

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbia) Case No. 21-637-GA-AIR
Gas of Ohio, Inc. for Authority to Amend its)
Filed Tariffs to Increase the Rates and Charges)
for Gas Services and Related Matters.)

In the Matter of the Application of Columbia) Case No. 21-638-GA-ALT
Gas of Ohio, Inc. for Approval of an)
Alternative Form of Regulation.)

In the Matter of the Application of Columbia) Case No. 21-639-GA-UNC
Gas of Ohio, Inc. for Approval of a Demand)
Side Management Program for its Residential)
and Commercial Customers.)

In the Matter of the Application of Columbia) Case No. 21-640-GA-AAM
Gas of Ohio, Inc. for Approval to Change)
Accounting Methods.)

**MEMORANDUM CONTRA THE APPLICATIONS FOR REHEARING OF
THE ENVIRONMENTAL LAW AND POLICY CENTER, OHIO PARTNERS
FOR AFFORDABLE ENERGY, AND CITIZENS' UTILITY BOARD OHIO
BY
OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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I. INTRODUCTION

The Environmental Law and Policy Center¹, Ohio Partners for Affordable Energy², and Citizens' Utility Board Ohio³ (collectively "Environmental Groups") seek rehearing of the PUCO's January 26, 2023 Order approving a Settlement that resolves the issues in Columbia's ratemaking and alternative regulation cases. The Environmental

¹ "ELPC".

² "OPAE".

³ "CUB Ohio".

Groups claim that the Order violates Ohio law and is not supported by record evidence. The Environmental Groups are wrong. The applications for rehearing should be denied.

The Order is a just and reasonable resolution of the issues in this case. The Settlement provides numerous benefits to consumers, including a base distribution revenue increase for consumers that is *\$153.2 million less* than the \$221.4 million Columbia initially requested.⁴ The Settlement helps to protect consumers by providing \$70 million in weatherization services for low-income consumers. The PUCO's Order requires Columbia to provide (at shareholder expense) \$3.5 million for bill-payment assistance for at-risk consumers.⁵ The Settlement saves residential consumers an additional \$120 million in charges for utility program costs and shared savings (Columbia profits) by removing Columbia's demand side management ("DSM") program for non-low-income consumers.⁶ These savings reduce monthly fixed charges all consumers pay for gas utility service. Environmental Groups' arguments that the Settlement does not benefit consumers and the public interest have no merit.

The Order fully explains the basis for the PUCO's decision to approve the Settlement and details the supporting record evidence. The PUCO explained in the Order how its decisions are consistent with Ohio law, prior PUCO precedent, and regulatory principles. The Environmental Groups' attempts to upend the Settlement by seeking rehearing of the Order are baseless and should be rejected.

⁴ OCC Ex. 1 (Adkins Supplemental) at 6.

⁵ Order at ¶ 177.

⁶ OCC Ex. 1 (Adkins Supplemental) at 10.

II. RECOMMENDATIONS

- A. The PUCO’s decision to approve the Settlement is fully explained in the Order, grounded in the evidentiary record, and consistent with prior PUCO precedent. The PUCO should reject the Environmental Groups’ claims that the Order violates R.C. 4903.09.**

The Environmental Groups seek rehearing of the Order because they want the PUCO to require Columbia to charge consumers for expensive energy efficiency and demand side management (“DSM”) programs for non-low-income consumers.⁷ The Environmental Groups assert that the PUCO’s Order is unsupported by record evidence, in violation of R.C. 4903.09.⁸ Those arguments should be rejected.

R.C. 4903.09 states:

In 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 findings of fact.⁹

The Ohio Supreme Court has explained that R.C. 4903.09 “requires [the PUCO] to explain the reasoning and factual grounds for its decision” so that the reviewing court has “enough information to know how the [PUCO] reached its result.”¹⁰ The PUCO’s Order satisfies this requirement. Environmental Groups clearly disagree with the PUCO’s approval of the Settlement, but that does not mean the Order is unlawful under R.C. 4903.09.

