BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application to Modify, in Accordance with Section 4929.08, Revised Code, the Exemption Granted Columbia Gas of Ohio, Inc., in Case No. 08-1344-GA-EXM.	)))))	Case No. 12-2637-GA-EXM

OPINION AND ORDER

The Commission, having considered the record in this matter, the amended motion to modify, the amended stipulation and recommendation submitted by the signatory parties, and the evidence of record in this case, and being otherwise fully advised, hereby issues its opinion and order.

APPEARANCES:

Porter, Wright, Morris & Arthur, LLP, by Daniel R. Conway, Mark S. Stemm, and Eric B. Gallon, 41 S. High Street, Columbus, Ohio 43215, and Stephen B. Seiple, Assistant General Counsel, and Brooke E. Leslie, Counsel, NiSource Corporate Services Company, 200 Civic Center Drive, Columbus, Ohio 43215, on behalf of Columbia Gas of Ohio, Inc.

Mike DeWine, Ohio Attorney General, by William L. Wright, Section Chief, and Stephen A. Reilly, Assistant Attorney General, 180 East Broad Street, Columbus, Ohio, 43215, on behalf of Staff of the Commission.

Joseph M. Clark and Jennifer Lause, 6641 North High Street, Suite 200, Worthington, Ohio 43085, on behalf of Direct Energy Services, LLC and Direct Energy Business, LLC.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff and Stephen M. Howard, 52 East Gay Street, Columbus, Ohio 43216, on behalf of the Ohio Gas Marketers Group and Retail Energy Supply Association.

Bell & Royer Co., LPA, by Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215, on behalf of Dominion Retail, Inc.

Bruce J. Weston, Ohio Consumers' Counsel, by Larry S. Sauer and Joseph P. Serio, Assistant Consumers' Counsel, 10 West Broad Street, Columbus, Ohio 43215, on behalf of the residential utility consumers of Columbia Gas of Ohio, Inc.

David C. Rinebolt and Colleen L. Mooney, 231 West Lima Street, Findlay, Ohio 45840, on behalf of Ohio Partners for Affordable Energy.

Bailey Cavelieri, LLC, by Dane Stinson, One Columbus, 10 West Broad Street, Suite 2100, Columbus, Ohio 43215, on behalf of Hess Corporation.

Bricker and Eckler, LLP, by Glenn S. Krassen, 1001 Lakeside Avenue East, Suite 1350, Cleveland, Ohio 44114, and Matthew W. Warnock and J. Thomas Siwo, 100 South Third Street, Columbus, Ohio 43215, on behalf of Northeast Ohio Public Energy Council and Ohio Schools Council.

Matthew S. White, Interstate Gas Supply, Inc., 6100 Emerald Parkway, Dublin, Ohio 43016, and Bell & Royer Co., LPA, by Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215, on behalf of Interstate Gas Supply, Inc.

John L. Einstein IV, 790 Windmiller Drive, Pickerington, Ohio 43147, on behalf of Volunteer Energy Services, Inc.

M. Anthony Long, 24000 Honda Parkway, Marysville, Ohio 43040, on behalf of Honda of America Manufacturing, Inc.

McIntosh & McIntosh, by A. Brian McIntosh, 1136 Saint Gregory Street, Suite 100, Cincinnati, Ohio 45202, on behalf of Stand Energy Corporation.

OPINION:

I. History of the Proceeding

A. Background

Columbia Gas of Ohio, Inc. (Columbia) is a natural gas company as defined by Section 4905.03(A)(5), Revised Code, and a public utility as defined by Section 4905.02, Revised Code, and, as such, is subject to the jurisdiction of the Commission, pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code.

By opinion and order issued on December 2, 2009, in *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 08-1344-GA-EXM (08-1344), the Commission approved the terms of a stipulation and recommendation (08-1344 stipulation) entered into by the parties in that proceeding. The 08-1344 stipulation provided, *inter alia*, that Columbia would hold an auction to secure natural gas supplies, initially through a standard service offer (SSO) structure and, subsequently, through a standard choice offer (SCO), and approved a Program Outline (initial outline), which reflected the changes necessary to implement the SSO structure through March 31, 2012. On September 7, 2011, the Commission issued a second opinion and order in 08-1344, which, *inter alia*, authorized the continuation of the 08-1344 stipulation and approved a Revised Program Outline (revised outline), reflecting the changes necessary to implement the initial SCO auction in February 2012, for the 12-month period beginning April 1, 2012.

On October 4, 2012, Columbia, Ohio Gas Marketers Group (OGMG),[1] Retail Energy Supply Association (RESA),[2] Dominion Retail, Inc. (Dominion), and Staff (joint movants) initiated the instant case and filed a joint motion to modify (initial joint motion) (Jt. Ex. 4) the December 2, 2009, and September 7, 2011, orders in 08-1344 (exemption orders), in accordance with Section 4929.08(A), Revised Code, along with a stipulation and recommendation (initial stipulation) (Jt. Ex. 3). On October 9, 2012, and October 12, 2012, Hess Corporation (Hess) and, jointly, the Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE), respectively, filed memorandum contra the initial joint motion.

On October 18, 2012, and November 21, 2012, the attorney examiner issued entries, which, *inter alia*, granted the motions to intervene filed by OCC, OPAE, Hess, Stand Energy Corporation (Stand), Northeast Ohio Public Energy Council (NOPEC), Ohio Schools Council (OSC), Volunteer Energy Services, Inc. (Volunteer), Direct Energy, IGS, and Honda of America Manufacturing, Inc. (Honda). The October 18, 2012, entry also established the procedural schedule for this case and required that: comments and/or memoranda contra the initial joint motion be filed by November 5, 2012; reply comments, replies to memorandum contra, and direct testimony by joint movants be filed by November 12, 2012; and intervenor testimony be filed by November 26, 2012. In addition, the hearing was scheduled to commence on December 3, 2012, and Columbia was directed to publish notice of the hearing. Comments were filed on November 5, 2012, by OCC (OCC Ex. 2), OPAE (OPAE Ex. 1), and, jointly, by OGMG and RESA (OGMG/RESA Ex. 1). On November 13, 2012, reply comments were filed by Columbia (Columbia Ex. 8) and OGMG/RESA (OGMG/RESA Ex. 2).

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1 OGMG, for purposes of this proceeding, includes: Constellation New Energy, Inc. (Constellation); Direct Energy Services, LLC and Direct Energy Business, LLC (Direct Energy); Interstate Gas Supply, Inc. (IGS); Integrys Energy, Inc. (Integrys); Just Energy Group, Inc. (Just Energy); and SouthStar Energy, LLC (Jt. Ex. 1 at 2).

2 RESA members include: Champion Energy Service, LLC; ConEdison Solutions; Constellation; Direct Energy; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Integrys; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LCC; NextEra Energy Services; Noble Americas Energy Solutions, LLC; PPL EnergyPlus, LLC; Reliant; TransCanada Power Marketing Ltd.; and TriEagle Energy, L.P. According to the amended stipulation, the comments expressed in the filing represent the position of RESA as an organization, but may not represent the views of any particular member of RESA. (Jt. Ex. 1 at 2.)

On November 27, 2012, joint movants filed an amended joint motion to modify the exemption orders (amended joint motion) (Jt. Ex. 2), along with an amended stipulation and recommendation (amended stipulation) (Jt. Ex. 1). The amended stipulation was signed by joint movants, as well as OCC (jointly referred to herein as signatory parties). On November 28, 2012, Columbia filed a Second Revised Program Outline (second revised outline) (Columbia Ex. 2), which reflects the changes necessary to implement the amended stipulation.

By entry issued on November 26, 2012, the procedural schedule in this matter was extended, such that the deadline for the filing of intervenor testimony was November 30, 2012, the December 3, 2012, hearing would commence for the purpose of taking public testimony, and the evidentiary hearing would commence on December 5, 2012. No members of the public were present to testify at the December 3, 2012, hearing. The evidentiary hearing commenced, as scheduled, and then concluded on December 6, 2012. At the hearing, Columbia presented proof of publication of the hearing (Columbia Ex. 1). The following 10 witnesses testified: Columbia, Thomas Brown (Columbia Exs. 6 and 7), Michele Caddell (Columbia Ex. 5), and Michael Anderson (Columbia Ex. 4); Direct Energy, D. Cory Byzewski (Direct Energy Ex. 1); IGS, Lawrence Friedeman (IGS Ex. 1); OGMG/RESA, Vincent Parisi (OGMG/RESA Exs. 3-4) and Teresa Ringenbach (OGMG/RESA Ex. 5); OCC, Bruce Hayes (OCC Ex. 1); OPAE, Stacia Harper (OPAE Ex. 2); and Hess, Randy Magnani (Hess Ex. 1). Briefs were filed on December 11, 2012, by Columbia, Staff, Dominion Retail, OGMG/RESA, Hess, OPAE, and, jointly by Direct Energy and IGS.

B. Motion for Bifurcation and for Expedited Treatment

Joint movants request that, if the Commission cannot issue an order on the amended stipulation, as a whole, by the end of December 2013, the Commission bifurcate the issues to be addressed and issue an expedited ruling on the following sections of the amended stipulation: SCO auction goals, objective, timing, and calendar; SCO supplier security requirements; SCO supplier payments; Columbia capacity contracts; capacity allocation process; daily nominations, demand and/or supply curves; off-system sales and capacity release (OSS/CR); and enhancements to billing for competitive retail natural gas service (CRNGS) providers. In support of their amended joint motion, joint movants explain that it is necessary for these specific issues to be addressed expeditiously, because the SCO auction for the next program year is scheduled for January 29, 2013, and, in order for gas to flow for the next program year, which begins April 1, 2013, an order in this case is needed by the end of December 2012. (Jt. Ex. 2 at 10-11; Columbia Exs. 6 at 6-7 and 7 at 4-5.)

By entry issued on October 18, 2012, the attorney examiner found that, while understanding that the SCO auction is scheduled for the end of January 2013, due process could be achieved during the timeframe presented. Therefore, the attorney examiner determined that the process would move forward and the joint motion to modify and the stipulation would be considered, in total, at the hearing, after which, upon consideration by the Commission, subsequent to the hearing, the Commission may consider joint movants' request to bifurcate consideration of the issues in this case. By entry issued on October 31, 2012, the reviewing attorney examiner denied the request to certify the interlocutory appeal of the October 18, 2012, entry to the Commission, which was filed by OCC and OPAE, in accordance with Rule 4901-1-15, Ohio Administrative Code (O.A.C.).

Upon consideration of the amended joint motion to bifurcate and for expedited treatment, the Commission finds that the record is complete and the evidence is sufficient to permit the Commission to come to conclusions on all issues presented in the amended stipulation. Our consideration of these issues has been accomplished within the expedited timeframe necessary for the next program auction. Therefore, the Commission finds that it is not necessary to bifurcate the issues in this case, as all issues have been thoroughly reviewed and will be addressed in this order.

II. Applicable Law

Section 4929.08, Revised Code, provides, in pertinent part, that:

> (A) The public utilities commission has jurisdiction over every natural gas company that has been granted an exemption or alternative rate regulation under section 4929.04 or 4929.05 of the Revised Code. As to any such company, the commission, upon its own motion or upon the motion of any person adversely affected by such exemption or alternative rate regulation authority, and after notice and hearing and subject to this division, may abrogate or modify any order granting such an exemption or authority only under both of the following conditions:
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> > (1) The commission determines that the findings upon which the order was based are no longer valid and that the abrogation or modification is in the public interest;
> >
> > (2) The abrogation or modification is not made more than eight years after the effective date of the

order, unless the affected natural gas company consents.

Rule 4901:1-19-12, O.A.C., sets forth the procedures for the filing of an application for abrogation or modification of a Commission order that granted an exemption. This rule requires the applicant in such a case to, at a minimum, provide a detailed description of the nature of the violation, supporting documentation for the applicant's allegations, and the form of remedy requested. In addition, paragraph (D) of this rule states that the Commission shall order such procedures as it deems necessary in its consideration for modifying or abrogating such order.

Section 4929.02, Revised Code, sets forth the state policies to be considered, as follows:

(1) Promote the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods.

(2) 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.

(3) Promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers.

(4) Encourage innovation and market access for cost-effective supply- and demand-side natural gas services and goods.

(5) Encourage cost-effective and efficient access to information regarding the operation of the distribution systems of natural gas companies in order to promote effective customer choice of natural gas services and goods.

(6) Recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment.

(7) Promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. of the Revised Code.

(8) Promote effective competition in the provision of natural gas services and goods by avoiding subsidies flowing to or from regulated natural gas services and goods.

(9) Ensure that the risks and rewards of a natural gas company's offering of nonjurisdictional and exempt services and goods do not affect the rates, prices, terms, or conditions of nonexempt, regulated services and goods of a natural gas company and do not affect the financial capability of a natural gas company to comply with the policy of this state specified in this section.

