IN THE SUPREME COURT OF OHIO

In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters.	)	CASE NO. 24-1548 On Appeal from the Public Utilities Commission of Ohio
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation.	)	Pub. Util. Comm. Case Nos. 21-637-GA-AIR, 21-638-GA-ALT, 21-639-GA-UNC, and 21-640-GA-AAM
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a Demand Side Management Program for its Residential and Commercial Customers.	)	
In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Change Accounting Methods.	)	

MERIT BRIEF OF APPELLANTS ENVIRONMENTAL LAW & POLICY CENTER AND CITIZENS' UTILITY BOARD OF OHIO

Erica S. McConnell (0102799)
(Counsel of Record)
Staff Attorney
Robert Kelter (pro hac vice pending)
Managing Attorney
Daniel Abrams (pro hac vice pending)
Senior Associate Attorney
Environmental Law & Policy Center
35 E. Wacker Dr., Ste. 1600
Chicago, IL 60601
T: (312) 673-6500
F: (312) 795-3730
emcconnell@elpc.org
rkelter@elpc.org
dabrams@elpc.org

Counsel for Appellant,
Environmental Law & Policy Center

Dave A. Yost (0056290)
Attorney General of Ohio
John H. Jones (0051913)
(Counsel of Record)
Section Chief
Steven Beeler (0078076)
Assistant Section Chief
Public Utilities Section
Ohio Attorney General
30 E. Broad St., 26th Floor
Columbus, OH 43215
T: (614) 466-4395
F: (866) 818-6152
John.Jones@OhioAGO.gov
Steven.Beeler@OhioAGO.gov

Counsel for Appellee,
Public Utilities Commission of Ohio

Trent Dougherty (0079817)
(Counsel of Record)
Hubay Dougherty
1391 Grandview Ave. #12460
Columbus, OH 43212
T: (614) 330-6752
trent@hubaydougherty.com

Counsel for Appellant,
Citizens' Utility Board of Ohio

Melissa L. Thompson (0086367)
(Counsel of Record)
Interim Vice President and Deputy General Counsel
John R. Ryan (0090607)
Interim Assistant General Counsel
Columbia Gas of Ohio, Inc.
P.O. Box 117
290 W. Nationwide Blvd.
Columbus, Ohio 43216-0117
T: (614) 315-3391
F: (614) 460-6988
mlthompson@nisource.com
johnryan@nisource.com

Eric B. Gallon (0071465)
L. Bradfield Hughes (0070997)
Porter, Wright, Morris & Arthur LLP
41 South High Street
Columbus, Ohio 43215
T: (614) 227-2000
F: (614) 227-2100
egallon@porterwright.com
bhughes@porterwright.com

Counsel for Intervening Appellee
Columbia Gas of Ohio, Inc.

TABLE OF CONTENTS

<u>APPENDIX VOLUME I</u> **Appx. Page**

<u>APPENDIX VOLUME II</u> **Appx. Page**

TABLE OF AUTHORITIES

Cases

Public Utilites Commission of Ohio Decisions

Statutes

INTRODUCTION

This appeal challenges the Public Utilities Commission of Ohio ("PUCO" or "Commission") decision to grant Columbia Gas of Ohio, Inc. ("Columbia" or "the Company") a rate hike that allows it to significantly raise its fixed monthly customer charge, while at the same time eliminating the majority of its energy-efficiency and other demand-side management ("DSM") programs.[1] In its decision, the Commission approved a non-unanimous settlement between Columbia and some of the parties in the case, *see* R. 140, while other parties challenged the Stipulation as violating Ohio laws that require Columbia to provide service at just and reasonable rates. R. 162; R. 164; R. 165. The Commission reviews all stipulations using a three-prong test, which asks: (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? R. 185 at ¶ 103. The Supreme Court of Ohio has held that the Commission "may place substantial weight on the terms of a stipulation" but "must determine, from the evidence, what is just and reasonable." *In re Columbus S. Power Co*., 2011-Ohio-2383, ¶ 19 (quoting *Consumers' Counsel v. Pub. Util. Comm'n*, 64 Ohio St. 3d 123, 126 (1992)).

