Stipulation test. (Jt. Ex. 1 at 2, 12, 15-16, 18.)

{¶ 180} In reply, ELPC disputes Columbia's claim that the continuation of the WarmChoice program and DSM rider promotes alignment of interests (Columbia Ex. 4 at 32). *See* R.C. 4929.02(A)(12)). ELPC argues that the applicable statutes, R.C. 4929.02 and R.C. 4905.70, do not distinguish between customer classes or single out low-income consumers. In addition, ELPC alleges that Columbia is attempting to turn the fixed customer charge increase into a positive regulatory principle rather than an offset to the DSM program, which is how the Commission approved it previously, citing *Columbia Rate Case*, Opinion and Order (Dec. 3, 2008) at 20.

{¶ 181} Staff asserts that the Stipulation satisfies the third prong of the Commission's test. Staff emphasizes that there are many principles that guide the Commission in evaluating rate setting proposals, and there is no "scorecard" that determines which regulatory principles or practices are important. Further, Staff highlights that witness Thompson, witness Adkins, and witness Lipthratt testify that the Stipulation continues previously approved principles and does not violate important regulatory principles and practices. (Columbia Ex. 35 at 5; OCC Ex. 1 at 11; Staff Ex. 8 at 7.)

{¶ 182} OCC also contends that the Stipulation meets the third prong of the test. OCC claims that the Stipulation is nondiscriminatory and consistent with the regulatory principles in R.C. 4905.33 and 4928.02(A). OCC states that all consumers within their respective rate classes pay the same rates for the same service. Further, OCC asserts that the Stipulation protects residential and low-income consumers, consistent with policy set forth in R.C. 4928.02(L) by providing bill payment assistance. OCC states that the Stipulation also protects at-risk populations by providing a weatherization program for low-income consumers. OEG agrees and claims that the Stipulation advances important policies and principles, including ensuring the availability to customers of adequate, reliable and reasonably priced natural gas service, and protecting at-risk populations.

{¶ 183} In reply, CUB asserts that there is no regulatory practice or principle that says approved rates should be based on whether they are less than what the utility requested in its initial Application.

{¶ 184} OMAEG and Kroger both assert that the Stipulation meets the third prong. OMAEG and Kroger note that the Stipulation serves the purpose of gradualism by avoiding rate shock and the use of yearly rider caps. OEG also observes that the Stipulation furthers important policies and principles which facilitate the state's effectiveness in the global economy. Lastly, OMAEG and Kroger state that by aligning rates with the cost to serve more closely, the Stipulation supports the principle of cost causation.

{¶ 185} IEU-Ohio also represents that the Stipulation meets the Commission's third prong. IEU-Ohio claims that the Stipulation balances Columbia's need for investment with the costs that such investment will impose on ratepayers in the future, and the Stipulation also limits future rate increases via caps on the CEP rider and IRP rider. Further, IEU-Ohio notes that the Stipulation continues auditing requirements for these riders and places timing requirements on Columbia's next case proceeding to ensure a future review of Columbia's future investment. (Jt. Ex 1 at 8, 15-17; OCC Ex. 1 at 9.)

{¶ 186} ELPC claims that the Stipulation violates important regulatory principles and that Signatory Parties fail to carry their burden as to proving this prong of the Commission's test. ELPC notes that Columbia witness Thompson's testimony and Staff witness Lipthratt's testimony addressing this prong was brief. ELPC says that OCC witness Adkin's testimony was longer but still fails to provide "meaningful evidence" to support its conclusion. (Columbia Ex. 35 at 5; Staff Ex. 8 at 7; OCC Ex. 1 at 11.) ELPC claims that in previous Commission cases, the Commission has approved settlement agreements with a more comprehensive discussion of prong three on the record.

{¶ 187} Next, ELPC states that witness Rábago draws from James C. Bonbright's *Principles of Public Utility Rates* and identifies important regulatory principles that the Stipulation violates (ELPC Ex. 1 at 25-26). ELPC claims that the Stipulation is "unduly discriminatory, improperly apportions costs, it fails to promise efficient use of energy or the system, and it overcompensates Columbia with an excessive ROE." ELPC alleges that the Stipulation violates the critical principle that "rates should advance economic efficiency, promote the efficient use of energy and support market growth for competing products and services" (ELPC Ex. 1 at 26).