(10) Facilitate the state's competitiveness in the global economy.

(11) Facilitate additional choices for the supply of natural gas for residential consumers, including aggregation.

III. Amended Joint Motion to Modify and Section 4929.08, Revised Code

A. Arguments of Joint Movants

Joint movants request that the Commission modify the exemption orders, and the terms of the exemption, for a five-year period to begin after the initial term of the 08-1344 stipulation. The 08-1344 stipulation, *inter alia*: eliminated Columbia's GCR mechanism and replaced it with the SSO and SCO auctions; established Columbia's peak day demand and peak day capacity portfolio, which would not be subject to audit; and established Columbia's OSS/CR revenue sharing mechanism. Joint movants note that these provisions of the 08-1344 stipulation, as well as certain interstate pipeline contracts, expire on March 31, 2013. (Jt. Ex. 2 at 1-2, 5-6.)

In support of their motion, joint movants note that the 08-1344 stipulation allows the parties to seek, and the Commission to grant, after notice and hearing, modifications to the terms of the exemption for the period after the term of the 08-1344 stipulation. In addition, they state that the parties agreed that the provisions of the 08-1344 stipulation would continue, after the expiration of the initial term, until modified by the Commission. As pointed out by joint movants, Section 4929.08(A), Revised Code, gives the Commission the authority to modify or abrogate the exemption order in 08-1344, under certain conditions. (Jt. Ex. 2 at 2, 6; Columbia Br. at 5.)

According to joint movants, the first prong of the two-prong test set forth in Section 4929.08(A), Revised Code, which permits the abrogation or modification of an exemption order has been met, because certain findings upon which the exemption orders were based are no longer valid and, as a result, Columbia is adversely affected by the exemption as it currently stands and modification of the exemption orders is in the public interest.

Specifically, joint movants aver that, since the auction process is no longer new or novel, there is less uncertainty about the auction process. While there is less uncertainty surrounding the auction process since 2009, joint movants assert that the introduction of shale gas into the market place has created greater uncertainty about Columbia's best use of interstate pipeline capacity. Until it is possible to assess the full impacts of shale gas on Ohio markets, joint movants assert it makes sense not to make long-term interstate pipeline capacity contract decisions that could adversely impact Columbia's ability to make the best use of all available pipeline capacity. Therefore, they argue that the factual assumptions underlying Columbia's capacity contracts have changed since the exemption orders and the 08-1344 stipulation is not geared to meet Columbia's needs during the period after the term of the 08-1344 stipulation. In addition, in support of their argument that the first prong is met, joint movants note that, while, in 2009, Columbia did not contemplate exiting the merchant function, it has since begun to plan for such an exit; however, the exemption orders do not authorize Columbia to exit. In further support of the first prong, as discussed in more detail in other sections of this order, joint movants declare that certain modifications to the exemption orders are in the public interest. (Jt. Ex. 2 at 7-10.)

In further support for the amended joint motion, OGMG/RESA witness Parisi contends that, when the state policy in Section 4929.02, Revised Code, was enacted in 2001, it was understood that it would take time to unbundle commodity programs, identify inequities in the programs, and revise the programs to ensure that subsidies would not hinder the development of the markets or inhibit consumers electing competitive supply alternatives. However, he believes it was clear in the policy that, once effective competition was developed in the state, regulated commodity service was to be eliminated in favor of competitive markets. Mr. Parisi states that the policy to foster competitive markets, in order to ultimately eliminate regulated service, inherently means that, once effective competition exists, consumers will no longer be inactive or passive recipients of the commodity service available in the competitive market. However, the system, as it exits today, continues to allow consumers to receive commodity service through inactivity, which, over the long term, is incongruous with effective competitive markets. (OGMG/RESA Ex. 3 at 4, 15-16.)

Joint movants state that the second prong of the Section 4929.08(A), Revised Code, test, regarding the eight-year limit, does not apply. They point out that, not only was the 08-1344 stipulation approved well under the eight-year limit, but Columbia's consent to the modification sought herein negates the application of the second prong. (Jt. Ex. 2 at 7.)

In furtherance of joint movants' position, Columbia notes that, contrary to the assertion of OPAE, the parties to the 08-1344 stipulation did not commit not to modify the initial outline substantively. Rather, the parties in that case agreed that the "implementation of the Program Outline may be amended by the signatory parties without subsequent Commission approval so long as the amendments are non[-]substantive[.]" Joint movants in the instant case are seeking approval for the substantive amendments to the revised outline. Furthermore, Columbia notes that it did not commit in the 08-1344 stipulation not to exit the merchant function. Instead, Columbia states that, in 08-1344, it "ha[d] not expressed a present intent to, nor does this Agreement contemplate that Columbia seeks to, exit the merchant function." Columbia's intent arose after the submission of the 08-1344 stipulation, according to Columbia. Therefore, Columbia advocates that there is nothing in the 08-1344 stipulation that prohibits it from filing the amended joint motion or the amended stipulation. (08-1344 stipulation at 8; Columbia Br. at 6.)

B. Arguments of Opponents to the Amended Joint Motion to Modify

OPAE asserts that the amended joint motion violates Section 4929.08(A), Revised Code, and the administrative rules. Initially, OPAE states that the amended joint motion does not request a modification of an existing exemption order; it is requesting a new alternative regulation plan. Therefore, it should have been filed under Section 4929.04, Revised Code, as an application for alternative regulation, which is a more comprehensive and complex filing. According to OPAE, the amended joint motion is devoid of the requisite grounds for a motion to modify an exemption order, in that it does not describe how the past exemption orders are based on findings that are no longer valid, it does not describe how joint movants are adversely affected, and it does not explain how granting the modifications will be in the public interest. OPAE contends that the amended joint motion does nothing more than violate the stipulation in the 08-1344 case, which provided that Columbia would not modify the program substantively or propose to exit the merchant function. (OPAE Br. at 4, 10, 14.)

In addition, according to OPAE, the amended joint motion violates Rules 4901:1-19-04 and 4901:1-19-12, O.A.C., pertaining to modifications of exemption orders. OPAE states that, contrary to the rules, there is no complaint that the findings of the exemption orders are no longer valid, in fact, the amended joint motion is not even a complaint. In addition, OPAE notes that, not only is there no detail about the public interest, code of conduct, corporate separation, or any other information called for by the rules, the rule for modifications of exemption orders is simply ignored. (OPAE Br. at 15-16.)

Furthermore, OPAE states that the amended joint motion disregards Ohio's rulemaking process, noting that, currently, there are no administrative rules for gas utilities to seek authority to exit the merchant function. While the Commission has issued proposed rules,[3] which establish a procedure for such an application, the amended joint motion ignores the effort to adopt administrative rules and set a process for these types of

[3] See *In the Matter of the Commission's Review of the Alternative Rate Plan and Exemption Rules Contained in Chapter 4901:1-19 of the Ohio Administrative Code*, Case No. 11-5590-GA-ORD.

applications. OPAE believes it is unlawful and unfair to those who commented in the rulemaking docket to complete this case prior to the rules being final. (OPAE Br. at 23-24.)

C. Conclusion on the Amended Joint Motion to Modify

The Commission has reviewed the evidence presented in this matter and, contrary to the assertions by OPAE, we find ample support presented by joint movants on the amended joint motion. In accordance with the statutory construct, joint movants considered the provisions of the exemption orders previously issued and requested a modification to such orders. As thoroughly summarized and reviewed throughout this order, joint movants addressed each requirement under Section 4929.08, Revised Code. The amended joint motion and accompanying amended stipulation clearly delineate the changes proposed by the stipulating parties to the previous exemption orders, as well as the initial and revised outlines approved by those orders. In fact, the sections in the amended stipulation are titled "changes from the 2009 stipulation" and "changes to the program outline." Thus, joint movants appropriately filed this application and joint motion under Section 4929.08, Revised Code, requesting an exemption to modify the exemption orders for another five-year period. In addition, the record reflects that the assumptions used to support the exemption orders are no longer valid and that joint movants may be adversely affected if modifications are not made. Most notably, joint movants point to the advent of shale gas production in Ohio, the factual assumptions underlying Columbia's capacity contracts, Columbia's consideration of exiting the merchant function, and adherence to the policies enunciated in Section 4929.02, Revised Code, to support this point. As we consider, in great detail below, the evidence supports a finding that it is in the public interest to grant the amended joint motion and permit modification to the exemption orders. Finally, we note that OPAE goes to great lengths stating that joint movants did not satisfy the requirements of Section 4929.04, Revised Code; however, unlike joint movants whom we find did provide record support for their amended joint motion, OPAE fails to provide citation to any support on the record for its broad assertions that there is no record to support the motion.

With regard to OPAE's assertions that the filing violates the Commission's rules in Chapter 4901:1-19, O.A.C., the Commission finds OPAE's arguments to be without merit. While it is true the Commission has been considering revisions to this chapter of the code, in accordance with the statutory five-year review requirement, the current rules provide the necessary direction as to what an applicant must include in an application for modification of an exemption order, such as the one filed by joint movants, pursuant to Section 4929.08, Revised Code.

Therefore, upon consideration of the amended joint motion to modify and the arguments made by the parties, the Commission finds that joint movants have demonstrated that, in accordance with Section 4929.08(A), Revised Code, the exemption orders should be modified. Joint movants have shown that certain findings from the exemption orders are no longer valid and, absent modification to those orders, Columbia, the suppliers, and, ultimately, the customers could be adversely affected. Moreover, joint movants have corroborated that the public interest objectives set forth in Section 4929.02, Revised Code, will be advanced by modifying the exemption orders. Accordingly, the Commission concludes that the amended joint motion to modify should be granted. Having found that the exemption orders should be modified, the Commission will now turn its consideration to how the exemption orders should be modified and consider the evidence pertaining to the amended stipulation presented in this case.

IV. Summary of the Amended Stipulation and Evidence

A. General

As stated previously, an amended stipulation was filed in this proceeding, on November 27, 2012, by Columbia, OGMG, RESA, Dominion, Staff, and OCC. According to the signatory parties, the stipulation was intended to resolve all outstanding issues in this proceeding.

Throughout this section of the order, the amended stipulation will be summarized, along with the evidence presented at the hearing and the arguments on brief. Those issues set forth in the amended stipulation that are in contention will be addressed and considered by the Commission in the applicable section below. The Commission notes that the following is a summary of the provisions agreed to by the stipulating parties and is not intended to replace or supersede the amended stipulation.

With regard to OCC, it is noted in the amended stipulation that OCC joins in only those provisions that relate to residential customers. For example, OCC is not joining the amended stipulation regarding nonresidential exit of the merchant function. Furthermore, the amended stipulation does not limit OCC's future advocacy with regard to the monthly variable rate (MVR) provision and the billing enhancements provision. (Jt. Ex. 1 at 1.)

B. Term of the Amended Stipulation

Pursuant to the amended stipulation, it shall be for a five-year term, commencing on April 1, 2013, and ending on March 31, 2018. After expiration of the term, the provisions of the amended stipulation, including the then-approved method of supplying commodity for SSO and SCO service shall continue until modified by the Commission, unless otherwise stated in the amended stipulation. (Jt. Ex. 1 at 3.)

C. SCO Auction Goals, Objective, Timing, and Calendar

According to the amended stipulation, the second revised outline reflects that the SCO has been approved and will continue, unless discontinued by the Commission's action authorizing Columbia's exit from the merchant function (Jt. Ex. 1 at 4).

D. SCO Supplier Security Requirements

1. Amended Stipulation Provisions

Pursuant to the amended stipulation, in addition to the letter of credit provided for in the revised outline, the second revised outline requires SCO suppliers to provide Columbia with a cash deposit, in the amount of $0.06 per thousand cubic feet (Mcf) multiplied by the initial estimated annual delivery requirements for the SCO program year of the tranches won by that SCO supplier. According to the amended stipulation, this security will provide a liquid account to meet supply default expenses incurred by Columbia, other than compensation to the nondefaulting SCO suppliers. These deposits and interest earned during the program year will be accounted for through a regulatory liability account and the interest will be computed monthly based on the average balance for each month and the applicable NiSource Inc. and subsidiaries money pool rate. Any funds remaining at the end of each program year will be transferred to customers through the Choice/SSO/SCO Reconciliation Rider (CSRR) commencing June 2014, for the 2013 program year, which commences on April 1, 2013. (Jt. Ex. 1 at 4.)

Even though it is a signatory party to the amended stipulation, OCC does not join in the provisions that relate to the SCO supplier security requirements and the $0.06 Mcf security deposit fee. As stated in the amended stipulation, OCC disagrees with the rationale supporting the security deposit fee; however, OCC will not litigate this issue, given the totality of the amended stipulation. Moreover, the amended stipulation provides that OCC's decision not to litigate this issue will not be used as precedent against OCC in other cases. (Jt. Ex. 1 at 1, footnote 1.)