⁷ See CUB Ohio AFR at 10-15; and ELPC AFR at 7-10.

⁸ See CUB Ohio AFR at 13-15; OPAE AFR 7-11; ELPC AFR at 9-10.

⁹ R.C. 4903.09.

¹⁰ *In re Suvon, LLC*, 2021-Ohio-3630, ¶¶ 20-21.

1. The PUCO's findings that the Settlement benefits consumers and the public interest are supported by the evidentiary record.

CUB Ohio argues in Assignment of Error No. 1 that “[t]he Order approving the Stipulation is unreasonable and unlawful because it fails to benefit neither [sic] ratepayers nor [sic] the public interest.”¹¹ CUB Ohio disagrees with the PUCO’s conclusion that the Settlement’s reduction in base rates, riders, and DSM charges from what Columbia sought in its application benefits consumers.¹² However, the PUCO’s decision is supported by the testimony of OCC witness Adkins, Columbia witness Thompson, and PUCO Staff witness Lipthratt.¹³

For example, OCC witness Adkins testified that under the Settlement, Columbia’s base distribution revenue increase is \$153.2 million *less* than the \$221.4 million Columbia initially requested.¹⁴ This reduction is effective for each year until Columbia files its next rate case.¹⁵ Thus, if Columbia’s next rate case is effective in five years, the benefit to consumers will total \$766 million.¹⁶

OCC witness Adkins also described how the Settlement limits what Columbia can charge consumers under the Infrastructure Replacement Program (“IRP”) and Capital Expenditure Program (“CEP”) Riders.¹⁷ Mr. Adkins also testified that Columbia agreed in the Settlement to withdraw its proposed Federally Mandated Investment Rider charge,

¹¹ CUB Ohio AFR at 5.

¹² *Id.* at 6.

¹³ Order at ¶ 169.

¹⁴ OCC Ex. 1 (Adkins Supplemental) at 6.

¹⁵ OCC Ex. 1 (Adkins Supplemental) at 6.

¹⁶ *Id.*

¹⁷ OCC Ex. 1 (Adkins Supplemental) at 8-9.

which could result in \$320 million in savings to consumers through 2027.¹⁸

Environmental Groups ignore the evidence of these benefits, which reduce Columbia's charges to consumers.

CUB Ohio argues that the difference between Columbia's initially requested increase (\$221.4 million) and the increase agreed to in the Settlement (\$68.2) does not benefit consumers.¹⁹ In CUB Ohio's (erroneous) view, the increase Columbia requested in the application was unreasonable, so the \$68.2 million agreed to in the Settlement is not a benefit.²⁰

The PUCO fully addressed – and rejected – CUB Ohio's claims as required by R.C. 4903.09.²¹ The PUCO explained that:

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 Liphtratt 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).²²

¹⁸ OCC Ex. 1 (Adkins Supplemental) at 9.

¹⁹ CUB Ohio AFR at 5-7.

²⁰ *Id.* at 6-7.

²¹ Order at ¶¶ 141, 169-170.

²² Order at ¶ 169.

The PUCO also explained how its decision is consistent with longstanding PUCO precedent, stating:

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.²³

CUB Ohio relies on the testimony of ELPC witness Rábago that Columbia’s initial rate increase request in the application was unreasonable.²⁴ The PUCO considered and rejected Mr. Rábago’s testimony in the Order.²⁵ The PUCO concluded that Columbia’s application “is certainly a legitimate comparison point for the

²³ Order at ¶ 170.

²⁴ CUB Ohio AFR at 6.

²⁵ Order at ¶ 118, 127.

[Settlement].”²⁶ CUB Ohio ignores the ample evidence of the Settlement’s benefits to consumers. The PUCO should reject CUB Ohio’s application for rehearing.

2. The PUCO’s Order approving the Settlement’s removal of Columbia’s non-low-income DSM program is supported by the evidentiary record and the PUCO’s past precedent.