{¶ 188} ELPC states that the elimination of the DSM program and increase in fixed customer charges indicates the Stipulation violates energy efficiency principles. ELPC claims that not only is energy efficiency a fundamental principle according to Bonbright's treatise, but it is also recognized by the Ohio legislature, courts, and the Commission via R.C 4905.70 and R.C. 4929.02(A)(12). ELPC highlights that the Commission has held energy efficiency workshops to solicit stakeholder viewpoints 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 CRNGS markets, citing *Ohio Power Co. Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶ 173. ELPC notes that in the 2021 Ohio Power Company rate case, the Commission withheld its judgement of the energy efficiency implications until it held the workshops. ELPC infers that such workshops were deemed necessary, before reaching a conclusion on this principle. Further, ELPC claims that Columbia recognizes energy efficiency as important and that in the past, it has advocated strongly for its energy efficiency programs and argued that its programs align with state energy policy, citing *Joint Comments of the East Ohio Gas Company dba Dominion Energy Ohio, Vectren Energy Delivery of Ohio, Inc. dba Centerpoint Energy Ohio, and Columbia Gas of Ohio,* Energy Efficiency Workshop Comments (Jan. 28, 2022). Furthermore, ELPC alleges that the increased fixed customer charge violates the principles that rates should advance the efficient use of energy, directly in violation of R.C. 4929.02(A)(12). ELPC alleges that the high fixed charges in the Stipulation encourage additional waste, while disincentivizing customers to be efficient in volumetric use when there is no real benefit in bill savings (ELPC Ex. 1 at 20).

{¶ 189} ELPC also asserts that the Stipulation contradicts the principle that rates must be fair in apportioning costs among different consumers (ELPC Ex. 1 at 25). ELPC further claims that the record in this case demonstrates that high fixed charges are economically regressive and unfair for low-volume users, who tend to be low-income individuals. ELPC notes that OCC witness Colton also expresses reservations about the fixed charge rate and that Columbia is impeding low-income consumers' ability to reduce their bills to more affordable levels (OCC Ex. 2 at 41). ELPC states that OCC witness Colton concludes, using the Company's data, that higher income customers consume more gas than lower income customers (OCC Ex. 2 at 13). ELPC recognizes that the Commission has rejected these kinds of arguments in the past, but argues that in the present case, there is ample evidence that there is a direct correlation between low-volume consumers and low-income consumers.

{¶ 190} OCC disputes ELPC's reliance on OCC's litigation position at the initial stages of the proceeding. OCC indicates that witness Colton offered no testimony regarding the Stipulation and that any reliance on that testimony is misplaced with regard to analyzing the Stipulation under the three-prong test.

{¶ 191} Lastly, ELPC argues that the Stipulation must be rejected because it violates statutory directives pursuant to R.C. 4909.18, 4909.19(C), 4929.05(3), which requires that rates are just and reasonable. ELPC cites to the U.S. Supreme Court to reiterate that ensuring just and reasonable rates is the heart of the regulatory system, citing *Fed. Power Comm. v. Hope Natural Gas Co.*, 320 U.S. 591, 602, 64 S.Ct. 281, 88 L.Ed. 333 (1944). ELPC states that the combination of the straight fixed charges combined with Columbia's proposed ROE makes the Stipulation unjust and unreasonable. For these reasons already discussed, ELPC does not agree that the Stipulation meets the third prong of the Commission's stipulation analysis.

