BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

APPLICATION FOR RE-HEARING BY

THE ENVIRONMENTAL LAW & POLICY CENTER

February 27, 2023

I. Introduction

Environmental Law and Policy Center (ELPC) submits that the Commission Order in the Columbia rate case fails to protect consumers' interests and violates the fundamental regulatory principle that utilities should help customers use energy efficiently. Raising the fixed customer charge to $58 per month and eliminating the non-low-income demand-side management programs ignores the interests of the majority of Columbia's customers who face challenges paying their bills. ELPC hopes the Commission will reconsider its decision to allow Columbia to charge its customers $58 every month before using any gas. Most importantly, the Commission has consistently ruled in gas cases that the energy efficiency programs utilities run benefit customers, but here fails to justify the elimination of these programs.

When the Commission evaluates a Stipulation it applies a three prong test:

> (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?

In re Ohio Power Co. & Columbus S. Power Co. for Authority to Establish a Standard Service Offer, Case No. 11-346-EL-SSO, *et al.*, Opinion & Order at 27 (Dec. 14, 2011). While ELPC's briefs explain in detail why the Stipulation violates the first two prongs of the test, the Commission's review of those prongs is very subjective. In fact, as Staff itself points out, the Commission always finds that

Stipulations comply with the serious bargaining test absent something nefarious.[1] Hence, ELPC will focus this application for rehearing on prong three, which requires the settlement to violate no regulatory principle. This test is much more stringent.

While the Commission concludes that the settlement does not violate any regulatory principles, it fails to support this finding with facts from the record. In fact, the Commission has not publicly stated what body of regulatory principles it uses to evaluate a Stipulation. This creates a moving target for parties opposing Stipulations, to guess at what principles and sources the Commission will consider. This is unreasonable. Given its statement in this order about the value of utility DSM programs to customers, its decisions on DSM in previous cases, and Columbia's own testimony, the record reflects that removing the DSM violates the important regulatory principle of promoting efficiency.

II. STANDARD OF REVIEW

R.C. 4903.10 enables parties to seek rehearing of any aspect of a final order by the Public Utilities Commission of Ohio ("Commission") that is "unreasonable or unlawful." In addition, on rehearing the Commission must be mindful of compliance with R.C. 4903.09, which provides:

> [I]n all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said

[1] As PUCO Staff notes in briefing, "[a]side from the exclusion of a customer class from negotiations, the only instances in which either the Commission or the Ohio Supreme Court has found bargaining not to have been serious was where the resulting agreement was reached because other secret undisclosed side agreements were also executed." Staff Initial Br. at 6.

findings of fact.

The Ohio Supreme Court has explained that R.C. 4903.09 means that "the PUCO's order must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion." *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St.3d 306, 312, 513 N.E.2d 337 (1987). In fact, "[a] legion of cases establish that the commission abuses its discretion if it renders an opinion on an issue without record support." *Indus. Energy Users-Ohio v. PUC*, 117 Ohio St.3d 486, 2008-Ohio-990, 885 N.E.2d 195, ¶ 30 (citations and internal quotation marks omitted) (2008).

III. ARGUMENT

The Commission erred by concluding that the Stipulation does not violate any important regulatory principle or practice when it allows Columbia to cancel its non-low-income energy efficiency programs as part of the Stipulation. Based on the record, it is unreasonable for the Commission to approve a Stipulation without these programs, which demonstrably benefit customers. The Commission should accept this application for re-hearing to review that unreasonable approval.

The Commission's decision to approve a Stipulation which eliminates non-low-income DSM programs is contrary to stated Ohio policy. Two statutes in Ohio explicitly declare a state policy in favor of energy conservation. O.R.C. 4905.70 declares that "[t]he public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs." O.R.C. 4905.70. Similarly, O.R.C. 4929.02(A)(12) explicitly declares that "[i]t is the policy of this

state to, throughout this state promote an alignment of natural gas company interests with consumer interest in energy efficiency and energy conservation. O.R.C. 4929.02(A)(12). Moreover, the Commission has consistently found that utilities should provide customers DSM programs. In Vectren Energy's most recent rate case, in the Order approving a robust energy efficiency program, the Commission stated:

> The Commission finds that the provisions of the Stipulation to continue EE programs are in the public interest and that OCC's recommendation to eliminate funding for non-low-income EE programs should be rejected. 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. Further, the availability of efficiency programs for all customers is consistent with the policy of this 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). We have long recognized that EE 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.