Environmental Groups argue that the Order violates R.C. 4903.09 because, in their view, no evidence supports the PUCO’s decision to allow the removal of Columbia’s non-low-income DSM program.²⁷ Environmental Groups also claim that the PUCO has departed from its prior precedent approving non-low-income DSM programs without sufficiently explaining its rationale in violation of R.C. 4903.09. Environmental Groups are wrong on both counts.

To begin, it is important to note that the PUCO is evaluating the removal of Columbia’s non-low-income DSM program within the context of the Settlement agreed to by the parties. Environmental Groups claim that the PUCO ignored evidence by Columbia witness Poe regarding the DSM program that Columbia initially proposed in its application.²⁸ But the merits of the DSM program initially proposed by Columbia are now subject to the PUCO’s settlement standards.

As noted above, the PUCO’s inquiry focuses on whether the Settlement, *as a package*, satisfies the PUCO’s three-part test for evaluating settlements.²⁹ The PUCO does not consider “whether there are different or additional provisions that would better

²⁶ *Id.* at ¶ 127.

²⁷ *See* CUB Ohio AFR at 10-15; ELPC AFR at 8-9; OPAE AFR at 7-11.

²⁸ CUB Ohio AFR at 10-12, 17-18; and ELPC AFR at 11-12.

²⁹ Order at ¶ 170.

benefit [consumers] and the public interest.”³⁰ Thus, whether Columbia’s initial proposal for non-low-income DSM would benefit consumers more is irrelevant to whether the PUCO appropriately approved the Settlement.

And here, the evidence demonstrates that the elimination of Columbia’s non-low-income DSM will benefit consumers. OCC witness Adkins testified that removal of Columbia’s non-low-income DSM program saves residential consumers an additional \$120 million in utility program costs and shared savings.³¹ The Settlement package approved by the PUCO precludes Columbia from charging consumers \$10 million in shared savings (profits) from the DSM program.³² The elimination of these non-low-income programs (which would otherwise be charged to Columbia consumers and increase the rates consumers pay) benefits consumers.

Moreover, the PUCO noted that consumers have competitive choices available to them in the energy efficiency market.³³ Those choices are available without the involvement of monopoly utilities.

At the same time, the Order preserves \$70 million for weatherization services for low-income consumers through Columbia’s WarmChoice® DSM program. In addition, the Order provides \$3.5 million for bill-payment assistance for Columbia’s low-income consumers including at-risk populations, at shareholder expense.³⁴ This will help

³⁰ *Id.*

³¹ OCC Ex. 1 (Adkins Supplemental) at 10.

³² Joint Ex. 1 (Settlement) at 12.

³³ Order at ¶ 56.

³⁴ Order at ¶ 177.

Columbia's most vulnerable and at-risk consumers, with up to \$450 annually for consumers to avoid disconnection or obtain reconnection.³⁵

In its application for rehearing, CUB Ohio criticizes OCC witness Adkins' testimony regarding the benefits and savings to consumers by eliminating the non-low-income DSM program.³⁶ Notably, however, Environmental Groups chose not to cross-examine Mr. Adkins on his testimony. Nor did the Environmental Groups offer their own testimony to specifically refute Mr. Adkins' testimony that the removal of non-low-income DSM will save consumers nearly \$120 million. Contrary to Environmental Groups' claims, the PUCO properly relied on Mr. Adkins' testimony to support approval of the Settlement's provisions eliminating non-low-income DSM. The PUCO's Order does not violate R.C. 4903.09.

OPAE (in its Assignment of Error B) and ELPC further argue that the Order violates R.C. 4903.09 because the PUCO failed to follow its prior decisions approving non-low-income DSM programs.³⁷ According to OPAE, the PUCO's Order is a "stark departure from its prior precedent" and the PUCO "is taking a position that it has repeatedly rejected the last five years, including as recently as January 2021, without adequately explaining why."³⁸ That is simply not true.

Indeed, the PUCO has rejected *virtually identical* claims by ELPC and OPAE in AEP's most recent rate case.³⁹ In a contested part of the AEP rate case, the PUCO

³⁵ Order at ¶ 98.