{¶ 192} CUB argues that the Stipulation does not meet the Commission's third prong and claims that it violates Ohio law and important regulatory principles and practices. CUB contends that the Stipulation takes away consumer control and related policies that are codified under R.C. 4902.02(B). CUB states that these policies are implicated by the Stipulation's high straight fixed variable rates and charges, which take away customers' ability to control their energy usage. CUB argues that increasing fixed charges and reducing energy efficiency programs contradict "the Commission's charge to initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs." Further, CUB claims that the Commission's statutory discretion, to ensure that energy is unwasted and cost savings are maximized, is undermined by the elimination of the non-low-income DSM program. CUB notes that there is no mandate for utilities to provide DSM programs. However, CUB points out that the Commission has found that natural gas utilities' DSM programs comply with and are consistent with Ohio's public policy of encouraging energy conservation and promoting natural gas company interests that align with consumer interests in energy efficiency and conservation, citing *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 19-2084-GA-UNC, Opinion and Order (Feb. 24, 2021) at ¶ 74; *In re Columbia Gas of Ohio, Inc.*, Case No. 19-1940-GA-RDR, Opinion and Order (Dec. 2, 2020) at ¶ 54.

{¶ 193} Lastly, CUB takes issue with the Stipulation provision that prevents Columbia from advocating for any consumer-funded energy efficiency programs at the Ohio Legislature or the Commission, or supporting others' advocacy efforts for the same, during the rate plan's term (Jt. Ex. 1 at 12). CUB opposes this provision by characterizing it as a "gag order" and claims that it is never the Commission's role to approve nor enforce provisions that are against "good public policy." CUB emphasizes that such a provision would be unprecedented.

{¶ 194} In reply to CUB's position, Columbia argues that nothing in the Stipulation "silences" Columbia and that Columbia has chosen not to speak on the issue of consumer-funded energy efficiency programs. Columbia highlights that CUB witness Bullock admitted during hearing that he had no reason to believe that Columbia signed the Stipulation involuntarily or that the Company was coerced to sign the Stipulation (Tr. at 102). Columbia states that its agreement not to pursue such programming until it files it next base rate case in 2027 largely reinforces its other DSM-related commitments in the Stipulation. Further, Columbia points out that no Ohio law would require the Company to advocate in favor of DSM in any Commission proceeding or legislative initiative in the absence of the Stipulation. OPAE joins ELPC and CUB and disagrees that the Stipulation satisfies the third prong for similar reasons discussed above.

{¶ 195} In reply to Opposing Parties', Columbia asserts that the Opposing Parties offer no arguments that the Commission and Ohio Supreme Court have not already rejected. Columbia notes that the Commission has consistently supported SFV rate design for over a decade, and the Ohio Supreme Court has twice affirmed the SFV rates, citing *Ohio Consumers' Counsel*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261, at ¶ 4; *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 127 Ohio St.3d 524, 2010-Ohio-6239. In addition, Columbia raises the argument that under R.C. 4929.02 or R.C. 4905.70, the Commission is not required to approve any particular DSM programs or specific funding levels, citing *Ohio Consumers' Counsel*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261, at ¶ 39; *Ohio Partners for Affordable Energy v. Pub. Util. Comm.*, 115 Ohio St.3d 208, 2007-Ohio-4790 at ¶ 36-39. Columbia argues that R.C. 4929.02 offers guidelines for Commission consideration, as it exercises its discretion to evaluate the policy implications of the Stipulation.

{¶ 196} Moreover, Columbia points out that Staff provided testimony that the Stipulation is consistent with the polices in R.C. 4929.02(A)(12) and 4905.70 (Staff Ex. 6 at 4). Further, OCC joins this position and argues that the Stipulation is consistent with the abovementioned statutes and that the Commission rejected ELPC and OPAE's identical claims in AEP's most recent rate case, citing *Ohio Power Co. Rate Case*, Opinion and Order (Nov. 17, 2021) at ¶ 173. OCC acknowledges that the Opposing Parties refer to the Commission's energy efficiency workshops, but notes that even CUB concedes that what was discussed during the workshops was "not definitive of a statewide policy." In addition, OCC notes that neither R.C. 4929.02 nor R.C. 4905.70 have changed, and Ohio law does not require the Commission to mandate the implementation of a DSM program.