2. Arguments of the Stipulating Parties

Columbia witness Brown states that the $0.06 per Mcf security deposit will provide a liquid account to meet the supply default expenses incurred by Columbia, other than the compensation to the nondefaulting SCO suppliers. According to Mr. Brown, this deposit provides security for Columbia, comparable to the security afforded to nondefaulting SCO suppliers by the letters of credit that all SCO suppliers must provide. Therefore, he opines that the deposit provision eliminates what might be regarded as an existing discrimination between Columbia and the SCO suppliers. The witness asserts that the contention that the $0.06 deposit is unduly discriminatory because it is not also applied to Choice suppliers is misguided because: the two types of suppliers are very different, in that the risk and potential costs to Columbia of default by an SCO supplier is greater than the risk associated with a Choice supplier; and the risk of default by an SCO supplier is immediate, while the risk of default by a Choice supplier is more remote. (Columbia Exs. 6 at 8-9 and 7 at 5.)

OGMG/RESA witness Parisi, the general counsel and regulatory affairs officer for IGS, states that IGS supports paying the SCO supplier fee, asserting that, while $0.10 per Mcf[4] is not sufficient to cover the default costs, the fee balances the interests and is a reasonable result. He explains that IGS recognizes that it receives a significant number of customers through the auction in a single event and that, as an SCO supplier, IGS is relieved from various educational and administrative costs. Further, he points out that no supplier is required to bid in an auction and any customer who feels the default service cost is higher can avoid it by electing a competitive supplier and product. (OGMG/RESA Ex. 3 at 19-21.)

According to OGMG/RESA, it is undisputed on the record that both shopping and nonshopping customers pay for the auction. OGMG/RESA do not agree with the claim by Hess that the costs are minimal and do not arise to $0.06 per Mcf. OGMG/RESA point out that Hess's assertions are at odds with the testimony of OGMG/RESA witness Parisi, which states that the costs are higher than $0.10 per Mcf. While no cost studies were done for the SCO fee, the fact that shopping customers, via base rates, pay for Columbia to supply the customer acquisition costs, including the auction costs and all services which CRNGS providers must supply, OGMG/RESA believe that it is reasonable to have the value of those services picked up as part of the SCO process. OGMG/RESA note that, in the Commission's Apples to Apples chart (Dominion Ex. 1), the SCO cost of natural gas was $5.226 per Mcf, so the proposed SCO fee is approximately one percent. Therefore, given the difficulty of separating out the value of services, the relative small impact of the proposed fee, and the fact that any of the SCO fee that is not used to offset an SCO supplier default will flow through to the benefit of customers, via the CSRR, the $0.06 per Mcf fee is a reasonable compromise, according to OGMG/RESA. (OGMG/RESA Br. at 29-30.)

3. Arguments of OPAE and Hess

Hess witness Magnani urges the Commission to reject the proposed $0.06 per Mcf SCO security charge for several reasons, arguing that Columbia has provided no evidence that an additional safeguard, beyond the current requirements, is necessary to protect customers in the event of an SCO supplier default. First, he notes that Columbia currently requires a preauction credit evaluation of all SCO bidders, and retains the right to make

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4 The initial stipulation provided for a cash deposit of $0.10 per Mcf; however, the amended stipulation, which is being considered herein, provides for a cash deposit of $0.06 per Mcf (Jt. Ex. 1 at 4 and 3 at 3).

alternative credit arrangements with a supplier and investigate an SCO supplier's creditworthiness. Second, the witness contends that the $0.06 per Mcf charge is not a deposit, it is a tax, because any remaining funds are credited to the CSRR and not credited back to the nondefaulting SCO suppliers. Third, the witness notes that, contrary to the assertions of the stipulating parties, there is no record support for their claims that the SCO security charge was designed to recover SCO costs incurred by Columbia or that it will offset alleged subsidies afforded to SCO customers. Mr. Magnani opines that this charge is nothing more than an administrative mechanism designed to artificially bolster the competitive position of retail suppliers compared with the SCO price. If approved, SCO suppliers will have to build this charge into their rates, while retail suppliers will not be assessed this charge; thus, retail suppliers' offers will be made more competitive to Choice-eligible customers. (Hess Ex. 1 at 5, 17-20.) Hess avers that the proposed SCO security deposit is not in the public interest and violates regulatory principles because it would needlessly increase prices for SCO customers and disrupt the competitive balance between SCO and retail suppliers. Hess points out that Columbia performed no cost studies or analyses to estimate the costs it would incur as a result of an SCO supplier default. Rather, the size of the deposit was negotiated as part of the amended stipulation package, as was the decision to impose it on SCO suppliers. (Hess Br. at 10; Tr. II at 41-43.)

OPAE witness Harper does not believe this charge is justified. She notes that SCO providers have met the Commission's certification requirements, met the credit standards established in Columbia's tariff, and are secured against the defaults of other suppliers. Thus, she argues that, for credit purposes, there is no difference between serving an aggregated SCO load, a governmental aggregation, or a group of customers served through bilateral contracts. Moreover, since SCO suppliers are providing a monthly commodity price that is based on a month-to-month contract set by the New York Mercantile Exchange (NYMEX), there is minimal risk to the SCO supplier. The witness opines that suppliers offering fixed-price contracts face a greater financial risk, because they must cover their positions for the duration of the contract period. Furthermore, Ms. Harper points out that she is not aware that there has ever been an SCO supplier default and there is no evidence to substantiate the contention by the stipulating parties that the cost of a supplier default would exceed the surety provided through the letters of credit that the suppliers already have. (OPAE Ex. 2 at 27-28.)

Ms. Harper reiterates that there is little difference between a CRNGS provider serving SCO load and a CRNGS provider serving non-SCO customers. She believes that adding an addition upfront cost to the service provided by SCO suppliers constructs an additional barrier to entry for CRNGS providers that prefer to acquire customers through the SCO process. In addition, it also discriminates between SCO suppliers and other CRNGS providers by subjecting SCO suppliers to an additional charge that will not be paid by other suppliers. According to the witness, the proposed $0.06 per Mcf charge will eliminate the level playing field among all supply options, and it is unnecessary and duplicative. Ms. Harper disagrees with Columbia's claim that customers will benefit from the new charge because any portion of the charge that is not needed will be applied to the CSRR. She points out that all customers currently pay the CSRR, but only SCO customers will pay the new charge through the SCO rate. Thus, the SCO rate will be raised and a subsidy to bilateral contracts and contracts established through government aggregations will be created. (OPAE Ex. 2 at 29-30.)

4. Conclusion to SCO Supplier Security Requirements

Upon consideration of the arguments raised by the parties, the Commission finds that the proposed SCO security requirement provision set forth in the amended stipulation is reasonable. The Commission finds the arguments presented by OGMG/RESA to be persuasive. Furthermore, we recognize the importance of ensuring that there are adequate liquid accounts available, in the event of a default. The point that, to date, there has been no supplier default in Columbia's service territory is not reason enough to ignore the need to ensure that, if such an event happens in the future, customers are protected and the public interest is preserved. We also agree that the transfer of any remaining funds to the CSRR is acceptable and a reasonable compromise.

E. SCO Supplier Payments - Balancing Fee

1. Amended Stipulation Provisions

In accordance with the amended stipulation, the balancing fee will be reduced from $.32 per Mcf to $.27 per Mcf, and the fee will be charged directly to customers, instead of being charged to suppliers. Furthermore, the amended stipulation provides that, after April 1, 2013, no Choice supplier may charge retail Choice customers a rate that is designed or intended to provide compensation for the balancing fee that Columbia charged any suppliers prior to April 1, 2013, so as to avoid customers being charged twice for the same service. As used in this section of the amended stipulation, Choice supplier includes CRNGS providers providing service to individual Choice customers through bilateral contracts, as well as Choice suppliers serving governmental aggregation programs. (Jt. Ex. 1 at 4.)

2. Arguments of the Stipulating Parties

Columbia witness Anderson explains that, as the system operator, Columbia is required to balance the amount of gas delivered by all suppliers with the actual consumption of all customers across its markets. In addition, Columbia provides a peaking service with the capacity and the other assets Columbia retains, in order to maintain system reliability. Furthermore, the witness points out that Columbia provides an interruptible banking and balancing service to its Transportation Service (TS) customers, utilizing that portion of the balancing capabilities derived from the retained no-notice storage service that is not needed to meet the daily balancing requirements of Choice and SCO customers. According to the witness, the amended stipulation changes the fee for balancing service to more accurately reflect the costs of the storage capacity Columbia retains to provide this service. Currently, the balancing fee is charged to Choice and SCO suppliers; the amended stipulation proposes, instead, that the balancing fee be charged directly to customers. Mr. Anderson states that this change would be consistent with the method used by The East Ohio Gas Company d/b/a Dominion East Ohio (DEO) in its auction process and it would create greater transparency for customers, as it relates to the actual cost of providing gas commodity service by their supplier. Since this change is proposed to take effect April 1, 2013, after the end of the current SCO period, Mr. Anderson asserts that SCO customers will not be charged twice for this fee. (Columbia Ex. 4 at 16-18.) Columbia witness Brown testified that the first step to verify that all CRNGS providers modify their contracts so that customers will not be billed twice would be a notice to the suppliers indicating the provisions of the amended stipulation. He goes on to note that there would then need to be a way for Staff and Columbia to verify how the provision would be implemented. (Tr. I at 40.)

3. Arguments of OPAE

OPAE maintains that shifting the responsibility to pay balancing fees from marketers to customers does not benefit ratepayers and is not in the public interest. According to OPAE, this shift would reduce the potential for competition. OPAE explains that sellers often discount prices of various elements that make up product costs. If marketers are not paying the balancing fee, it is yet another component of the costs that is not subject to competition. OPAE opines that a competitively neutral fee is, in effect, anti-competitive. Therefore, OPAE asserts that responsibility for balancing fees should remain with the marketers. With regard to the provision in the amended stipulation that purports to prevent customers from being charged twice for the balancing fee, OPAE points out that there is no way to enforce this provision because there is no way to ensure that the fee currently embedded in marketers' rates is removed when payment responsibility is shifted to customers. (OPAE Br. at 41.)

4. Conclusion to SCO Supplier Payments - Balancing Fee

The Commission agrees that it is appropriate for the balancing fee to be commensurate with the costs incurred by Columbia and that such fee should be charged directly to customers. However, the dilemma on this issue is the actions to be taken to ensure, after April 1, 2013, that Choice suppliers do not continue to charge Choice customers a rate that includes compensation for the balancing fee. While the Commission understands OPAE's concern regarding enforcement of this provision, we believe, with appropriate communication and documentation from the Choice suppliers, the necessary enforcement is possible.

To that end, we direct Columbia to work with Staff to provide direct notice to all Choice suppliers serving in Columbia's territory regarding the determination that the balancing fee may no longer be charged by Choice suppliers to Choice customers located in Columbia's service territory, effective April 1, 2013. The notice should:

(1) Be sent by Columbia to Choice suppliers as soon as practicable after the issuance of this order.

(2) State that, in accordance with this order, each Choice supplier is required to review all Choice customer contracts that extend beyond April 1, 2013, in order to determine if balancing fees are embedded in the contracted price.

(3) State that, in accordance with this order, each Choice supplier is required to work with Columbia and Staff to ensure that the charge is not passed on to Choice customers after April 1, 2013.

With this process in place, the Commission finds that this provision of the amended stipulation is reasonable.

F. Columbia's Capacity Contracts and Capacity Allocation Process

1. Amended Stipulation Provisions

The amended stipulation provides that Columbia's firm city gate interstate and intrastate pipeline transportation and storage capacity will be adjusted to 1,963,178 decatherm (Dth) per day on April 1, 2013, and 1,940,214 Dth per day on November 1, 2013 (Jt. Ex. 1 at 5).

In addition, the amended stipulation provides that Columbia will continue to use its existing annual design peak day calculation process for core market demand, which is premised on a 1-in-10 probability of occurrence. This process includes all standby service quantities elected by TS customers on a year-to-year basis. Furthermore, Columbia shall retain storage and related transportation service capacity equal to the elected standby service volumes, and customer standby service demand and related retained capacity shall be removed from the capacity allocation calculations. (Jt. Ex. 1 at 5.)