³⁶ See CUB Ohio AFR at 10-11.

³⁷ ELPC AFR at 6-7; and OPAE AFR at 9-11.

³⁸ OPAE AFR at 11.

³⁹ *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case No. 20-585-EL-AIR, *et al.*, Opinion and Order (Nov. 17, 2021) ("AEP Rate Case Order"), at ¶ 173.

approved – in November 2021 – a settlement that removed AEP’s initially proposed DSM program *in its entirety*. That is exactly what Columbia did in this case (and what the PUCO approved), except that here, the Settlement includes over \$70 million in low-income weatherization through the WarmChoice® program.

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

OPAE and [ELPC] have not shown that, by omitting a DSM plan from its provisions, the Stipulation fails to comply with the third part of the three part test. We agree with the Signatory Parties that there is no basis, under current Ohio law, to conclude that electric distribution rates are inherently unjust or unreasonable if they do not include a DSM component. ***Contrary to the position of OPAE and Environmental Advocates, no portion of R.C. 4905.70 requires the Commission to mandate the implementation of a DSM plan as part of a distribution rate case. Neither does R.C. 4928.02 dictate such an outcome.*** Further, [ELPC has] not supported their contention that the Stipulation will result in customers paying for electricity that they do not need. ***No part of the Stipulation precludes customers from undertaking energy efficiency measures on their own initiative through market-based products or services.*** Although we find that OPAE and [ELPC] have not sustained their position here, we note that the Commission has announced its intention to hold a series of energy efficiency workshops to solicit the views of interested stakeholders on whether cost-effective energy efficiency programs are an appropriate tool to manage electric generation costs and how such programs fit into Ohio’s competitive retail electric and natural gas markets. We, therefore, plan to fully consider these issues in a broader context than the distribution rate case of a single electric distribution utility.⁴⁰

The PUCO’s Order approving the Settlement’s removal of non-low-income DSM is consistent with the PUCO’s more recent (November 2021) precedent in the AEP Rate Case Order. It is also worth noting that neither ELPC nor OPAE filed an application for rehearing of the AEP Rate Case Order removing the DSM program.

The Order is also consistent with the PUCO’s recent decision in AES Ohio’s rate case that “[a]t this time, we are unwilling to consider the broad DSM programming that

⁴⁰ *Id.* (Emphasis Added).

the Company proposes in this distribution rate case.”⁴¹ OPAE’s and ELPC’s claims that the Order approving the Settlement in this case somehow violates the PUCO’s prior precedent or R.C. 4903.09 should be rejected.

The PUCO should also reject the Environmental Groups’ claims⁴² that no evidence supports the PUCO’s determination that “[i]t is time to look to competitive markets to play a more significant role in the provision of energy efficiency services in this state.”⁴³ Again, OPAE argues that the PUCO departed from prior precedent without explaining its opinion.⁴⁴

However, the PUCO’s Order is consistent with the AEP Rate Case Order. In addition, the PUCO specifically found that eliminating the non-low-income DSM program serves state policy in R.C. 4929.02 by “promot[ing] the competitive market by relying on competitive suppliers to provide energy efficiency services to customers.”⁴⁵ The PUCO further noted that the Settlement “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.”⁴⁶ So the PUCO followed the law.

The PUCO also discussed the evidence that consumers will have alternative assistance for funding for non-low-income DSM (without charging utility consumers).

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

⁴¹ *In the Matter of the Application of the Dayton Power and Light Company to Increase its Rates for Electric Distribution*, Case No. 20-1651-EL-AIR, *et al.*, Opinion and Order (Dec. 22, 2022), at ¶ 124.

⁴² CUB Ohio AFR at 12-15; ELPC AFR at 9-10; OPAE AFR at 8-11.

⁴³ See Order at ¶ 56.

⁴⁴ OPAE AFR at 10-11.

⁴⁵ Order at ¶ 56.