In any rate case, the Commission must determine how much money a utility can recover from customers, and then it must determine how the utility can recover those costs. In this proceeding, the Commission not only considered rate issues, but also Columbia's proposed energy-efficiency programs, which discount energy-saving appliances and weatherization to help its customers lower their bills. R. 25. In its approval of the Stipulation, the Commission not only

---

[1] Appellants use both "demand side management" and "energy efficiency" to describe Columbia's programs.

eliminates Columbia's non-low-income energy efficiency programs, it also allows the Company to recover a high percentage of its costs through a fixed monthly customer charge that all customers must pay regardless of their gas usage. The Stipulation allows Columbia to recover $58 per month through that fixed monthly charge regardless of how much or little gas they use—an exorbitant fixed charge that harms customers.

Appellants Environmental Law and Policy Center ("ELPC") and the Citizens Utility Board of Ohio ("CUB") appeal the Commission's rate case order because, in approving the Stipulation, the Commission failed to support its decision on prongs two and three of its test with sufficient evidence in the record. As explained below, the record does not support the Commission's findings that a Stipulation that significantly increases the fixed customer charge while eliminating Columbia's non-low-income efficiency programs meets the public interest and regulatory principles prongs of the three-prong test.

While Appellants acknowledge the Commission's goal of encouraging consensus and settling cases, the Commission approved this Stipulation despite the lack of meaningful evidence supporting it. The signatory parties filed conclusory testimony that simply asserts that the Stipulation complies with the Commission's three-part test. At no point did Columbia or other parties refute the evidence presented by ELPC and CUB witnesses, which demonstrates the various ways that the Stipulation is not in the public interest and violative of several important regulatory principles and practices. Ultimately, the Commission fails to justify its Order and Appellants request that the Court direct the Commission to modify the Order to reinstate Columbia's non-low-income efficiency programs and reject Columbia's proposed increase to the fixed monthly customer charge.

STATEMENT OF FACTS

Columbia's Initial Rate Case Proposals

On June 30, 2021, Columbia Gas of Ohio, Inc. filed its application at the Public Utilities Commission of Ohio to increase rates pursuant to R.C. 4909.18. The Company filed its testimony in support of its application on July 14, 2021. Columbia's original case included a proposed rate increase of $221.4 million. R. 185 at ¶ 133. As part of this rate increase, relying on straight fixed variable ("SFV") rate design, the Company proposed to raise the total fixed monthly charges for residential customers from $36.15 in 2022 to $80 by 2027. R. 164 at 3. The Company also proposed continuing its demand-side management programs, both for low-income customers and non-low-income residential customers. R. 25 at 1.

Straight fixed variable rate design is a rate allocation methodology that emphasizes recovering the cost for a utility's pipes and delivery system through fixed monthly customer charges. Typically, a utility recovers its costs through two methods—fixed charges and volumetric charges. Fixed charges remain constant every month on each customer's bill, regardless of actual gas usage. In contrast volumetric charges reflect the customer's consumption, so as a customer consumes more gas, their volumetric charges increase.

Demand-side management is an umbrella term that captures programs that help customers manage their energy usage, including energy-efficiency programs. Utilities run DSM programs to help their customers use less gas to heat their homes and save money on their bills, and also to achieve system-wide benefits that these programs provide. Utilities typically offer customers discounts and rebates on appliances such as high-efficiency furnaces and smart thermostats, as well as weatherization to encourage them to spend more money upfront and save money over time on their bills. R. 25 at 7. In order to receive regulatory approval, utilities design their DSM programs to meet a cost-effectiveness test to show the programs save more money than they cost. As Columbia Witness Poe, the Company's Energy Efficiency Manger, explains, the Company's award-winning DSM programs provide "cost-effective, customer-oriented energy efficiency services" which "improve[] customer health, safety, comfort and productivity," while producing "customer savings by lowering bills." *Id.* at 1-2.

The Company proposed to spend an average of $30.9 million annually on its non-low-income programs, plus an additional $7.1 million for the low-income WarmChoice program. R. 25 at 9. In support of its proposed DSM programs, the Company performed a cost-benefit analysis. The Company concluded that its non-low-income DSM programs generated a "Utility Cost Test" ("UCT") cost-effectiveness score of 2.37. R. 25 at 9. This means that for every dollar the Company spends on the program it delivers $2.37 of benefit to the utility and its customers. Columbia's Witness Poe explained that the Company's "current portfolio of DSM programs received 22 program awards from 2017 to 2021." R. 25 at 1, 5.