Furthermore, the amended stipulation states that Columbia will assign suppliers capacity, including the Columbia-provided peaking service, equal to up to 100 percent of the design peak day requirements of their customers, in accordance with the amended stipulation. The design peak day demand will be determined annually. In addition, Columbia will retain its existing peak day capacity portfolio through March 31, 2018, with the following modifications: the Sempra peaking contract will terminate on March 31, 2013; and 22,964 Dth of the North Coast Gas Transmission (North Coast) transportation capacity contract and 23,255 Dth of the Crossroads transportation capacity contract will terminate on October 31, 2013. As a result of the Commission's decision in 08-1344, Columbia will retain the remaining North Coast capacity and treat it as operationally required, utilizing it as part of the Columbia-provided peaking service. With regard to the Columbia Gulf FTS-1 capacity, Columbia will renew 100 percent of this capacity through March 31, 2016, and then will renew these contracts to cover 75 percent of the volume under contract prior to March 31, 2016, for a two-year period April 1, 2016, through March 31, 2018. During the term of the amended stipulation, there will be no contract capacity review. (Jt. Ex. 1 at 5-6.)

2. Arguments of the Stipulating Parties

Columbia witness Anderson explains that, as noted in the amended stipulation, Columbia anticipates having a total of 1,940,214 Dth of firm peak day capacity and firm city gate supply; however, Columbia plans to use 11,500 Dth for TS customers, which leaves 1,928,714 Dth to provide backup service and for the Choice and SCO programs. Mr. Anderson offers that Columbia does not have excess capacity, noting that its latest peak day forecast shows firm demand that slightly exceeds its available firm capacity entitlements by 20,186 Dth or 1.05 percent. Therefore, according to the witness, Columbia's capacity portfolio set forth in the amended stipulation is necessary to meet these projected demands. Mr. Anderson points out that the SCO market-based capacity rates that have been established through an open auction process in Ohio, which have been successful in providing Ohioans with low-priced natural gas, are essentially the same capacity portfolio as presented in this case. (Columbia Ex. 4 at 12.)

In support of the capacity contract and capacity allocation provisions in the amended stipulation, Columbia witness Anderson explains that Columbia's distribution network consists of several hundred, often isolated, systems spread out over 60 counties in Ohio, with over 840 separate points of delivery (PODs) from upstream interstate pipeline companies, some of which are connected to a single POD serving a single distribution system. In addition, Columbia provides service to over 10,000 mainline tap customer locations in Ohio. The witness described Columbia's broad service territory, explaining that, given Columbia's dozen market areas or pipeline scheduling points (PSPs), large number of receipt points, and the integration of its system with Columbia Transmission, LLC (TCO) pipeline, Columbia has a more complex operating environment than most local distribution (LDC) companies. According to Mr. Anderson, the vast majority of Columbia's distribution systems that are connected to TCO have no alternate pipeline options. There are several Columbia distribution systems where service from TCO is not available that are served either by Gatherco or DEO, and those systems, generally, do not have service alternatives. However, for Columbia's markets located in Maumee, the south side of Columbus, portions of Parma and Findlay, Fostoria, Oberlin, and Norwalk, Mr. Anderson explains that Columbia has the ability to receive gas from alternative pipeline sources. In addition, Columbia has other nonpipeline capacity resources. (Columbia Ex. 4 at 2-4, 8.)

Columbia witness Anderson asserts that renewal of the interstate capacity pipeline contracts at the levels specified in the amended stipulation is necessary for Columbia to maintain service reliability across its complex, wide-spread service territory. Moreover, the witness emphasizes that, such renewal does not have an adverse impact on competition, in fact, it enhances competition by lowering barriers, reducing supplier uncertainty, and preserving reliability. Furthermore, he notes that the interstate capacity Columbia holds are contracted for at or below Federal Energy Regulatory Commission-approved rates. According to Mr. Anderson, the shale gas supplies can not provide an alternative to the markets covered by these interstate pipeline contracts. (Columbia Ex. 4 at 9.)

Mr. Anderson does not consider the five-year renewal period set forth in the amended stipulation for these contracts to be long-term, pointing out that the development of any new pipeline capacity alternatives would require new construction and developers of that new capacity would require contracting parties to enter into 10- to 15-year contracts (Columbia Ex. 4 at 25).

Columbia witness Anderson notes that the amended stipulation provides that Columbia will terminate several of the contracts that serve Columbia's Findlay, Fostoria, Oberlin, and Norwalk markets, in order to bring its city gate capacity portfolio in line with its design peak day forecast. In addition, it provides for a reduction in Columbia's contract quantity by Columbia Gulf by 25 percent, effective April 1, 2016, in order to test whether Appalachian Basin shale gas supplies can be relied on to meet the needs of Columbia's customers. (Columbia Ex. 4 at 10.)

While Columbia does not believe that any of the currently proposed shale gas projects are viable replacements for Columbia Gulf or TCO, Mr. Anderson states that the introduction of shale gas provided benefits to Columbia's customers due to the reduction in prices that has been driven by the increase in Appalachian Basin shale gas. The witness asserts that the introduction of shale gas has created additional flexibility from the utilization of Columbia's existing portfolio; however, until the full impacts of shale gas on Ohio markets can be assessed, it does not make sense to make long-term interstate pipeline capacity decisions that could adversely impact reliability and Columbia's ability to make the best use of all the available pipeline. According to Mr. Anderson, the benefits of shale production will continue to accrue with assured reliability and there will be no loss of flexibility attributable to Columbia renewing its upstream interstate pipeline contracts. (Columbia Ex. 4 at 23, 26-27.)

With regard to the capacity allocation, Mr. Anderson explains that, after Columbia retains adequate storage to provide the necessary system balancing services for Choice and SCO suppliers, Columbia's allocation process assigns a slice of the pie to all Choice and SCO suppliers on a level playing field basis. Any capacity that Columbia is not able to assign, Columbia uses to benefit all Choice and SCO suppliers equally, by incorporating it into the peaking service it provides all Choice and SCO suppliers and by supplementing supplier provided supplies, as needed, to maintain system reliability. The witness states that, while the mechanics of the allocation process proposed in this case are identical to that approved by the Commission in 08-1344, the actual assignment process will change slightly due to changes in Columbia's capacity portfolio. However, the advantages to this assignment mechanism include: service reliability; a consistent and level playing field between Choice and SCO suppliers; minimizing operational complexities; stability and certainty for market participants; lowering barriers to entry; and minimizing potential supplier stranded costs from capacity. (Columbia Ex. 4 at 13-15.) Furthermore, Mr. Anderson states that, by Columbia assigning suppliers' capacity that matches the Choice/SSO suppliers' customer groups' needs, suppliers are not placed in a position of having to acquire capacity that they do not know if they need; thus, minimizing costs to customers (Columbia Ex. 4 at 30).

3. Arguments of OPAE

OPAE asserts that the extension of the pipeline contracts does not benefit ratepayers and the public interest. According to OPAE, the extension of the contracts will choke off the use of shale gas at a time when it is the state's policy is to promote markets for that commodity. Moreover, should marketers choose to pay for unnecessary gulf pipeline capacity and access the shale resources, Columbia will have even more excess capacity to market and will receive a huge financial benefit by selling that capacity. OPAE also contends that the extension of the pipeline contracts is anti-competitive because the marketers are forced to purchase capacity from Columbia. (OPAE Br. at 40-41.)

4. Conclusion to Capacity Contracts and Capacity Allocation Process

The Commission emphasizes that reliability in the supply and distribution of natural gas is of paramount concern to us as a regulatory body because it is our responsibility to ensure that customers are provided adequate and reliable service. As delineated on the record, the emergence of shale gas shows great potential for the future of gas supply in our state. The fact that the amended stipulation takes into consideration the potential for shale gas through the reduction of the Columbia Gulf contract quantity is appropriate. However, as noted by Columbia witness Anderson, the current shale gas projects are not cost-effective, reliable alternatives to Columbia Gulf and these projects do not currently provide the same flexibility as Columbia Gulf (Columbia Ex. 4 at 29). On the other hand, the amended stipulation contains provisions covering Columbia's capacity requirements for the time period in question. As the shale market evolves, the Commission expects Columbia to continue to evaluate the viability of shale, as well as all other supply options, in its capacity planning. Accordingly, the Commission finds these provisions of the amended stipulation to be reasonable.

G. Off-Systems Sales and Capacity Release

The amended stipulation provides that the OSS/CR program's prior sharing mechanism approved in 08-1344 will continue for a five-year term, except as modified in the amended stipulation. The annual cap on Columbia's retained OSS/CR revenues will be $14 million during each of the five program years, in accordance with the amended stipulation, with the cumulative cap on Columbia's retained OSS/CR revenues reduced to a total of $55 million over the five-year term. OSS revenues above the $14 million annual cap or above the $55 million cumulative cap will be provided 100 percent for customers through the CSRR. The formula for determining Columbia's share of OSS will be modified from the mechanism approved in 08-1344, as follows:

(1) For the first $1 million of OSS, Columbia shall retain 50 percent of the revenue, with the remainder included in the CSRR for customers.

(2) For OSS from $1 million to $2 million, Columbia will retain 100 percent of the revenue.

(3) For OSS from $2 million to $27 million, Columbia will retain 50 percent of the revenue, with the remainder included in the CSRR for customers.

Columbia will provide quarterly reports for the OSS/CRR activity to the stakeholder group. (Jt. Ex. 1 at 3, 6.)

Columbia witness Anderson explains that OSS activities take place only after Columbia has assured service reliability to its firm customers. Once this is accomplished, Columbia's traders identify opportunities using the available capacity and gas supply resources. Similarly, each month, Columbia analyzes what transportation capacity is needed for its firm customers and, once that is determined, it solicits bids to release the available capacity through the CR process approved for each interstate pipeline. (Columbia Ex. 4 at 27.)

Mr. Anderson states that the sharing mechanism in the amended stipulation is identical to the one approved in the 08-1344 case, except the potential revenue that Columbia may retain under the amended stipulation is reduced from the annual average of $14 million ($42 million over the 08-1344 three-year period) to $12 million ($55 million[5] over the five years proposed in this amended stipulation) (Columbia Ex. 4 at 28; Jt. Ex. 1 at 6).

Mr. Anderson disagrees that customers will be giving up $55 million in OSS revenues to Columbia and will be required to pay for upstream interstate pipeline capacity that may not be needed, emphasizing that Columbia does not have excess or unneeded capacity. According to the witness, the capacity Columbia retains under the Choice/SSO capacity assignment mechanism is only that capacity it must retain to manage system operations; all other capacity is assigned to Choice and SCO suppliers. Mr. Anderson insists that customers will benefit from Columbia's OSS/CR activities, pointing out that the sharing mechanism in the amended stipulation incents Columbia and recognizes its efforts, and rewards customers. (Columbia Ex. 4 at 28.)

Finally, Mr. Anderson notes that the introduction of shale gas does not increase the likelihood that Columbia's capacity contracts might include excess capacity. Mr. Anderson points out that the only way shale gas can provide an alternative to Columbia's portfolio is if it can be directly connected to Columbia's distribution system; however, the shale gas in Ohio can not be directly connected due to reliability, economic, utilization, and safety concerns. Another way would be if the shale gas could replace an upstream capacity source; however, according to the witness, the current shale gas projects are not cost-effective, reliable alternatives to Columbia Gulf and do not provide the same flexibility as Columbia Gulf. (Columbia Ex. 4 at 29.)

The Commission finds that the OSS/CR sharing mechanism provided for in the amended stipulation is reasonable.

H. Possible Exit from the Merchant Function

1. Amended Stipulation Provisions

During the five-year term of the amended stipulation, Columbia will not exit the merchant function for nonresidential customers, and will not file an application to exit the merchant function for residential customers, unless and until participation in Columbia's Choice program meets specified thresholds and other conditions in the amended stipulation are met. In accordance with the amended stipulation, the term exit the

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5 The Commission notes that, while Mr. Anderson's testimony references the $60 million in OSS revenues contained in the initial stipulation, the amended stipulation provides for $55 million in OSS revenues (Jt. Exs. 1 at 6 and 3 at 5). Accordingly, the order will refer to the amended amount of $55 million.

merchant function, means that all of Columbia's Choice-eligible[6] residential and/or nonresidential customers are provided commodity service by a CRNGS provider through Columbia's Choice program or MVR program. (Jt. Ex. 1 at 6-7.)

The amended stipulation provides that, if Columbia exits from the merchant function for any customer class:

(1) Columbia will provide no default commodity service for Choice-eligible customers in that customer class upon exit.

(2) Choice-eligible customers in that class may enroll with a supplier.

(3) Those Choice-eligible customers in the class that do not enroll with a supplier will be assigned to a supplier, and the pricing for such customers will be based on the closing NYMEX price, plus the MVR.

(4) Columbia will continue as the supplier of last resort for that class.

(5) Columbia will retain responsibility for all system balancing obligations and will maintain operational control of the interstate pipeline capacity necessary to satisfy that obligation.

(Jt. Ex. 1 at 7.)