In re Vectren Energy Delivery of Ohio, 18-298-GA-AIR, et al., Opinion & Order at 68 (Aug. 28, 2019). Notably, the Commission quotes its Order from Columbia's last rate case, and the Commission emphasizes the importance of efficiency programs for all customers, not just low-income customers. Moreover, the Commission cites its responsibility to initiate efficiency programs in compliance with R.C. 4905.70. Nothing has changed since *Vectren* that supports a different conclusion.

While the Commission finds at page 75 of the Order that the Stipulation does not violate any important regulatory principle or practice, the record does not support the finding. Regarding Columbia's DSM program the Commission explains:

> Pursuant to 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,* Case No. 16-1309-GA-UNC 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.

Order at 78. This statement by the Commission warrants scrutiny. The Commission acknowledges that previous Orders find that DSM programs are consistent with the state's economic and policy objectives. Furthermore, the Commission recognizes that cost-effective DSM reduces total costs and minimizes impacts on customers' bills. However, then the Commission says cancelling the DSM programs is not inconsistent with these prior decisions. Order at 78.

In its initial DSM Application, the Company explained the importance of the continuation of the DSM program, stating:

> Columbia believes it is in the continued best interest of its customers to continue to provide DSM services through programs that promote the installation and implementation of energy efficiency measures and technologies in a cost-effective manner. For many of Columbia's customers, there are numerous barriers to the adoption of efficient technology, including higher incremental costs for high efficiency equipment, lack of customer education, lack of contractor trade ally training, lack of monetary resources, and fear of change. Accordingly, Columbia believes that it can continue to play an important role in promoting and encouraging energy efficiency, economic development, and job creation in Ohio. Utility companies in the nation are in a unique position to bring energy efficiency to scale, which would be absent without these investments.

Application of Columbia Gas of Ohio, Inc. To Continue Its Demand Side Management Program. Case No. 21-639-GA-UNC, June 30, 2021.

The Commission's only substantive reason for not rejecting the argument that the Stipulation's elimination of efficiency does not violate a regulatory principle is that it is the state's policy to encourage the development of the competitive market, citing to O.R.C. 4929.02(A)(2), (3) and (4). Order at 78. The Order emphasizes "giving customers effective choices over the selection of those supplies and the suppliers; and encouraging innovation and market access for cost-effective supply-and demand-side natural gas services and goods." Order at 78. However, the Commission makes no connection between eliminating Columbia's DSM program and furthering competition. Furthermore, the record contains no evidence that the competitive suppliers offer a reasonable replacement for utility run efficiency programs or that they plan to do so. To the contrary, the record contains uncontradicted evidence that competitive suppliers cannot replace utility spending and market exposure on DSM. ELPC's initial brief cited Columbia's application for the proposition that, "[u]tility companies in the nation are in a unique position to bring energy efficiency to scale, which would be absent without these investments." *Application of Columbia Gas of Ohio, Inc. To Continue Its Demand Side Management Program.* Case No. 21-639-GA-UNC, June 30, 2021.

Under R.C. 4903.09 the Commission must base its findings on specific findings of fact and conclusions of law. Further, as outlined in the Ohio Supreme Court decision in *MCI Telecomm Corp. v. Public Util. Comm.*, "the Commission abuses its discretion if it decides an issue without adequate record support." *MCI Telecomm Corp. v. Public Util. Comm.*, 117 Ohio St. 3d 306, 311-312, 513 N.E. 2d 337 (1987). The Court goes on to state, "In order to meet the requirements of R.C. 4903.09, therefore, the PUCO's order must show, in sufficient detail, the facts in the record upon which the order is

based, and the reasoning followed by the PUCO in reaching its conclusion." *Id.* The Commission fails to meet this standard when it offers no evidence that competitive suppliers offer the same type of efficiency opportunities as the utility DSM programs.