PUCO Staff Report and Objections

In a rate case the PUCO Staff acts like an independent party and assists the Commission by filing a Report analyzing the utility's proposal. *See* R.C. 4909.19(C). PUCO Staff filed its Report on Columbia's proposals on April 6, 2022, recommending that the Commission deny most of Columbia's rate hike, reducing it from $221 million to a range of $35 million to $57 million. R. 40 at 59. Staff also recommended allowing Columbia to spend the $36 million it was currently spending on DSM at the time of the rate case, but denying its request to increase the spending. R. 41 at 20.

On May 6, 2022, several parties, including ELPC and CUB, filed objections to Staff's Report. Many parties supported their objections with testimony[2] filed the next week, May 13, 2022. ELPC filed two objections to the Staff Report. R. 63. First, ELPC objected to Staff's recommendation to deny Columbia's proposal to increase its spending on DSM programs. *Id.* at 3-5. Second, ELPC objected to Staff's support for the Company's reliance on SFV rate design to increase its customers' monthly fixed charges to unusually high levels. *Id.* at 5-6. CUB filed three objections, two of which track with ELPC's objections discussed above. R. 71. CUB's third objection related to the Staff's lack of support for Columbia's Carbon Reduction Rider. *Id.*

The Office of the Ohio Consumers' Counsel ("OCC") also initially opposed the Company's proposed increase to the total monthly fixed charge. OCC Witness Fortney explained that straight fixed variable rate design sends consumers a price signal that "usage doesn't matter." R. 83 at 17. Relatedly, OCC Witness Colton discussed the disproportionate impact of high fixed monthly charges on low-use and low-income customers. R. 84. Witness Colton observed that, "[b]y dramatically increasing the portion of the Columbia bill that is unavoidable as a fixed monthly charge, Columbia is impeding, if not outright preventing, the ability of its low-income consumers to reduce their bills to more affordable levels." R. 84 at 41.

Non-Unanimous Stipulation and Testimony in Support

On October 31, 2022, some of the parties in the case reached a non-unanimous settlement. Columbia Gas, PUCO Staff, OCC, Northeast Ohio Public Energy Council, Industrial Energy Users-Ohio, Ohio Manufacturers' Association Energy Group, Kroger, Ohio Schools Council, Interstate Gas Supply, Retail Energy Supply Association, and Ohio Energy Group filed a

---

[2] R.C. 4909.19(C) provides for both objections and "the taking of testimony" regarding those objections within 30 days of the filing of the Staff Report.

Stipulation ("Signatory Parties"). R. 140 at 1-2. ELPC, CUB and Ohio Partners for Affordable Energy ("OPAE") did not sign the Stipulation. The Stipulation modified Columbia's initial application in several critical ways, two of which are relevant to this appeal. First, the Signatory Parties agreed to set the total fixed monthly charge at $58 by 2027, a reduction from the $80 proposed by Columbia, but still a significant increase from status quo. The year-over-year increase in fixed charge is below:

SGS Rate Class	Total Fixed Charge
Pre-Case Rate	$ 36.15
2023	$ 46.30
2024	$ 49.43
2025	$ 52.30
2026	$ 54.76
2027	$ 58.01

R. 164 at 3 n.5. In addition, the Signatory Parties agreed to eliminate the Company's proposed non-low-income DSM programs and associated spending, continuing only its low-income demand-side management program, WarmChoice. R. 140 at 12; R. 142 at 1; R. 146 at 8.

Beyond those relevant changes, the Stipulation included provisions to increase Columbia's revenue requirement by $68.192 million (down from the Company's initial proposal of $221.5 million).[3] R. 145 at 4. The Company also agreed to a lower return on equity than proposed (9.6% compared to 10.95%)[4] and to withdraw several rider requests. R. 145 at 4-5. The Stipulation also ensures that Columbia will provide a bill assistance program for low-income consumers. R. 146 at 9-10.

[3] PUCO Staff's Report recommended a revenue requirement between $35 and $57 million. R. 40 at 59.

[4] PUCO Staff's Report recommended a return on equity between 9.04 and 10.05 percent. R. 40 at 27.