During the term of the amended stipulation, Columbia will send monthly reports to Staff and other interested members of the stakeholder group on the levels of customer participation in its Choice program. Furthermore, Columbia, in consultation with the stakeholder group, will develop and conduct a customer survey to determine nonresidential customers' educational needs and general knowledge of Columbia's Choice program. The results of this survey will be used to design a two-phase education program for all Choice-eligible nonresidential customers regarding:

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6 Choice-eligible customers are defined in the amended stipulation as those who: use less than 6,000 Mcf per year or are a human needs customer, regardless of annual consumption; are not enrolled in the percentage of income payment plan (PIPP); are not a TS customer; are not more than 60 days in arrears in payment for the Columbia bills, or not more than 30 days in arrears in payment of their Columbia bills if enrolled in a payment plan. Choice-eligible nonresidential customers are a subclass of Choice-eligible customers and consist of those Choice-eligible customers who are commercial or industrial customers. (Jt. Ex. 1 at 7).

(1) Phase 1 - This phase will target all Choice-eligible nonresidential customers about changes in the Choice program specifically that Columbia will no longer provide SCO service to Choice-eligible nonresidential customers after Columbia exits the merchant function. The educational materials will be tailored to address educational needs identified through the surveys and information about the Commission's Apples to Apples chart. This phase will be implemented by the first day of October after the nonresidential customer participation level in the Choice program meets or exceeds 70 percent of the Choice-eligible nonresidential customers for three consecutive months.

(2) Phase 2 - This phase will target the remaining Choice-eligible SCO nonresidential customers who have not selected a supplier by the end of the SCO program period. The educational materials will emphasize explaining the MVR process and include, among other things, an informational letter at the initial transfer to an MVR supplier and periodic bill inserts showing the participating MVR suppliers' monthly rates posted on the Apples to Apples chart. This phase will be implemented by the first day of January prior to Columbia's exit from the merchant function for nonresidential customers and will continue for one year after the transfer of nonresidential customers to MVR suppliers.

(Jt. Ex. 1 at 8-9.)

The amended stipulation provides that, beginning on or about April 1, 2013, and continuing to on or about the first day of each month of the term of the amended stipulation, until Columbia exits with regard to nonresidential customers, Columbia will evaluate the participation of these customers in the Choice program for the preceding 12 months (evaluation period). On August 1 each year, Columbia will calculate whether, during the evaluation period preceding the August 1 review, the nonresidential customer participation level in the Choice program met or exceeded 70 percent of the Choice-eligible nonresidential customers for three consecutive months (70 percent threshold). If the 70 percent threshold is met, Columbia will exit, with regard to nonresidential customers, effective the first April 1 that follows. If the 70 percent threshold has not been met, Columbia will continue its SCO auction for gas to be supplied to nonresidential customers during the subsequent program year. (Jt. Ex. 1 at 9-10.)

Subsequent to the exit for nonresidential customers, the amended stipulation provides that Columbia will gather information from those customers and SCO suppliers regarding the impacts on customers from the exit, for use in evaluating any subsequent application to exit with regard to Choice-eligible residential customers. The stipulating parties recommend that the Commission direct Staff to meet with Columbia and the stakeholders following approval of the amended stipulation, to discuss and determine the parameters of the nonresidential exit from the merchant function. (Jt. Ex. 1 at 9-10.)

With regard to residential customers, the amended stipulation provides that, beginning on or about April 1, 2013, and continuing to on or about the first day of each month during the term of the amended stipulation, unless and until Columbia files an application to exit the merchant function with regard to residential customers, Columbia shall evaluate residential customer participation in the Choice program for the preceding three months. For the term of the amended stipulation, only Columbia may make a filing with the Commission seeking authority to exit for Columbia's Choice-eligible residential customers. In accordance with the amended stipulation, Columbia will not file such an application:

(1) Unless and until the customer participation level in the Choice program has met or exceeded 70 percent of the Choice-eligible residential customers for three consecutive months.

(2) Until, at least, one month after the third consecutive month of at least 70 percent customer participation by Choice-eligible residential customers.

(3) Until, at least, 22 months after Columbia exits the merchant function with regard to nonresidential customers, where data is available for analysis from at least two full winter heating seasons of a nonresidential exit during the time of case preparation leading up to the hearing on an exit-the-merchant-function application regarding residential customers.

(Jt. Ex. 1 at 10.)

If Columbia files an application to exit the merchant function with regard to residential customers, the amended stipulation provides, *inter alia*, that:

(1) The Commission will hold a hearing and Columbia will bear the burden of proof.

(2) Testimony by Columbia and OGMG supporting the application shall be filed before the filing of intervenor testimony.

(3) The Commission will hold at least six local public hearings throughout Columbia's service territory.

(4) OCC reserves the right to oppose such an application and its signature on the amended stipulation cannot be used to make an argument that OCC supports residential exit.

(5) The Commission may consider, *inter alia*, the effects of Columbia's exiting the merchant function on nonresidential customers as part of its evaluation of a residential exit application.

(6) If the Commission approves the application, Columbia will exit the merchant function with regard to residential customers effective the first April 1 that is, at least, five months after the issuance of the Commission's order.

If the consecutive 70 percent customer participation threshold for Choice-eligible residential customers has not been met or the Commission has not approved a residential exit application by November 1 of any year during the term of the amended stipulation, Columbia will continue its SCO auction for gas to be supplied to residential customers during the subsequent year. If any consecutive three-month 70 percent participation threshold has not been met as of June 1, 2016, Columbia will meet with stakeholders to discuss prospective supply options for Choice-eligible customers to be effective April 1, 2018. (Jt. Ex. 1 at 11-12.)

In accordance with the amended stipulation, if Columbia exits, customers assigned to suppliers shall not be subject to any termination fees from MVR suppliers, if such customers decide to affirmatively enroll with a Choice supplier. Furthermore, customers who are not Choice-eligible and are not being served under TS will continue under the default sales service (DSS) and be allocated to the SCO until Columbia fully exits the merchant function; upon Columbia's exit, those customers will be aggregated and their supply will be bid out to suppliers through a request for proposal. (Jt. Ex. 1 at 12.)

During the term of the amended stipulation, Columbia will continue its full residential and nonresidential Choice program shadow billing. If Columbia exits the merchant function with regard to nonresidential customers, the shadow billing for those customers after the exit shall compare the nonresidential Choice customers' monthly billed gas costs to the residential monthly SCO auction price. In addition, if Columbia exits the merchant function for the residential customer class, Columbia will not be obligated to continue its Choice program shadow billing; although entities may seek an order from the Commission requiring Columbia to continue its shadow billing. (Jt. Ex. 1 at 12.)

2. Arguments of OPAE and Hess

OPAE witness Harper advocates for the continuation of the auction process in conjunction will government aggregations and bilateral contracts, stating that this process effectuates state policy set forth in Section 4929.02, Revised Code. According to the witness, auctions produce reasonable prices, promote diversity of suppliers, obviate the need for regulation, and add choices available to customers. (OPAE Ex. 2 at 10; OPAE Br. at 50-51.)

Ms. Harper asserts that the MVR, to which Columbia intends to assign Choice-eligible customers that are currently on the SCO, is not a contract between willing buyers and sellers within the meaning of Section 4929.02(A)(7), Revised Code. She argues that the MVR program proposed in the amended stipulation is not a voluntary arrangement, because the customer is assigned to the supplier without the customer's consent and the prices are established solely by the seller. Although the MVR rates are published, the witness points out that buyers are not aware of the prices, because they do not know which MVR supplier they are assigned to. Furthermore, she believes industrial and commercial customers will experience price increases if the SCO is eliminated. (OPAE Ex. 2 at 15, 17.)

Ms. Harper asserts that it is unlikely that marketers will offer prices as low as those produced by the SSO and SCO auctions, noting that marketers are profit maximizers and the SCO is a market approach that drives prices down to the lowest price level. In the absence of an auction process with a capped market share, she predicts marketers are more likely to engage in predatory pricing and price below cost in order to force other firms out of the market. Thus, Ms. Harper opines that the SCO provided by marketers through an auction is, in the aggregate, superior for customers in pure price terms to nonauction-based pricing; however, she states that marketers can overcome the competitive auction price by offering customers other options they may prefer. (OPAE Ex. 2 at 22.)

According to OPAE witness Harper, CRNGS providers currently serve 26 percent of the industrial market, 52 percent of the commercial market, and 41 percent of the residential market, either through direct contracts with customers or governmental aggregations. She calculates that, since the SCO was implemented in April 2012, customers served through bilateral contracts or through governmental aggregations have paid $37,200,878 more for natural gas than SCO customers; nonetheless, she believes that CRNGS providers are able to compete with the SCO service by offering other terms and conditions. She further observes that, since November 2006, customers of CRNGS providers have paid $861,175,104 more for natural gas. (OPAE Ex. 2 at 20, SH-7; OPAE Ex. 2A at SH-2.)

Hess witness Magnani explains that, while Hess supports the provision in the amended stipulation regarding nonresidential exit, Hess does not support the framework proposed in the amended stipulation that could end the SCO option for residential customers. According to Mr. Magnani, if the framework for residential exit is adopted, the Commission would: create regulatory uncertainty in the SCO and retail markets, which will lead to higher prices; remove the lowest-cost benchmark price, which provides valuable transparency for residential customers; and subject numerous SCO residential customers to higher prices without their consent, which is inconsistent with Ohio policy and not in the public interest. Mr. Magnani asserts residential customers should be treated differently than nonresidential customers, because the SCO auction price is the lowest-cost alternative for residential customers. (Hess Ex. 1 at 8-9, 15-16; Hess Br. at 4-6.)

Furthermore, Mr. Magnani advocates that the 70 percent shopping threshold for residential customers is too low. The witness compares the recent statistics for DEO's shopping, which reflects over 80 percent for nonresidential customers and 84 percent for residential customers, to Columbia's current shopping statistics of 48 percent for nonresidential and 37 percent for residential. Unlike DEO's situation, with Columbia's enrollment data, he estimates that, at a 70 percent shopping level, over 364,000 customers would still be on SCO service and, if the amended stipulation is approved, all of these customers would be assigned to retail suppliers at the MVR rates. Moreover, Mr. Magnani points out that, once these customers are transferred, the Commission will no longer have any regulatory oversight of gas supply prices for Choice customers. (Hess Ex. 1 at 9-11, 13; Hess Br. at 9-10.)

Hess witness Magnani disagrees with OGMG/RESA witness Parisi's assertion that customer inactivity or passivity is inconsistent with state policy. Columbia's competitive retail market offers options for retail customers, one of which is the SCO that provides a competitively-derived monthly variable rate product. According to the witness, one can not reasonably argue that customers that have elected to stay on the lowest-cost alternative are not engaged in the market; rather, those customers are just taking advantage of the choice the market has afforded them. To stay on the lowest-cost alternative, contrary to assertions by OGMG/RESA, does not demonstrate disengagement and ambivalence, according to Mr. Magnani. He also disagrees with the argument that the SCO auction program should be eliminated because the SCO price could become higher, noting that such is also true for suppliers' MVR rates. Moreover higher rates also hinge on the gas commodity market suffering from high volatility and the witness is confident that, given the current unprecedented high levels of domestic natural gas supply in this region, there will be no volatility in the near future. (Hess Ex. 1 at 11-12; Hess Br. at 8.)

3. Arguments of the Stipulating Parties and Hess

According to Columbia witness Brown, Columbia has over 877,500 customers served by SCO/DSS and, if the proposal in this case is approved, he believes the market will remain vibrant and active. Mr. Brown states that Columbia's SCO program provides the largest pool of demand of any such program in the nation by a significant margin. The witness points out that, even if the 70 percent threshold level provided for in the amended stipulation is met and Columbia were to file to exit the merchant function, approximately 350,000 customers would still remain on the SCO/DSS program. (Columbia Ex. 6 at 15.)

OGMG/RESA witness Parisi explains that the amended stipulation does not eliminate a default service for any customer class, continues to allow all customers that take no action to receive default service, in no way impacts the availability of SCO service to residential customers, and only moves the inactive nonresidential default customers to an MVR default service if the metrics in the amended stipulation are achieved. In a full exit, customers would be required to engage in the market in order to get commodity service, which is not the request in the amended stipulation. Mr. Parisi also notes that the MVR program provides significant protections to MVR customers, including: no cancellation fees; posting all suppliers' MVR rates on the Commission's Apples to Apples chart; permitting periodic disclosures to MVR consumers of a list of all MVR prices; and requiring MRV prices to be based on the monthly NYMEX settlement. (OGMG/RESA Ex. 3 at 6, 9.)

As noted previously, Hess witness Magnani supports the proposal in the amended stipulation that the SCO option for nonresidential customers ends once 70 percent of Choice-eligible nonresidential customers are shopping. His experience shows that commercial customers have a more sophisticated understanding for their energy consumption needs than residential customers and tend to be more motivated, for business reasons, to achieve price certainty and stability. In addition, commercial customers have usage levels that are large enough to take advantage of retail suppliers' more complex supply-side products. In contrast, the SCO is only a monthly variable product. (Hess Ex. 1 at 6-7.)