{¶ 197} Staff iterates similar responses to the Opposing Parties, also emphasizing that the Stipulation's rates are reasonable because all similarly situated customers are treated the same, as the law requires. Staff emphasizes that the ROE in the Stipulation was well within the range proposed by the Staff and significantly lower than the 10.95 percent proposed by Columbia. Additionally, OMAEG and Kroger claim that the terms of the Stipulation are just and reasonable pursuant to R.C. 4905.22, R.C. 4909.15, R.C. 4909.19, and R.C. 4929.05, and that the Opposing Parties merely focus on whether specific terms could be changed to satisfy specific regulatory principles, while ignoring whether the Stipulation, as a package, satisfies this prong.

{¶ 198} The Commission finds that, with the modifications discussed herein, the Stipulation does not violate any important regulatory principle or practice. Columbia witness Thompson, OCC witness Adkins, and Staff witness Lipthratt each testified that the Stipulation violated no important regulatory principles or practices (Columbia Ex. 35 at 4-5; OCC Ex. 1 at 11; Staff Ex. 8 at 7). On the other hand, ELPC witness Rábago presented testimony claiming that the Stipulation violated several regulatory principles and practices articulated in James C. Bonbright's *Principles of Public Utility Rates* (ELPC Ex. 1 at 25-30). We find that the evidence in this case demonstrates that the provisions of the Stipulation are consistent with Bonbright's treatise.

{¶ 199} Opposing Parties claim that the continued use of SFV rate design for SGS class customers violates important regulatory principles and practices, particularly in conjunction with the elimination of programs for non-low-income customers from Columbia's DSM program. As noted above, the Commission established that the SFV rate design as the appropriate rate design for natural gas company distribution rates through a series of decisions, beginning with *In re Duke Energy Ohio, Inc.*, Case No. 07-589-GA-AIR, et al., Opinion and Order (May 28, 2008), *aff'd, Ohio Consumers' Counsel*, 125 Ohio St.3d 57, 2010-Ohio-134, 926 N.E.2d 261. The Commission recently affirmed the use of SFV rate design for a natural gas company. *2018 VEDO Rate Case*, Opinion and Order (Aug. 28, 2019) at ¶ 47-48, 51-52. The SFV rate design was initially adopted for Columbia in *Columbia Rate Case*, Opinion and Order (Dec. 3, 2008). We are not convinced that deviating from these established precedents would represent sound regulatory policy. We disagree with ELPC witness Rábago that the SFV rate design is confusing. As Columbia witness Feingold testified, every SGS customer pays a flat monthly rate, which is a simple and easily understood rate. Mr. Feingold also noted that Columbia's SGS customers have been charged under the SFV rate design for natural gas delivery service for over 12 years, and these customers are accustomed to paying a monthly fixed charge by Columbia for this type of utility service (Columbia Ex. 7 at 35-36). Thus, we conclude that the SFV rate design is consistent with principles of *simplicity* and *public acceptance* raised by ELPC witness Rábago.

{¶ 200} The Commission has recognized that SFV rate design provided a more equitable cost allocation among residential customers because the costs of providing distribution service are principally fixed, and each residential customer should bear an equal proportion of the distribution costs. *Dominion East Ohio*, Opinion and Order (Oct. 15, 2008) at 24-25. In this case, Columbia witness Feingold testified that "fixed charges promote fairness to all customers because it reflects the actual average cost of providing gas delivery service rather than being based on the volume of gas consumed." (Columbia Ex. 7 at 31). The testimony of Mr. Feingold also demonstrates that SFV rate design results in rates that track embedded costs more accurately, eliminating intra-class subsidies and undue discrimination in the residential and small commercial classes (Columbia Ex. 7 at 36). Accordingly, despite ELPC's claims to the contrary, we find that the SFV rate design is consistent with the principle of *fairness*. Moreover, the evidence demonstrates that SFV rate design is not *unduly discriminatory* and SFV rate design promotes *cost causation* because the costs incurred by Columbia are relatively uniform across the range of customers in the SGS rate class and SGS customers pay a flat monthly fee for the fixed costs of distribution service (Columbia Ex. 7 at 35-36).