Three Signatory Parties filed testimony in support of the Stipulation—Columbia Witness Thompson (five pages), PUCO Staff Witness Lipthratt (eight pages), and OCC Witness Adkins (eleven pages)—each of which asserted that the Stipulation complied with the Commission's three-part test. R. 142; R. 145; R. 146. The three prongs of the test are: (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? R. 142 at 2; R. 145 at 2-3; R. 146 at 3. None of the three witnesses explained or offered evidence as to *why* the Stipulation complied with the test. No other parties filed testimony to support the Stipulation.

ELPC, CUB, and OPAE Opposition to the Stipulation

On November 14, 2022, ELPC, CUB, and OPAE filed testimony in opposition to the Stipulation. *See* R. 154; 155; 156; 157.

ELPC Witness Karl Rábago filed testimony that analyzed the Stipulation and its compliance with the Commission's three-part test for approval of Stipulations. R. 156. Witness Rábago testimony focused on the increased reliance on fixed customer charges for the residential class and the elimination of the non-low-income DSM program. R. 156 at 6. As a general matter, Witness Rábago concluded that the "excessive fixed customer charges proposed by the Company . . . are economically regressive," and that "[c]ontrary to regulatory common sense and the experience and practice across the nation, the Stipulation meets the increased cost of gas and growing energy burdens for Ohioans with a proposal to eliminate efficiency programs for all customers except those qualifying for Warm Choice." R. 156 at 7. Witness Rábago asserted that these two Stipulation provisions—increased fixed charges and elimination of non-low-income DSM programs—rendered the Stipulation contrary to the public interest and violative of important regulatory principles, including in particular foundational regulatory principles articulated by scholar James Bonbright. R. 156 at 25-26, 31. Therefore, he concluded that the Stipulation failed two of the three prongs in the Commission's test.

Similar to Witness Rábago, CUB Executive Director, Thomas Bullock, provided testimony to analyze the Stipulation's compliance with the three-part test. Witness Bullock compared the impacts of the combination of approving high fixed charges and eliminating DSM programs on both low-energy-use and high-energy-use customers. Witness Bullock explained how high fixed charges can significantly reduce incentives for consumers to reduce their consumption of natural gas. For low-usage customers, they experience a greater percentage increase when fixed charges are increased. He concluded that it is not in the public interest to force upon customers rates that target those that use less energy for higher bills, which at the same time discriminate against those who may already have difficulty making ends meet. Likewise, he asserted that high fixed charges hurt current high use customers who wish to take control of their costs and use by removing the price signal that would provide the short-term incentive to change behavior or investing in technology. R. 157 at 5.

The administrative law judge held a hearing on November 21, 2022. The parties filed initial briefs on December 9, 2022 and reply briefs on December 23, 2022.

Commission Decision Approving the Stipulation

The Commission entered its opinion and order on January 26, 2023. The Commission determined that the Stipulation complied with its three-prong test. R. 185 at ¶ 1. In its Order, the Commission reaffirmed its commitment to straight fixed variable rate design, stating, "the evidence in the record of this case supports the retention of the SFV rate design . . ." and that "SFV rate design sends true and accurate price signal to customers for the purpose of making energy efficiency investments." R. 185 at ¶¶ 59, 62. Regarding the elimination of non-low-income DSM spending, the Commission found that the Stipulation "promotes the competitive market by relying on competitive suppliers to offer energy efficiency services to non-low-income customers." R. 185 at ¶ 204.

Applying these findings to its three-prong test for stipulations, the Commission determined that "the evidence in the record demonstrates that the Stipulation, as a package, benefits ratepayers and the public interest." R. 185 at ¶ 169. The Commission pointed specifically to the reduction in the rate increase between the Company's initial case and the Stipulation, as well as significantly lower rider caps than proposed by Columbia as evidence of the benefit to the public. *Id.*

The Commission also found "the Stipulation does not violate any important regulatory principle or practice," pointing to the testimony of Columbia, OCC and Staff for support. R. 185 at ¶ 198. In response to ELPC's Witness Rábago's argument that the Stipulation violated regulatory principles, in particular the Bonbright principles, the Commission concluded "that the evidence in this case demonstrates that the provisions of the Stipulation are consistent with Bonbright's treatise." *Id.*

On February 27, 2023, ELPC and CUB filed applications for rehearing, contesting the Commission's decision regarding the Stipulation, arguing that the Stipulation was not in the public interest and violated important regulatory principles and practices. R. 189; R. 190.