In response to OPAE's assertions that shadow billing data has revealed that Choice customers have paid approximately $884 million more than GCR, SSO, or SCO customers since 1997, Columbia witness Brown states that this is not a relevant figure for the Commission to consider for several reasons. First, while this figure implies that the Choice program is designed to generate guaranteed savings, such is not the case; the program intent has always been to provide customers with alternatives for the purchase of their gas supply. Second, since the figure mentioned by OPAE is a combined cumulative total over the last 15 and a half years of the program, it tells nothing about the actual cost difference in a month for an average customer. Third, the figure includes residential and nonresidential costs differences and the amended stipulation is only recommending exit for the nonresidential customers. Fourth, most of that figure represents the theoretical cost savings for GCR and SSO customers, while OPAE wants to keep the SCO, which has only been offered since 2012. Fifth, shadow billing is only a crude measure of the cost differences between GCR, SSO, and SCO, as the programs offer different kinds of rates. Finally, this data is irrelevant because it says nothing about future costs. (Columbia Ex. 6 at 20.)

With regard to the exit for residential customers, Columbia witness Brown advocates that the 70 percent is not too low, stating that Columbia views the residential exit to be an option for the Commission to consider as it looks at how the evolution in commodity sales service in Ohio is progressing and whether the exit is appropriate and consistent with state policy and goals. Mr. Brown believes that the 70 percent level provides a good benchmark at which time Commission review would be appropriate. In addition, the witness notes that, in order for such an application to be filed, the participation rates in Columbia's Choice program would approximately double from current levels; levels that were achieved after 15 years of statewide Choice availability. (Columbia Ex. 6 at 14.)

4. Conclusion on Possible Exit from the Merchant Function

The Commission understands that the amended stipulation provides for Columbia's exit from the merchant function for nonresidential customers upon attainment of a fixed threshold level of Choice-eligible customers participation in the Choice program. In addition, the stipulating parties agree, *inter alia*, that, upon exit for any class, Columbia will continue as the supplier of last resort for that class, will retain responsibility for all system balancing obligations, and will maintain operational control of the interstate pipeline capacity necessary to satisfy that obligation. Moreover, the amended stipulation establishes detailed reporting requirements and educational responsibilities, and mandates that Columbia keep its stakeholder group informed throughout the process. The Commission believes the two-phase educational obligations set forth in the amended stipulation that target all Choice-eligible nonresidential customers will ensure that all Choice-eligible nonresidential customers are equipped with specific information to help them make an informed decision when selecting a supplier to service their natural gas energy needs. In addition to the requirements set forth in the amended stipulation, the Commission directs Columbia to reach out to small businesses and entities representing small businesses in its service territory, in order to engage them in the stakeholder group and discussions regarding the educational obligations. Furthermore, the Commission directs Staff and Columbia to meet with the stakeholders following issuance of this order, to discuss and determine the parameters of the nonresidential exit from the merchant function. Therefore, upon consideration of the evidence of record and the above directives, the Commission finds that the proposed process, thresholds, and requirements set forth in the amended stipulation for exiting the merchant function for nonresidential customers appears to be reasonable.

With regard to the provisions concerning residential customers and Columbia's possible exit for that class, our reading of the stipulating parties' proposal is that our approval of these provisions would in no way be a determination of the reasonableness of exiting the merchant function for residential customers. Rather, the amended stipulation merely sets a minimum threshold after which Columbia may file an application. Our approval of the threshold set forth in the amended stipulation is by no means an indication as to whether we find the 70 percent level of Choice participation by residential customers sufficient to warrant exiting the merchant function for residential customers. If such an application is filed, the Commission will establish a procedural process, which will include local and evidentiary hearings, and all parties will be afforded ample due process to present and argue for or against any proposal presented in such a case. In addition, in order to assist in our review of the effects of Columbia's exit on competition and customers, the Commission finds that the maximum amount of information should be provided regarding the impact of Columbia's exit from the merchant function for nonresidential customers. Such information should include, but is not limited to, a record of the number of suppliers participating in Columbia's service territory over the next five years; a record of the number and type of various supplier offers of new products and services; a record of customer participation levels in new supplier products and service offerings; an analysis of any increased investment in Ohio by suppliers that was caused by Columbia's exit; specific customer billing determinants; and any other data Staff determines is necessary to adequately provide information to assist the Commission in determining future actions pertaining to natural gas competition. To that end, Columbia shall schedule a meeting with Staff, suppliers, and interested stakeholders, within 45 days of the date of this order, to determine what data should be analyzed. Columbia and suppliers shall collect the information that Staff determines is necessary and provide such information to Staff. Staff shall take appropriate actions to protect information that is marked as confidential. Having found that the provisions addressing residential customers are not definitive of the Commission's ultimate deliberations and conclusions in a future case, and given the above directives, the Commission finds that the provisions in the amended stipulation regarding possible exit of the merchant function for residential Choice-eligible customers are reasonable.

I. Monthly Variable Rate Program

1. Amended Stipulation Provisions

The amended stipulation provides that, if Columbia exits the merchant function, Choice-eligible customers who have not selected a Choice supplier and are not served through a government aggregation program, shall receive commodity service through Columbia's MVR program. The MVR program will not apply to any customer class, unless and until Columbia exits the merchant function for that class. A supplier that is active in Columbia's Choice program may elect each February 1 to be an MVR supplier or to end its participation in the MVR program for the upcoming program year. (Jt. Ex. 1 at 13.)

Nonresidential customers establishing service with Columbia for the first time and customers relocating within Columbia's service territory will be served under DSS for two billing cycles. Subsequently, Choice-eligible nonresidential customers who have not selected a Choice supplier and are not served through a government aggregation program will be assigned to an MVR supplier. Nonresidential customers may migrate from the MVR program by enrolling with a Choice supplier or participating in a government aggregation program, without incurring a cancellation fee. (Jt. Ex. 1 at 13-14.)

The signatory parties agree that, prior to Columbia's exit of the merchant function, a method for assigning supply default Choice-eligible customers should be determined. The signatory parties advocate that such method should be considered, as part of this proceeding, and should include both the initial allocation upon Columbia's exit, as well as an allocation methodology for future supply default Choice-eligible customers. (Jt. Ex. 1 at 13.)

In accordance with the amended stipulation, MVR suppliers must provide their MVR prices to Columbia each month for the applicable billing month. Each MVR supplier will have its MVR price posted on the Commission's Apples to Apples chart each month and the MVR price provided to Columbia shall be no greater than the supplier's MVR price posted on the chart for the same billing period. An MVR supplier that exits Columbia's Choice program must also exit the MVR program, and an MVR supplier that is terminated from participation in the program by Columbia is terminated from MVR program participation. If Columbia terminates a supplier from the MVR program, it may also terminate the supplier from participation in its Choice program. If an MVR supplier is terminated, its customers will be reassigned to the remaining MVR suppliers on a random, rotating basis. (Jt. Ex. 1 at 13.)

2. Parties' Arguments on MVR Allocation Methodology

Columbia witness Brown advocates that, upon exit, the nonresidential Choice-eligible customers should be allocated to MVR suppliers on a proportional basis, as compared to the MVR supplier's Choice enrollment at the time of allocation. According to the witness, a minimum of one percent would be assigned to an MVR supplier with equal to, or less than, one percent Choice enrollment. He states that this initial allocation will preserve the relative market shares of the Choice suppliers at the time of the exit. Furthermore, Mr. Brown proposes that ongoing customer allocations would be done on a random, rotating basis, based upon the list of participating MVR suppliers. (Columbia Ex. 7 at 16.)

Hess witness Magnani endorses an MVR assignment methodology that is based on each supplier's proportional market share at the time of exit, including a supplier's average historical SSO and SCO tranche ownership. Hess proposes a proportional allocation ratio that is equal to the number of Choice-eligible customers being served by the supplier, including the average percentage of customers served under the SSO and SCO auctions, divided by the total number of Choice-eligible customers, both shopping and nonshopping. Mr. Magnani states that, if a former SSO/SCO supplier no longer provided, or did not wish to provide, Choice service, such a supplier should not be assigned any allocation, and the supplier's allocation should be reallocated to the remaining SCO suppliers. (Hess Ex. 1 at 7; Tr. II at 145-152.) To determine the number of SSO/SCO tranche customers to be assigned, Mr. Magnani recommends taking the average number of tranches served by each supplier since the first SSO auction in 2010 through the SCO auction at the time of the nonresidential exit. The witness believes that his proposed methodology strikes the appropriate balance between properly recognizing each supplier's contribution and investment in reaching 70 percent, while continuing to incent all suppliers to offer customers competitive products. Mr. Magnani asserts that incorporating historical SCO tranche ownership is critical, because the auction process has been the primary tool in transitioning from an LDC-procured default service to providing a market-based benchmark price that Choice customers can use as a means of comparison. Furthermore, he notes that, in order to stay competitive in the SCO market, SCO suppliers, like Hess, have had to make and continue to make considerable investments in the back-office resources, including traders, market analysts, customer enrollment personnel, and information technology systems. Such historical reference will incent investment in the SCO market. (Hess Ex. 1 at 7-8, OM-2.)

IGS witness Friedeman agrees that allocating customers based on market share is the most logical and has many advantages for customers, the state of Ohio, and the competitive marketplace. He agrees that such allocation will: incentivize new entrants into the market; incentivize Choice suppliers to offer a more diverse range of products; incentivize investment by Choice suppliers; ensure Choice suppliers have the necessary technical, financial, and operations acumen to serve; ensure Choice suppliers demonstrate familiarity with and the capability to satisfy the consumer protection rules and regulations; and reward Choice suppliers who expend effort and invest in Ohio's competitive energy market. Mr. Friedeman argues that the collective market dynamic of the Columbia market will be diminished during the transition period, if MVR customers are allocated equally to all Choice suppliers. He submits that the 70 percent Choice participation benchmark in the amended stipulation motivates competitive suppliers to migrate customers to Choice; however, if the number of MVR customers a Choice supplier receives is not proportional to its efforts to organically enroll customers during the transition period, then a Choice supplier's incentive to enroll customers will be diminished. (IGS Ex. 1 at 3-4, 9.)

Direct Energy witness Byzewski supports a proportional allocation methodology for the initial allocation of SCO customers to MVR CRNGS providers, as well as for the future supply of default Choice-eligible customers, after an exit from the merchant function by Columbia. The witness explains that a proportional allocation methodology would apportion customers to various suppliers, depending on the supplier's share of the Columbia market at the time the customer is eligible to be assigned to a supplier. Under this methodology, each supplier's market share would be calculated based on its total number of Choice-eligible customers served, inclusive of those enrolled organically (i.e., customers that came through an energy marketer, other than through an SCO contract) on a bilateral contract, as well as customers in community aggregation programs with a supplier. According to Mr. Byzewski, market share would not include a supplier's share of customers won through the SCO auction process. The witness asserts that service provided by an SCO auction winner is governed by Columbia's tariff, not a bilateral contract between the supplier and the customer; therefore, the SCO auction winner has no right to keep that customer after the end of that current auction period. Furthermore, he observes that SCO customers, by definition, are not shopping customers and should not be counted as part of a company's market share. The witness believes the proportional allocation methodology proposed by Direct Energy encourages suppliers to increase market share to receive assigned customers, allows a supplier to keep its earned place in the market, and ensures small suppliers who may not have the structure to take on an immediate assignment of a large load from a rotating assignment will receive assignment proportional their business. He asserts that this methodology is the most fair to those suppliers that have made investments in Columbia's service territory and will send the proper signals going forward for continued investments. (Direct Energy Ex. 1 at 3-6; Tr. I at 88.)

As stated previously, Direct Energy advocates that the proportional allocation methodology continue beyond the initial allocation and be applied to future allocations, as well. Mr. Byzewski believes that applying this to future allocations would incent suppliers that are active in the market to continue providing solid value propositions to customers knowing their efforts will be recognized and their competitors will not be receiving the same benefits for little or no effort. Direct Energy witness Byzewski also proposes that, if the Commission adopts the proportional allocation methodology for the ongoing, future allocation, it should require Columbia to recalculate the market share of each supplier each month and then for that month allocate eligible customers according to that month's market share. (Direct Energy Ex. 1 at 10.)

OPAE witness Harper asserts that the allocation methodologies proposed by Direct Energy and IGS, which awards MVR customers based on the percentage share of customers of individual marketers, does not promote a competitive market. Rather she opines that it would promote the status quo of suppliers and establish a barrier to market entry for other suppliers. Ms. Harper believes that the current allocation process established in the SCO is an effective mechanism to assign retail energy suppliers to customers. (OPAE Ex. 2A at 26.)