{¶ 201} Moreover, notwithstanding Opposing Parties' arguments to the contrary, the Commission repeats that the SFV rate design sends a true and accurate price signal to customers for the purpose of making energy efficiency investments. Columbia witness Feingold testified that SFV rates minimize the distortion of gas commodity prices and promote more accurate commodity price signals to the customer, providing greater economic efficiency (Columbia Ex. 7 at 36). Accordingly, we find that the SFV rate design promotes *economic efficiency*. Nonetheless, customers can still reduce the cost of the commodity portion of their bills, which varies based upon the amount of consumption, by conserving or implementing energy efficiency measures, informed by the accurate price signal sent by natural gas commodity prices; in fact, ELPC witness Rábago's testimony indicates that the commodity price for natural gas has risen significantly in the last year (ELPC Ex. 1 at 7-8).

{¶ 202} Moreover, as noted above regarding ELPC's objection to the Staff Report, it is the policy of the state to promote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation. R.C. 4929.02(A)(12). The SFV rate design adopted by the Stipulation eliminates any conservation disincentive to Columbia and, thus, properly aligns Columbia's interests with consumer interest in energy efficiency and conservation (Columbia Ex. 7 at 36). *See also 2018 VEDO Rate Case*, Opinion and Order (Aug. 28, 2019) at ¶ 121. Increased reliance upon volumetric rates would be inconsistent with R.C. 4929.02(A)(12) because increased reliance on volumetric rates would run the risk of creating a disincentive for Columbia to support energy efficiency and energy conservation efforts, such as WarmChoice, and to seek additional, non-ratepayer funding for weatherization projects as provided for in the Stipulation (Jt. Ex. 1 at 12).

{¶ 203} Regarding the provisions of the Stipulation addressing Columbia's DSM program and WarmChoice, R.C. 4905.70 provides that the Commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs. Pursuant to this statutory authority, we have long recognized that energy efficiency and DSM programs that are cost-effective, produce demonstrable benefits, and produce a reasonable balance between reducing total costs and minimizing impacts on non-participants are consistent with this state's economic and energy policy objectives. *Dominion East Ohio,* Opinion and Order (Oct. 15, 2008) at 22-23; *In re Columbia Gas of Ohio, Inc.,* Case No. 16-1309-GA-UNC, et al., Opinion and Order (Dec. 21, 2016) at 63. However, there is nothing in the Stipulation which is inconsistent with these prior decisions, or which violates an important regulatory principle or practice.

{¶ 204} Moreover, as noted above, we find that the Stipulation is consistent with the policy of this state as set forth in R.C. 4929.02. Under the terms of the Stipulation proposed in this case, Columbia will continue its DSM program, as proposed in its Application and modified by the Staff Report; but Columbia's DSM program shall be limited, beginning on January 1, 2023, solely to Columbia's low-income program, WarmChoice (Jt. Ex. 1 at 11-12). Pursuant to the terms of the Stipulation, the DSM program reduces impacts upon non-participating customers by reducing utility spending on energy efficiency by approximately $120 million (OCC Ex. 1 at 10) and promotes the competitive market by relying on competitive suppliers to offer energy efficiency services to non-low-income customers. At the same time, the WarmChoice program will provide over $70 million in weatherization service for low-income customers over five years, protecting at-risk populations who may be unable to afford market-based services. It is the policy of the state to promote the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail consumers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs; promote diversity of natural gas supplies and suppliers, by *giving consumers effective choices* over the selection of those supplies and suppliers; and encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods. R.C. 4929.02(A)(2), (3) and (4).

{¶ 205} Further, the Commission notes that there is nothing in this Stipulation which is inconsistent with the public workshops held by the Commission to receive feedback from stakeholders regarding the future of energy efficiency programs implemented by both electric and natural gas utilities in this state. At the conclusion of the workshops, the Commission announced that future decisions regarding energy efficiency programs would be made, on a case-by-case basis, based upon the evidence in the record of each proceeding.