STANDARD OF REVIEW

The Supreme Court of Ohio will reverse, vacate, or modify a PUCO order if the Court considers the record and finds the order was unlawful or unreasonable. R.C. 4903.13. Where there is a mixed question of law and fact. . . the Court must judicially review the evidence to determine whether the findings of fact are reasonable and lawful and whether the legal principles have been properly applied. *Motor Freight, Inc. v. Pub. Util. Comm'n,* 120 Ohio St. 1, 6 (1929). As regarding questions of fact, this Court will not reverse or modify a PUCO decision when the record contains sufficient probative evidence to show that the Commission's decision was not manifestly against the weight of the evidence and was not so clearly unsupported by the record as to show misapprehension, mistake, or willful disregard of duty. *Monongahela Power Co. v. Pub. Util. Comm'n*, 2004-Ohio-6896, ¶ 29. Where the Commission departs from precedent or significantly shifts its position such that it has "change[d] or modif[ied an] earlier order" it must "justif[y] any changes." *Ohio Consumers' Counsel v. Pub. Util. Comm'n*, 2006-Ohio-4706.

The appellant bears the burden of demonstrating the Commission's decision was against the manifest weight of the evidence or is clearly unsupported by the record. *Ohio Consumers' Counsel v. Pub. Util. Comm'n*, 2009-Ohio-604, ¶ 12. However, the Supreme Court will overturn PUCO decisions which are "devoid of evidentiary support," or where the Court finds "it impossible to make any determination about the reasonableness of the commission's decision." *Ohio Consumers' Counsel v. Pub Util. Comm'n*, 2006-Ohio-5789, ¶¶ 28, 31; *see also In re Ohio Edison Co.*, 2019-Ohio-2401; *In re Application of Columbus S. Power Co.*, 2011-Ohio-1788, ¶¶ 24-25.

This Court has held that "[t]he Commission may take the stipulation into consideration, but must determine what is just and reasonable from the evidence presented at the hearing." *Duff v. Pub. Util. Comm'n*, 56 Ohio St. 2d 367, 379, 384 (1978). Moreover, the Commission "may place substantial weight on the terms of a stipulation" but "must determine, from the evidence, what is just and reasonable." *In re Columbus S. Power Co.*, 2011-Ohio-2383, ¶ 19.

ARGUMENT

I. Proposition of Law #1—The Commission's Approval of the Stipulation Is Unlawful Because the Evidentiary Record Does Not Support the Commission's Finding that the Stipulation Is In the Public Interest

The second prong of the Commission's test to evaluate stipulations requires that "the settlement, as a package, benefit[s] ratepayers and the public interest." *In re Ohio Energy*

Company, Case No. 20-585-EL-AIR, et al., Opinion and Order (Nov. 17, 2021) at ¶ 95. The Commission asks whether "the Stipulation reflects a fair and balanced compromise that is intended to result in reasonable rates for both the Company and its customers." *Id.* at ¶ 150. Further, the Commission also "emphasize[s] that the second part of the three-part test is not whether there are different or additional provisions that would benefit ratepayers and the public interest, but whether the Stipulation, as a package, benefits ratepayers and the public interest." *Id.* at ¶ 151. The Commission values tangible benefits to ratepayers as well as the conservation of resources in evaluating the second prong of the test. *Id.* In addition, this Court has held that "[t]he Commission may take the stipulation into consideration, but must determine what is just and reasonable from the evidence presented at the hearing." *Duff*, 56 Ohio St. 2d at 379, 384 (1978).