IGS witness Friedeman does not support other types of allocation methodologies (IGS Ex. 1 at 7). Likewise, Direct Energy does not support other methodologies, such as a rotational allocation methodology or the inclusion of SCO customers in the calculation of market share, which he states would reduce the incentives for suppliers to invest and hinder the chances that the 70 percent targets would be met. Mr. Byzewski believes a rotational allocation could force some suppliers to default or leave the market because they do not have the credit to fulfill the default supply thrust on them. Even if these suppliers can take on the credit requirements, they may not have the infrastructure to handle the large number of customers. Furthermore, he states that a rotational allocation would allow a supplier to enter the market just before the initial allocation and merely maintain a license and reap the benefits of being assigned customers disproportional to its investments and efforts to sign up customers. Also, Direct Energy witness Byzewski opines that customers assigned to a supplier that can not handle a customer allocation might experience higher prices, because the increased risk from lack of experience will be factored into the rates. (Direct Energy Ex. 1 at 6, 8-9.)

With regard to residential customers, Direct Energy witness Byzewski advocates that the Commission determine now that a proportional allocation methodology be considered the default construct for those customers if, and when, and exit of the merchant function for residential customers occurs. By determining, in this case, that the proportional allocation methodology should be used for residential exit, Mr. Byzewski believes a strong signal will be sent to the suppliers that their investments and efforts will be rewarded. In the alternative, the witness submits, the Commission should, at least, declare that this methodology will be the rebuttal presumption in any proceeding to exit the merchant function for residential customers. (Direct Energy Ex. 1 at 4.)

3. Conclusion on MVR Allocation Methodology

As for the initial allocation methodology to be applied to Choice-eligible nonresidential customers who, upon Columbia's exit have not selected a Choice supplier and are not served through a government aggregation program, there were essentially three methodologies advocated in this case: a proportional allocation based on Choice customer market share only; a proportional allocation based on the market share of all nonresidential Choice eligible customers, including a supplier's average historical SSO and SCO tranche ownership; and a rotational allocation, under which customers are equally and randomly assigned to each CRNGS provider. Upon consideration of the record, the Commission finds the arguments against a rotational allocation are well-founded for the initial allocation methodology, especially in light of the large customer load that could be shifted to the MVR suppliers during the initial allocation. For the most part, we find the proposal submitted by Hess regarding the initial allocation to be the most persuasive and reasonable. We acknowledge that SSO/SCO suppliers have had to make and must continue to make investments in order to stay competitive in the SCO market. Furthermore, SCO suppliers are CRNGS providers; therefore, they have met the criteria to serve customers under Columbia's SCO program and have invested in the SCO market to do so. Accordingly, the Commission concludes that the initial allocation to MVR suppliers should be as follows:

(1) The initial allocation will be done on a proportional basis, as compared to the MVR supplier's Choice enrollment at the time of allocation, including a supplier's average historical SSO and SCO tranche ownership for nonresidential customers.

(2) A supplier's average historical SSO and SCO tranche ownership for nonresidential customers shall be measured as of the date of this order going forward.

(3) For the initial allocation, a minimum of one percent shall be assigned to an MVR supplier with equal to, or less than, one percent Choice enrollment.

Next, the Commission must determine the appropriate allocation methodology to be employed after the initial allocation for ongoing allocations. In light of the much smaller customer load that will be shifted to the MVR suppliers after the initial allocation, the Commission finds that the ongoing allocations should be done on a random, rotating basis, based upon the list of participating MVR suppliers. The Commission notes that this is the method currently utilized in Columbia's SCO program.

With regard to Direct Energy's proposal that the Commission predetermine, in this case, that the proportional allocation methodology would apply to a residential exit or, at least be the rebuttable presumption methodology in any such proceeding, the Commission declines to make such a finding. The amended stipulation provides for a separate proceeding, in the event Columbia requests authority to exit the merchant function for residential customers. It would be inappropriate for the Commission, within the confines of this case and absent appropriate due process, to make such a determination, at this time.

J. Enhancements to Billing for CRNGS Providers

1. Amended Stipulation Provisions

In accordance with the amended stipulation, Columbia will use its best efforts to implement the following billing system changes:

By April 1, 2013

(1) Permit the option to bill a fixed bill for the suppliers' charges. Suppliers may submit a rate ready code so that Columbia may bill a flat fee to their Choice customers covering the suppliers' gas costs for the month. The estimated programming cost for this enhancement is $53,680 to $70,400.

(2) Increase rate ready billing codes to 100 per supplier. There are no programming costs for this enhancement.

(3) Permit suppliers to bill a rate based upon monthly NYMEX prices, plus or minus a value. The estimated programming cost for this enhancement is $28,160 to $36,960.

(4) Offer suppliers larger logo size and placement on the bill. Columbia will charge a competitively neutral fee for this service and the net revenues will be credited to the CSRR. The estimated programming cost for this enhancement is $17,600 to $22,880.

(5) Permit rolling rate change submission. The estimated programming cost for this enhancement is $8,800 to $11,440.

(6) Permit contract portability. The estimated programming cost for this enhancement is \$96,800 to \$125,840.

By April 1, 2017

(1) Offer rate-ready billing and/or bill-ready billing by individual customers. The estimated programming cost for this enhancement is \$561,440 to \$731,280.

(2) Permit suppliers to offer customers the opportunity to prepay the commodity portion of the bill. The estimated programming cost for this enhancement is \$95,040 to \$123,200.

(3) Allow a new customer to start Choice immediately. The estimated programming cost for this enhancement is \$30,800 to \$39,600.

(4) Provide rolling enrollment. The estimated programming cost for this enhancement is \$427,680 to \$563,200.

According to Columbia witness Caddell, it will cost between \$1.3 and \$1.7 million to implement these billing changes. (Jt. Ex. 1 at 14-16; Columbia Ex. 5 at 2-4.)

The stipulating parties agree that Columbia may continue to collect from customers through the CSRR the costs of implementing the Choice education program, the pre-exit-the-merchant-function education programs, and the bill system changes provided for in the amended stipulation. These program costs will be subject to review by the Commission in the annual audit of Columbia's CSRR. Furthermore, the amended stipulation provides that, if Columbia exits with regard to any class of customers, Columbia may collect, through the CSRR, the incremental program costs relating to that exit. The incremental program costs means any expense that is incurred by Columbia resulting from the implementation of the exit that is found prudent, reasonable, and necessary by the Commission, including, but not limited to, the post-exit educational programs and informational technology expenses. However, if the Commission denies an application filed by Columbia to exit with regard to Choice-eligible residential customers, any informational technology expenses incurred in preparation for that exit will be billed to all Choice and MVR suppliers. (Jt. Ex. 1 at 16-17.)

Columbia witness Caddell believes that the proposed billing enhancements benefit customers by providing innovative commodity products and new flexibility for customer enrollments. According to the witness, customers will have the option of choosing from a multitude of supplier commodity products, which will provide an expanded number of pricing offers to customers, as well as prepay products. In addition, rolling rate change submission will accelerate rate changes for customers, thus, enhancing the customers' experience, and reducing the number of customer inquiries related to the amount of time it takes for a supplier's rate changes to appear on the customer bill. The witness also notes that contract portability will enhance the customer experience and supplier logo placement on the first page of the bill will improve customer awareness. The witness believes that these billing enhancements further the state policy set forth in Section 4929.02(A)(2), Revised Code, of providing consumers with the price, terms, conditions, and quality options they elect and encourage innovation and market access for cost-effective supply of natural gas. (Columbia Ex. 5 at 4-5.)

OPAE points out that the stipulating parties seek to continue the CSRR, which recovers the costs of implementing the Choice education program, the pre-exit-the-merchant-function education programs, and the billing system changes. OPAE believes that, because all customers pay the CSRR, the rider subsidizes marketers' efforts and violates that principle of cost causation. According to OPAE, these costs should be borne by the marketers, because customers choosing the SCO option should not be forced to pay for choice-related costs that do not benefit them. (OPAE Br. at 45-46.)

Upon consideration of the billing enhancement proposals and the record in this case, the Commission disagrees with OPAE's assertion that there are no customer benefits associated with the enhancements set forth in the amended stipulation. It is clear from even a cursory review of the list of changes that there will be improvements that will benefit not just the suppliers, but, ultimately, the customers. Furthermore, Columbia presented uncontested evidence to support these provisions on the record. Accordingly, the Commission finds that this provision of the amended stipulation is reasonable.

IV. Consideration of the Stipulation

A. Standard of Review

Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to enter into a stipulation. Although not binding on 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 unopposed by any party and resolves all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 31, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 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 a 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?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues 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, 561, 629 N.E.2d 423 (1994), citing *Consumers' Counsel* at 126. The Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. (*Id.* at 563.)

B. Review of the Three-Prong Test and the Amended Stipulation

1. Is the settlement a product of serious bargaining among capable, knowledgeable parties?

Columbia witness Brown submits, and OGMG/RESA witnesses Parisi and Ringenbach, as well as Staff, agree that the amended stipulation is the result of serious bargaining among capable, knowledgeable parties. Mr. Brown states that the amended stipulation is the product of an open process, in which all parties were represented by able counsel and technical experts that regularly participate in proceedings before the Commission. According to Mr. Brown, beginning in March 2012, and continuing through the summer, Columbia conducted a series of open meetings with its stakeholder group, which is comprised of a large and diverse group of suppliers serving Columbia's TS customers, CRNGS providers, numerous municipalities, industrial and commercial customer groups, representatives of residential customers, and Staff. The witness asserts that the amended stipulation is a comprehensive compromise of the issues and the signatory parties have adopted a reasonable resolution of those issues. Mr. Brown offers that, even though not all stakeholders agreed to the initial stipulation, all those entities had ample opportunity to participate in the stakeholder meetings and negotiations that eventually resulted in the stipulation. (Columbia Exs. 6 at 22-23 and 7 at 9; OGMG/RESA Exs. 4 at 4 and 5 at 4; Staff Br. at 4.) OCC witness Hayes agrees that the first prong of the three-prong test for a stipulation is met, stating that OCC, as a stipulating party, provides much more diversity in the amended stipulation, because OCC is the statewide advocate for residential consumers (OCC. Ex. 1 at 10).

Unlike the information provided by Columbia, OPAE asserts that it was excluded from the actual settlement negotiations, pointing out that, not only is it an intervenor representing low-income residential customers, but it also has member agencies who are nonresidential customers. According to OPAE, the nonresidential customer class was entirely excluded from settlement negotiations. OPAE asserts that such an exclusionary settlement process is contrary to public policy and also raises questions concerning the procedural due process rights of interested stakeholders. Citing *Time Warner AxS v. Pub. Util. Commn*, 75 Ohio St. 3d 229, 661 N.E.2d 1097, footnote 2 (1996) (*Time Warner*). OPAE also cites the Commission's decision in Case No. 11-346-EL-SSO, et al. (11-346),[7] stating that, as in that case, the commercial customers in the instant case had no part in the settlement and no voice at the Commission. (OPAE Br. at 26, 28-30.)

Based upon the long list of stakeholders and their associated credentials presented by Columbia and the signatory parties, it is evident that numerous and diverse interested and affected entities, including representatives of all customer classes, were invited to and participated in the meetings and negotiations leading up to the amended stipulation. While OPAE states that it was excluded from the negotiations, OPAE failed to provide any information, either on the record or in its brief, as to when and how those exclusions took place. In *Time Warner*, the footnote referenced by OPAE in its brief, the Ohio Supreme Court mentioned its concern about customer classes being "intentionally" excluded from negotiations. The Court, in *Time Warner*, based this statement on the facts present in that case. The Court went on to state that it "...would not create a requirement that all parties participate in all settlement meetings." Likewise, the record in 11-346 is dissimilar from the record in this case. Contrary to OPAE's assertions, there were no facts presented in the instant case that support OPAE's allegations in its brief that it was excluded from negotiations, intentionally or otherwise. In fact, the evidence of record indicates that all customer classes were invited to the stakeholder meetings and were aware that negotiations were ongoing.

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7 *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Entry on Rehearing (February 23, 2012).

Therefore, upon consideration of the record in this case, the Commission concludes that the first prong of the test has been met and the stipulating parties have shown that the amended stipulation is the product of serious bargaining among capable, knowledgeable parties.

2. Does the settlement, as a package, benefit ratepayers and the public interest?

According to Columbia witness Brown, and OGMG/RESA witnesses Parisi and Ringenbach, as well as Staff, the amended stipulation will benefit ratepayers and promote the public interest, consistent with Ohio's energy policy set forth in Section 4929.02, Revised Code. Mr. Brown notes that the amended stipulation provides for an up-to-five-year extension of Columbia's SCO program. Furthermore, by providing a structure for Columbia to make a careful, gradual transition and potential exit from the commodity merchant function, if certain market conditions are met, Mr. Brown believes the public interest is advanced through the provisions of the amended stipulation. Furthermore, the amended stipulation ensures that customers will not be double-billed for the balancing fee and provides greater OSS/CR revenues for customers, which will lower the CSRR and provide a financial benefit to ratepayers. Mr. Brown also notes that the amended stipulation will benefit ratepayers because it requires Columbia to credit its net revenues from certain new billing services to the CSRR and requires local hearings if Columbia files to exit the merchant function for residential customers. (Columbia Exs. 6 at 23 and 7 at 10; OGMG/RESA Exs. 4 at 4 and 5 at 4; Staff Br. at 5.)