{¶ 206} Lastly, with respect to the provision of the Stipulation in which Columbia agrees that it will not pursue, or support the pursuit of others, consumer-funded energy efficiency or DSM programs through "legislation," we will modify the Stipulation to eliminate this provision because the Commission lacks statutory authority to approve or enforce it. As a creature of statute, the Commission "has no authority to act beyond its statutory powers." *In re Ohio Power Co.*, 144 Ohio St.3d 1, 2015-Ohio-2056, 40 N.E.3d 1060, at ¶ 32, quoting *Discount Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957, at ¶ 51. The General Assembly has established a comprehensive system of regulation of public utilities rates and services. R.C. 4905.04, 4905.05, and 4905.06. However, we are not persuaded that our broad statutory authority over utilities' rates and service extends to limiting, or enforcing limitations on, public utilities' First Amendment rights to free speech or to petition the government. The Commission notes that this modification extends only to the language specifying "legislation." Nonetheless, we will reiterate that nothing in the Stipulation prevents a consumer from obtaining energy efficiency services from a competitive retail service provider or other provider in the competitive marketplace. With the modifications prescribed by the Commission, we find that the Stipulation does not violate any important regulatory principles or practices.

E. Rate of Return and Authorized Increase

{¶ 207} Given Columbia's current rates, the Company has a current operating income of $194,317,000 and a stipulated rate base of $3,505,491,000, which yields a 5.54 percent earned ROR. Such ROR is insufficient to provide Columbia with reasonable compensation for distribution of natural gas service provided to its customers. (Jt. Ex. 1 at 3, Stipulation Appendix A, Schedule A-1.)

{¶ 208} The negotiated ROR recommended by the Stipulation is 7.08 percent. In order to realize this agreed to ROR on the stipulated rate base of $3,505,491,000, Columbia requires net operating income of $248,189,000. Accordingly, the Stipulation provides for a revenue increase, or base rate increase, of $68,192,000, and a total revenue requirement of $923,592,000. (Jt. Ex. 1 at 2-3; Stipulation Appendix A, Schedule A-1.)

F. Effective Date and Tariffs

{¶ 209} As part of its investigation in this matter, Staff reviewed the various rates, charges, and provisions governing terms and conditions of service contained in Columbia's proposed tariffs and, ultimately, joined the Stipulation recommending that the Commission approve the tariffs filed as Stipulation Appendix F on December 16, 2022. Upon review, the Commission finds the stipulated proposed tariffs to be reasonable. Consequently, Columbia shall file final tariffs, which will become effective on a bills-rendered basis on or after the effective date of the tariffs.

V. Findings of Fact and Conclusions of Law

{¶ 210} Columbia is a natural gas company and a public utility as defined by R.C. 4905.03 and R.C. 4905.02, respectively. As such, the Company is subject to the Commission's jurisdiction pursuant to R.C. 4905.04, 4905.05, and 4905.06.

{¶ 211} On May 28, 2021, Columbia filed a notice of intent to file an application for an increase in rates. Columbia proposed a date certain of March 31, 2021, and a test year of the 12 months ending December 31, 2022.

{¶ 212} On June 30, 2021, Columbia filed its Application for approval of an increase in its rates, for approval of an alternative rate plan, for approval of a DSM program, and for approval to change accounting methods.

{¶ 213} By Entry issued on July 7, 2021, the test year and date certain were approved.

{¶ 214} On August 25, 2021, the Commission issued an Entry that accepted the Application for filing as of June 30, 2021.

{¶ 215} On April 6, 2022, the Staff Report was filed with the Commission.

{¶ 216} Objections to the Staff Report were filed by various parties on May 6, 2022.

{¶ 217} Following public notice, the Commission conducted local public hearings on June 1, June 2, June 7, June 9, and October 14, 2022. Notice of the local public hearings were published in accordance with R.C. 4903.083, and proof of such publication was filed by Columbia on June 22, 2022, and October 12, 2022.

{¶ 218} On August 5, 2022, Columbia filed a letter stating that it will not put its proposed rates into effect on December 28, 2022, or for ninety days thereafter unless the proposed rates have been approved by the Commission.