The record does not support the Commission's finding that the Stipulation is in the public interest and benefits ratepayers, or that it is otherwise just and reasonable, even when viewed as a package. The Commission relied on conclusory testimony from Signatory Parties, insufficient to support its conclusion that the Stipulation satisfies the second prong of its test. Instead, the record shows that the Stipulation saddles ratepayers with higher fixed rates while removing the available tools to conserve energy and lower bills, namely utility-run energy-efficiency programs. Importantly, the interaction of these two facets of the settlement—the increased monthly fixed charges and the elimination of Columbia-sponsored non-low-income energy efficiency programs—defies the Commission's initial justification for transitioning to reliance on straight fixed variable rate design: to align the utility's incentives with consumers in promoting and deploying energy-efficiency programs. *See, e.g.*, *In re Columbia Gas*, Final Opinion and Order, Case No. 08-72-GA-AIR et al. (Dec. 3, 2008). By *raising* the fixed charge but *removing* the majority of Columbia's energy-efficiency programs, the Commission has unlawfully departed from its prior precedent without explanation or justification in the record. *See Ohio Consumers' Counsel*, 2006-Ohio-4706, ¶ 25.

A. The Commission's Approval of Increased Monthly Fixed Charges Does Not Benefit Ratepayers or the Public Interest, Because They Send Customers the Wrong Price Signal and Harm Low-Usage and Low-Income Customers

The drastic increase in fixed monthly charges for residential customers does not benefit ratepayers and is contrary to the public interest. As OCC Witness Fortney testifies, the Commission's overreliance on fixed charges sends uneconomic price signals that "usage doesn't matter." R. 83 at 17. As discussed above, utilities can either recover their costs through volumetric charges or fixed charges. When a utility charges its customers through volumetric rates, customers pay part of the costs for the gas pipes based on usage. When a utility collects through fixed charges each customer pays the same monthly charge regardless of usage. Prior to this case, Columbia collected $36.15 per customer in total monthly fixed charges. R. 164 at 3. Under the rates currently in effect under the Stipulation, in 2025, the Company recovers $52.30 from its customers, summer and winter, before they turn on their furnace and use a therm of gas. And by 2027, Columbia will recover $58 per customer via monthly fixed charge. R. 164 at 3 n.5.

The Commission failed to consider that the $58 fixed charge is in fact an *increase* from the status quo of $36, not the $80 Columbia proposed. As ELPC Witness Rábago asserted, assessment of the Stipulation and whether it is in the public interest should not be measured by "whether [the terms] deviate favorably from the requests initially filed by the Company. . . . Rather, regulation succeeds according to a different standard—whether the regulatory process has resulted in an outcome that would have been achieved had the monopolist faced the forces of true and efficient market competition." R. 156 at 18-19. In approving the Stipulation, the Commission instituted a rate design where Columbia recovers 70% of all its costs through guaranteed fixed charges. R. 156 at 10-11. The result of such significant imbalance between fixed and variable charges is that the potential savings for customers through either energy efficiency measures or otherwise reducing usage are minimized because only thirty cents on every dollar spent on bills correlates to the actual gas they use.

In its Order, the Commission defends SFV rate design and the allocations approved in the Stipulation by stating that SFV rate design "sends a true and accurate price signal to customers. . . ." Order at ¶ 173. However, the Commission fails to support this conclusory statement nor does it address the substance of the testimony of the opposing parties. In support of its argument that this rate design sends "true and accurate price signals," the Commission cites the testimony of Columbia Witness Feingold. *Id.* However, Witness Feingold's testimony contains the exact same conclusory statements as the Commission order. Specifically, Witness Feingold states that, "SFV rates minimize the distortion of gas commodity prices, thus promoting more accurate commodity price signals to the customer, and hence provide greater economic efficiency." R. 29 at 36. Witness Feingold's testimony and the Commission Order mirror each other, asserting conclusory impacts of fixed charges without explanation. Neither Witness Feingold nor the Commission explains *how* higher fixed monthly charges send "accurate commodity price signals to customers," or the impacts on these price signals of *increasing* the fixed charge.

The Commission and witnesses in support of the Stipulation do not address, much less refute, the testimony of ELPC Witness Rábago or OCC Witnesses Fortney and Colton, who discuss the manifest unfairness in charging customers over $50 per month before they use the first therm of gas. R. 156 at 19-20; R. 83 at 17-21; R. 84 at 48-57. Notably, these customers include ELPC and CUB members residing in Columbia's service territory. R. 54 at 4; R. 59 at 4. As each witness explained, fixed charges treat all customers as if they put the same strain on the system, when that is plainly false. *See, e.g.*, R. 83 at 16. As Witness Rábago explains, a low-volume consumer in a 500 square foot house does not drive system costs in the same way as a customer in a 5,000 square foot home. ELPC Witness Rábago emphasized that the shift towards fixed charges is "economically regressive" and enacts a "cross subsidy from low users and lower-wealth customers to higher-use and wealthier customers." R. 156 at 28. Relatedly, the record contains significant evidence that demonstrates that the overreliance on fixed charges inequitably harms low-income customers. Similarly, OCC Witness Colton demonstrates that low-income customers are often low-volume gas users and that sending the signal via a disproportionately high fixed charge that usage does not matter is economically inefficient policy. R. 84 at 8. Despite the fact that low-volume consumers put less strain on the system compared to high-volume consumers, under the Stipulation, both sets of customers will pay the same high fixed charge.