OGMG/RESA witness Parisi believes that ratepayers receive benefits from retail competition, noting that customers in Ohio's largest utility service territory that have choice available have saved millions of dollars because of the existence of the retail competitive market (OGMG/RESA Ex. 3 at 21). Furthermore, OGMG/RESA witness Ringenbach states that the primary benefits of the amended stipulation include: greater ability for competitors to bring new and innovative products to customers; greater transparency in billing to customers; a path for Columbia to exit the merchant function with attendant regulatory benefits; a gradual reduction in the Columbia Gulf transport contracts; and a deposit which, if not needed for default, would reduce the CSRR paid by all customers. In addition, Ms. Ringenbach believes that approval of the amended stipulation is in the public interest, stating that it will encourage suppliers to make investments in Ohio, because it will send the signal that Ohio is a place where regulatory stability exists and where the objective of having a public utility exit the merchant function is achievable. (OGMG/RESA Ex. 5 at 3-8.)

OCC witness Hayes agrees that the amended stipulation benefits customers and is in the public interest. For example, he notes that the amended stipulation requires a full evidentiary hearing for consideration of any potential future residential exit, wherein OCC and others will have the opportunity to challenge such an application. In addition, Mr. Hayes points out that OCC and others will obtain monthly shadow billing information, which is an important tool in the analysis of the bill impacts of an exit from the merchant function. Moreover, the witness states that customers are benefitted by the amended stipulation, because it eliminates the potential for double billing of the balancing fee and because the OSS/CR revenue sharing mechanism provides customers an additional $2.5 million in revenues over the five years of the program that Columbia would have otherwise retained. (OCC Ex. 1 at 10-14, 16.)

OPAE contends that the amended stipulation fails to benefit ratepayers and the public interest because it reduces competition and eliminates competitive options available to consumers. According to OPAE, once Columbia exits the merchant function for nonresidential customers, roughly 50 percent of all commercial customers will lose their current choice, the competitively determined SCO. OPAE submits that the MVR to which the SCO commercial customers will be assigned, in the event of an exit, is inferior to the SCO in terms of price and conditions. It is OPAE's belief that bilateral contracts, government aggregation, and the current SCO represent options that are consistent with the state's policy, because they represent a diversity of competitive options. OPAE, further, asserts that the amended stipulation will eliminate the SCO, squelch competition, increase the price of natural gas, and harm commercial consumers; therefore, it is not in the public interest. (OPAE Br. at 30-35; OPAE Ex. 2 at 15, 21.)

In addition, OPAE argues that customers should get the lowest price they are eligible for and the lowest price is the SCO price. According to OPAE, on a sustained basis, the SCO has to be lower than the bilateral contract price or the MVR price, because the cost to serve a customer through the SCO is significantly less than the cost to serve a Choice customer. (OPAE Br. at 38.)

According to OPAE, the amended stipulation does nothing to ensure that gas prices are just and reasonable, and that competition is enhanced. OPAE argues that the provisions of the amended stipulation that address transportation service, the balancing fee, the new security deposit, and subsidizing the educational and billing enhancements do not benefit ratepayers and the public interest. (OPAE Br. at 46.)

Upon consideration of the evidence in this matter and the policy of the state of Ohio established in Section 4929.02, Revised Code, the Commission finds that, as a package, the amended stipulation benefits ratepayers and the public interest. As with any contested case, the parties on the different sides provide conflicting arguments that must be weighed based upon the record evidence and the statutory constructs. While it is evident that OPAE does not agree with Columbia's progression, as agreed to by the stipulating parties, toward market-based commodity supply, a thorough review of the amended stipulation and the record, in light of the statute and the specific directives set forth herein, reveals provisions and a framework that, overall, provide benefits to all customer classes. Accordingly, the Commission finds that the second prong of the criterion is satisfied

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

Columbia witness Brown avers, and OGMG/RESA witnesses Parisi and Ringenbach, as well as Staff, agree that the amended stipulation does not violate any important regulatory principle or practice and, in fact, the state energy policies in Sections 4929.02(A)(2), (4), (6), and (7), Revised Code, are furthered by the modifications to the exemption orders set forth in the amended stipulation. Specifically, Mr. Brown states that the enhanced billing options for CRNGS providers further the state policy by: providing consumers with the price, terms, conditions, and quality options they elect; enabling customers to enter into new kinds of contracts with Choice suppliers; enabling customers to transfer their Choice contracts to new addresses within Columbia's service area; and allowing customers to prepay commodity portions of their bills. In addition, Mr. Brown offers that the provision of the amended stipulation that permits Columbia to exit the merchant function for nonresidential customers, if 70 percent of its Choice-eligible nonresidential customers migrate to choice, supports the policy established in Section 4929.02, Revised Code. (Columbia Ex. 6 at 21, 23; OGMG/RESA Exs. 4 at 4 and 5 at 6; Staff Br. at 6.)

OCC witness Hayes states that having an auction-based SCO can serve the regulatory principle that reasonably priced natural gas service should be afforded to consumers. However, according to the witness, the amended stipulation helps in that regard by establishing a deliberate process, with safeguards for consumers, for any consideration of eliminating the standard offer. Mr. Hayes notes that the standard offer has been very successful for saving money for Ohio consumers. Furthermore, the witness offers that the amended stipulation supports public policy by promoting diversity of supply, giving consumers effective choices, and establishing due process for future consideration. (OCC Ex. 1 at 15-16.)

Furthermore, joint movants declare that certain modifications to the exemption orders are in the public interest. Specifically, they reiterate the importance of Columbia and its stakeholders to maintain flexibility, particularly with regard to interstate pipeline capacity. In addition, the modification to the balancing fee set forth in the amended stipulation, which is currently charged to suppliers and is proposed to be charged directly to customers, will improve transparency in the way marketers' rates are set. The amended stipulation's prohibition against Choice suppliers charging rates that include the prior balancing fee ensures the customers will not pay this fee twice. Further, modifications allowing Columbia to upgrade its computer systems will provide more varied and diverse marketing service. Moreover, the proposed modifications are in the public interest because they allow new customers to enroll in the Choice program immediately and preclude Columbia from exiting the merchant function entirely, unless certain preconditions are satisfied, including meeting certain levels of shopping and obtaining Commission authorization after public and evidentiary hearings. Finally, joint movants maintain that the proposed modifications further the state policy outlined in Section 4929.02, Revised Code, to: encourage innovation and market access for cost-effective supply; recognize the emergence of competitive markets through flexible regulatory treatment; and promote transition to effective competition to reduce or eliminate the need for regulation. (Jt. Ex. 2 at 9-10.)

OPAE asserts that the procedural schedule for the hearing on the amended joint motion was so egregious and unreasonable that those parties opposing the amended stipulation have been denied due process. OPAE points out that it objected to the extremely compressed litigation schedule; however, by entry issued on October 31, 2012, the attorney examiner refused to certify the interlocutory appeal to the Commission. Furthermore, OPAE notes that amended filings were submitted in this case on November 27, 2012. (OPAE Br. at 47-48.)

The Commission finds the stipulating parties' arguments that the amended stipulation furthers the policy prescribed in the statute persuasive. Over the last decade, the Commission has taken reasonable and carefully measured steps toward the provision of commodity supplies via the fully-competitive market envisioned in Section 4929.02, Revised Code. Modifying our exemption orders for Columbia at this point in time is the next logical step in the process. Our progress toward a more competitive environment in the supply of natural gas services is consistent with the statute and fully supported by the record evidence in this case.

With regard to OPAE's allegations that the procedural schedule in this matter was compressed, the Commission understands that, from a review of only the docket card in this matter, it may appear to be a short time period. However, the evidence presented on the record reflects that the stakeholders and stipulating parties collaborated on the issues presented herein for many months prior to the filing of this case. Mr. Parisi verifies that OPAE had been involved in the stakeholder forums regarding the issues in this case (Tr. II at 211). In addition, many of the parties in this case, including OPAE, were involved in a similar case that was opened well before this case, wherein many of same issues were debated regarding the exit of the merchant function by an LDC.[8] For a party in both cases, with substantially the same arguments, to infer in this case that the time frames were not adequate is misleading. At this point, the Commission has thoroughly reviewed all of the evidence in this case and has had sufficient time to consider all of the positions of the

8 *In the Matter of the Application to Modify, in Accordance with Section 4929.08, Revised Code, the Exemption Granted to The East Ohio Gas Company d/b/a Dominion East Ohio in Case No. 07-1224-GA-EXM*, Case No. 12-1842-GA-EXM.

parties. Therefore, we find that the amended stipulation does not violate any regulatory principle or practice.

CONCLUSION:

Upon consideration of the record, Commission finds that the amended joint motion is reasonable and should be granted. Furthermore, we conclude that the amended stipulation, as a whole, with the directives set forth herein, satisfies the criterion used by the Commission in evaluating the reasonableness of a stipulation, is in the public interest, and should be adopted. However, the Commission wishes to clarify that nothing precludes us from reestablishing the SCO or other pricing mechanism, if we determine that Columbia's exit from the merchant function for nonresidential customers is unjust or unreasonable. As provided for in Section 4929.08, Revised Code, the Commission is permitted to abrogate or modify the exemption provided for in this order within eight years after the effective date of this order, without Columbia's consent.

With regard to the SCO supplier payments and the balancing fee, in order to eliminate the potential for double billing of the fee by Choice suppliers we have set forth a process in Section IV(E)(4) of this order, whereby Columbia and Staff will notice the Choice suppliers and work with them to ensure that, effective April 1, 2013, Choice customers are not charged twice for the balancing fee. Furthermore, the MVR allocation methodology set forth in Section IV(I)(3) of this order shall be implemented for all Choice-eligible nonresidential customers who, upon Columbia's exit, have not selected a Choice supplier and are not served through a government aggregation program. As we stated previously, Staff is to meet with Columbia and the stakeholders to discuss and determine the parameters of the nonresidential exit from the merchant function. In addition, we believe that the reporting requirements set forth in the amended stipulation and the comprehensive education programs mandated therein are an important element in the transition to a competitive market.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) Columbia is a natural gas company as defined in Section 4905.03(5), Revised Code, and a public utility under Section 4905.02, Revised Code.

(2) On October 4, 2012, Columbia, OGMG, RESA, Dominion, and Staff filed an initial joint motion to modify the orders issued in 08-1344, pursuant to Section 4929.08(A), Revised Code, along with an initial stipulation.

(3) Motions to intervene filed by OCC, OPAE, Hess, Stand, NOPEC, OSC, Volunteer, Direct Energy, IGS, and Honda were granted.

(4) By entry issued on October 18, 2012, as extended by entry issued on November 26, 2012, the procedural schedule in this matter was established, and Columbia was directed to publish notice of the hearing.

(5) On November 27, 2012, an amended joint motion and an amended stipulation, signed by joint movants and OCC were filed.

(6) On November 28, 2012, Columbia filed a second revised outline, which reflects the changes necessary to implement the amended stipulation.

(7) The hearing was held on December 3, 5, and 6, 2012. At the hearing, Columbia presented proof of publication of the hearing.

(8) Section 4929.08, Revised Code, and Rule 4901:1-19-12, O.A.C., provide that, upon motion, and after notice and hearing, the Commission may modify any order granting an exemption pursuant to Section 4929.04, Revised Code.

(9) Joint movants have demonstrated that the amended joint motion to modify the exemption orders should be granted.

(10) The stipulation submitted by the signatory parties comports with Section 4929.08, Revised Code, and Rule 4901:1-19-12, O.A.C., meets the criteria used by the Commission to evaluate stipulations, is reasonable, and should be adopted.

(11) The specific directives set forth in this order regarding the balancing fee in Section IV(E)(4) of this order, the MVR allocation methodology in Section IV(I)(3) of this order, and all other directives should be executed.

ORDER:

It is, therefore,

ORDERED, That the amended joint motion to modify be granted. It is, further, ORDERED, That the amended stipulation be adopted and approved. It is, further,

ORDERED, That the directives set forth in this order be executed. It is, further,

ORDERED, That nothing in this opinion and order shall be binding upon the Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this opinion and order be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Todd A. Snitchler

Todd A. Snitchler, Chairman

Steven D. Lesser

Andre T. Porter

Lynn Slaby

CMTP/vrm

Entered in the Journal
JAN 09 2013

Barcy F. McNeal

Barcy F. McNeal
Secretary