⁴⁶ *Id.*

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.⁴⁷

Regarding DSM funding, it is important to note that both the federal Inflation Reduction Act⁴⁸ and the Infrastructure Investment and Jobs Act⁴⁹ provide incentives for home weatherization DSM programs for Americans.

Environmental Groups argue that there is no evidence that competitive suppliers will provide the DSM services.⁵⁰ However, CUB Ohio witness Bullock acknowledged during examination from the Attorney Examiner that “nothing in the [Settlement] precludes a customer from getting DSM services from a competitive natural gas supplier and that nothing in the [Settlement] precludes a competitive natural gas supplier from offering demand-side management services to their customers (Tr. at 107).”⁵¹

In its application for rehearing, CUB Ohio attempts to walk-back Mr. Bullock’s admission by arguing that consumers, particularly at-risk and elderly consumers need “tailored utility programs” to help them navigate “a highly complex and technical field like energy.”⁵² CUB Ohio cites no evidence to support its argument that “tailored utility

⁴⁷ Order at ¶ 176 (emphasis added).

⁴⁸ P.L. 117-18.

⁴⁹ P.L. 117-58.

⁵⁰ CUB Ohio AFR at 14; ELPC AFR at 9-10; OPAE AFR at 8.

⁵¹ Order at ¶ 171.

⁵² CUB Ohio AFR at 14.

programs” are necessary. But regardless, the PUCO explained how the Settlement in fact protects such at-risk consumers through providing \$70 million for Columbia’s WarmChoice program.⁵³

Finally, the PUCO explained that the purpose of removing Columbia’s non-low-income DSM program is to “promote” (*i.e.* encourage) competition consistent with state policy in R.C. 4929.02 by “relying on competitive suppliers to provide energy efficiency services to customers.”⁵⁴ Promoting energy efficiency by competitive suppliers will increase the programs available to non-low-income consumers. The PUCO’s Order satisfies R.C. 4903.09. Environmental Groups’ applications for rehearing should be denied.

3. The PUCO’s approval of guardrails to prevent property owners from exploiting limited weatherization benefits does not violate R.C. 4903.09.

OPAE argues (in Assignment of Error A) that the PUCO unlawfully approved the Settlement’s provision that limits property owners to “receiving weatherization assistance for one rental premise per calendar year for the five-year term of the DSM program.”⁵⁵ According to OPAE, the PUCO failed to explain adequately its rationale for approving this provision of the Settlement in violation of R.C. 4903.09.⁵⁶ OPAE’s arguments should be rejected.

⁵³ Order at ¶ 56.

⁵⁴ Order at ¶ 56.

⁵⁵ OPAE AFR at 5-6.

⁵⁶ *Id.*

OPAE believes that this provision of the Settlement discriminates against renters who share a landlord or property owner.⁵⁷ However, as OCC has argued (and as the PUCO explained in the Order), once a premise is weatherized, the benefits of that weatherization should continue for subsequent renters as well.⁵⁸ The Order also describes the purpose of this provision is to avoid concentrating multiple program benefits in individual property owners.⁵⁹ The Settlement term would help diversify benefits to more rather than fewer property owners.⁶⁰ It is unclear how preventing a property owner from exploiting weatherization benefits would harm consumers. What's clear is that OPAE, which is an association of weatherization providers, has a different interest than the broader public interest; it has the interest of selling weatherization.

In approving this Settlement provision, the PUCO detailed OPAE's and OCC's positions on the issue.⁶¹ The PUCO restated its precedent 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."⁶² Thus, the Order sufficiently identifies the facts and the PUCO's rationale for its decision for a reviewing court on appeal as required by R.C. 4903.09. The PUCO should deny OPAE's application for rehearing.

⁵⁷ OPAE AFR at 6.

⁵⁸ Order at ¶ 167.

⁵⁹ Order at ¶ 167.

⁶⁰ *Id.*

⁶¹ Order at ¶¶ 166-167.

⁶² Order at ¶ 170.