The Order notes that under cross-examination from Attorney Examiner Price 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 natural gas supplier from offering demand-side management services to their customers (Tr. at 107)." Order at 64. However, Attorney Examiner Price, failed to ask the right question. It is irrelevant what competitive suppliers might do hypothetically. The record contains no evidence that competitive suppliers currently offer any such demand-side management services. Hence, the premise that they could have, should have or would have offered such services does not dismiss the need for Columbia's DSM programs. As noted above, the Commission has consistently ruled in favor gas efficiency programs as promoting an important state interest in supporting efficiency. *See, In re Vectren Energy Delivery of Ohio*, 18-298—GA-AIR, et al., Opinion & Order (Aug. 28, 2019) at ¶121.

The $58 per month fixed customer charge that the Commission approves also violates the efficiency principle. The Commission recognizes that rate design effects efficiency, but then reaches the wrong conclusion on its influence on customers. Ironically, the Commission finds that reliance on volumetric rates, "would run the risk of creating a disincentive for Columbia to support energy efficiency and conservation efforts, such as Warm Choice…" Order at 77. However, both ELPC Witness Rabago and OCC Witness Fortney explain how the high fixed customer charge sends the wrong

price signals and discourage efficiency. Mr. Rabago notes “the high fixed charges proposed in the settlement encourage additional waste. In short there is little reason for a customer to be efficient in volumetric use when there will be no real benefit in bill savings. High fixed charges send inefficient price signals to customers…” ELPC Ex. 1 at 20, ln. 17-20. OCC Witness Fortney also highlights how high fixed customer charges harm ratepayers:

> One of the most important and effective tools that any regulator has to promote efficient use of energy (including gas) is by developing rates that send proper price signals to conserve and utilize resources efficiently. Pricing structures that are weighted heavily on fixed charges are much more inferior from a conservation and energy efficiency standpoint than pricing structures that require consumers to incur more costs with additional consumption.

OCC Ex. 3 at 18, ln. 4-9.

ELPC also notes that the Commission continues to support Columbia’s low-income program as helping customers. Order at 78. But there is nothing in the record that the Commission cites to supporting the conclusion that low-income customers benefit from DSM, but other customers do not. For example, the Order does not address how customers who make marginally more money than low-income customers differ from low-income customers when it comes to DSM.

Finally, as the Commission considers the record in this case, the facts do not support the Commissions finding that the Stipulation saves ratepayers $120 million by eliminating the non-low-income DSM programs. Order at 49, 64. The characterization of the $120 million Columbia will not spend as “savings” ignores the fact that cost-effective DSM saves customers money. As Columbia Witness Poe testifies, “The primary benefits of the DSM Program continue to be: Cost-effective, customer-oriented energy

efficiency services for Columbia's residential and commercial customers; Improved customer health, safety, comfort, and productivity; Customer savings by lower utility bills. Columbia Ex. 19 at 2, ln. 2-7. Poe goes on to testify that the non-low-income DSM Portfolio is cost-effective with a Utility Cost Test ("UCT") score of 2.37. *Id*. at 9. This means that Columbia's spending of $154,290,165 over the five years of the program would generate $365,667,691 in savings over the life time of the efficiency measures. *Application of Columbia Gas of Ohio, Inc. To Continue Its Demand Side Management Program* Appendix A, Case No. 21-639-GA-UNC, June 30, 2021. Given that no evidence contradicts this conclusion the Commission errs when it concludes the elimination of the programs "save" customers money.

IV. CONCLUSION

While the signatory parties argue that the Stipulation meets the just and reasonable standards because the fixed charge maximum is $57 instead of $80, the Order means that customers throughout Columbia Gas' territory will pay $57 in July of 2027 to Columbia Gas before using a therm of gas. This applies the same for customers that live in a 400 sq. ft studio as those in the 10,000 sq. ft mansion. The elimination of the DSM programs, combined with raising the fixed charge, violates the legislature's direction to the Commission to encourage efficiency. While the Commission believes that the competitive market obviates the need for Columbia's DSM program, the record does not support that finding. Hence, ELPC urges the Commission to correct its decision and order Columbia to reinstate the DSM program and lower its fixed customer charge.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Application for Re-Hearing By The Environmental Law & Policy Center was served by electronic mail upon the following Parties of Record on February 27, 2023.

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Summary: App for Rehearing electronically filed by Mr. Robert Kelter on behalf of Environmental Law & Policy Center