{¶ 219} On October 31, 2022, the Stipulation was filed by the Signatory Parties.

{¶ 220} Prehearing conferences were held on June 1, 2022, and October 18, 2022.

{¶ 221} The evidentiary hearing was held at the Commission offices and was called and continued on June 15, 2022, and was resumed on November 21, 2022.

{¶ 222} The value of Columbia's property used and useful for the rendition of service to customers affected by the Application, determined in accordance with R.C. 4909.15, is $3,505,491,000.

{¶ 223} The current net annual compensation of $248,189,000 represents a ROR of 7.08 percent on the jurisdictional rate base of $3,505,491,000.

{¶ 224} A ROR of 7.08 percent is fair and reasonable under the circumstances of these cases and is sufficient to provide Columbia just compensation and return on its property used and useful in the provision of services to its customers.

{¶ 225} An authorized revenue increase of $68,192,000 will result in an operating income of $194,317,000, which, when applied to the rate base of $3,505,491,000, yields a ROR of approximately 7.08 percent.

{¶ 226} The allowable gross annual revenue to which Columbia is entitled for purposes of these proceedings is $923,592,000.

{¶ 227} Columbia's Application to increase rates was filed pursuant to, and this Commission has jurisdiction over the Application under, the provisions of R.C. 4909.17, 4909.18, and 4909.19; the Application complies with the requirements of these statutes.

{¶ 228} A Staff investigation was conducted, and a report of that investigation duly filed and mailed, in accordance with R.C. 4909.19.

{¶ 229} Public hearings were noticed and held in compliance with the requirements of R.C. 4909.19 and 4903.083.

{¶ 230} The Stipulation meets the three criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted as modified by the Commission.

{¶ 231} The existing rates and charges for natural gas distribution service are insufficient to provide Columbia with adequate net annual compensation and return on its property used and useful in the provision of natural gas distribution services.

{¶ 232} A ROR of 7.08 percent is fair and reasonable under the circumstances of this proceeding and is sufficient to provide Columbia just compensation and return on its property used and useful in the provision of natural gas distribution services.

{¶ 233} Columbia's Application was filed pursuant to, and this Commission has jurisdiction over the Application under, the provisions of R.C. 4909.17, 4909.18, and 4909.19, and the Application complies with the requirements of these statutes.

{¶ 234} Upon review, the Commission finds the proposed tariffs to be reasonable. Consequently, Columbia is authorized to withdraw its current tariffs and to file, in final form, revised tariffs as approved by the Commission herein.

VI. ORDER

{¶ 235} It is, therefore,

{¶ 236} ORDERED, That, subject to the modifications by the Commission, the Stipulation filed on October 31, 2022 in this proceeding be approved and adopted by the Commission. It is, further,

{¶ 237} ORDERED, That Columbia's Applications for an increase in rates and for approval of alternative rate plans are granted to the extent provided in this Opinion and Order. It is, further,

{¶ 238} ORDERED, That Columbia is authorized to file, in final form, two complete copies of tariffs consistent with this Opinion and Order and to cancel and withdraw its superseded tariffs upon the effective date of the final tariffs. One copy shall be filed in these case dockets and one copy shall be filed in the Company's TRF docket. The Company shall also update its tariffs previously filed with the Commission's docketing division. It is, further,

{¶ 239} ORDERED, That Columbia shall notify all affected customers of the tariffs via bill message or bill insert within 30 days of the effective date of the revised tariffs. A copy of this customer notice shall be submitted to the Commission's Service Monitoring and Enforcement Department, Reliability and Service Analysis Division, at least ten days prior to its distribution to customers. It is, further,

{¶ 240} ORDERED, That the effective date of the revised tariffs shall be a date not earlier than the date of this Opinion and Order and the date upon which two complete copies of the final tariffs are filed with the Commission. It is, further,

{¶ 241} ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

COMMISSIONERS:
Approving:
Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

GAP/JWS/IMM/mef/dmh