B. CUB Ohio's and ELPC's claims that the Order violates R.C. 4905.70 and policy in R.C. 4929.02 are baseless and should be rejected. Ohio law does not require the PUCO to mandate a DSM program as part of Columbia's rate case.

CUB Ohio (Assignment of Error No. 2) and ELPC claim that the PUCO erroneously and unlawfully determined that the Settlement does not violate state energy policy and regulatory principles under R.C. 4929.02 and R.C. 4905.70.⁶³ Those arguments should be rejected and the applications for rehearing should be denied.

As a threshold matter, and contrary to the Environmental Groups' claims, R.C. 4929.02 and R.C. 4905.70 do not require Columbia to implement and charge consumers for energy efficiency and DSM programs. CUB Ohio and ELPC ignore the AEP Rate Case Order where the PUCO unequivocally stated:

Contrary to the position of OPAE and [ELPC], no portion of R.C. 4905.70 requires the Commission to mandate the implementation of a DSM plan as part of a distribution rate case. Neither does R.C. 4928.02 dictate such an outcome.⁶⁴

Plainly, if R.C. 4905.70 and R.C. 4929.02 do not require the PUCO to mandate a DSM program in this rate case, the PUCO could not have violated those statutes in approving the Settlement's removal of non-low-income DSM.

CUB Ohio's and ELPC's claims that the PUCO has not adequately explained its rationale for approving the elimination of non-low-income DSM in this case are equally unavailing. The PUCO specifically explained how the Settlement's provisions with respect to DSM and WarmChoice® are consistent with R.C. 4905.70 and R.C. 4929.02.

⁶³ See CUB Ohio AFR at 15-18; ELPC AFR at 6-9.

⁶⁴ AEP Rate Case Order at ¶ 173.

Regarding R.C. 4905.70, the PUCO explained that “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.”⁶⁵ *But*, the PUCO went on to explain that:

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.⁶⁶

The PUCO properly considered the evidence in this case and determined that removal of the non-low-income DSM program (but continue the low-income program), was appropriate. R.C. 4905.70 does not distinguish between a program that benefits low-income consumers and a program that benefits non-low-income consumers. Both meet the same objective, that is to encourage the conservation of energy and a reduction in the growth rate of energy consumption.

And with respect to state policy codified in R.C. 4929.02, the PUCO explained in the Order that:

[W]e 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

⁶⁵ Order at ¶ 53.

⁶⁶ Order at ¶ 54.

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).⁶⁷

The PUCO also explained how the Order is not inconsistent with decisions in previous cases or with the recent energy efficiency workshops.⁶⁸ As noted, the PUCO clarified that its decisions regarding energy efficiency and DSM programs will be made on a case-by-case basis, based on the evidence in the proceeding.⁶⁹

In sum, there is no merit to CUB Ohio's and ELPC's assignments of error that the PUCO unlawfully approved the Settlement in violation of regulatory principles, or that the PUCO did not support its decision. The PUCO should reject CUB Ohio's and ELPC's applications for rehearing.

III. CONCLUSION

The PUCO's Order approving the Settlement is a just and reasonable resolution of the issues in this case. The evidentiary record demonstrates that the Settlement benefits consumers and the public interest and does not violate Ohio law or regulatory principles

⁶⁷ Order at ¶ 204.

⁶⁸ *Id.* at 203, 205.

⁶⁹ Order at ¶ 54.

or practices. For the reasons explained above, the applications for rehearing of CUB Ohio, ELPC, and OPAC are baseless and should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Memorandum Contra to the Applications for Rehearing was served on the persons stated below via electronic transmission, this 9th day of March 2023.

/s/ Angela D. O'Brien

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Summary: Memorandum Memorandum Contra The Applications for Rehearing of The Environmental Law and Policy Center, Ohio Partners for Affordable Energy, and Citizens' Utility Board Ohio by Office of the Ohio Consumers' Counsel electronically filed by Mrs. Tracy J. Greene on behalf of O'Brien, Angela D.