Witness Rábago demonstrates that overreliance on recovering fixed costs through fixed charges does not benefit customers or satisfy the legal standard to set just and reasonable rates. R. 156 at 19-20. Specifically, Witness Rábago testifies that allowing the utility to collect fixed costs through fixed charges "insulates the utility from the kind of pressure to keep costs low that it would feel if it operated in a competitive market and it therefore reflects a failure of sound regulation." R. 156 at 22. Further, Witness Rábago testifies that "[m]arginal demand drives new fixed costs, so good rate design sends economically efficient price signals with variable volumetric charges." *Id.* In other words, since each increment of additional gas demand drives further investment in the system, it is most economically efficient to design rates where customers pay higher bills when they use more gas, so customers are incentivized to use less and avoid system costs. Similarly, when the utility over-recovers its costs through fixed charges, it also loses its incentive to operate efficiently and reduce costs, because it will recover the same fixed charges from its customers regardless.

There is no substantive analysis by Columbia or any other party in the record that refutes Witness Rábago's assertions. Instead, the Commission relied exclusively on the conclusory testimony of Columbia Witness Feingold which stated "that fixed charges promote fairness to all customers because the customer's bill reflects the actual average cost of providing gas delivery service rather than being based on the volume of gas consumed." R. 185 at ¶ 172 (quoting R. 29 at 31). As this Court has held, "[i]t is improper for an expert's affidavit to set forth conclusory statements and legal conclusions without sufficient supporting facts." *Douglass v. Salem Community Hosp.*, 2003-Ohio-4006, ¶¶ 28, 30 (affirming the trial court's decision to strike expert testimony from the record which consisted of "unsupported conclusory statements"). Moreover, this Court has held that the Commission "may place substantial weight on the terms of a stipulation" but "must determine, from the evidence, what is just and reasonable." *In re Columbus S. Power Co.*, 2011-Ohio-2383, ¶ 19. In contrast, in its decision here, the Commission has relied only on the terms of the Stipulation and conclusory testimony in support of them, and has failed to show that the Stipulation, including in particular in its overreliance on fixed charges and elimination of non-low-income energy efficiency programs, is just, reasonable, and in the public interest.

B. The Commission's Approval of the Elimination of Columbia's Non-Low-Income Energy Efficiency Programs Is Contrary to the Public Interest

Similar to its approval of the fixed charge provision discussed above, the Commission's approval of the Stipulation's total elimination of non-low-income DSM programs is unreasonable and "devoid of evidentiary support." *Ohio Consumers' Counsel,* 2006-Ohio-5789, ¶ 28. As noted above, prior to the Stipulation, Columbia itself emphasized that it delivered award-winning DSM programs to its customers. R. 25 at 9. As Columbia Witness Poe explains, the benefits of an effective demand-side management program accrue to non-participating customers, as well. R. 25

at 2-3. A utility-run DSM program reduces peak demand by reducing energy demand at the highest-usage, or "peak" times, such as during a cold front when many customers turn on their heat at the same time. By reducing this simultaneous strain on the system, the program alleviates or defers the need for system infrastructure investment, in addition to reducing the need for gas. As Columbia Witness Poe notes, DSM programs also reduce carbon emissions, lower water, sewer and electric bills, and provide several other secondary economic benefits. R. 25 at 3.

According to the Company, those programs deliver customers significant bill savings and benefits: the non-low-income energy-efficiency programs received a UCT (cost-benefit) score of 2.37, and the Company's full portfolio of DSM programs, inclusive of the low-income WarmChoice program, received a UCT score of 1.52. R. 25 at 9. This means that, for every dollar the Company spends on its full DSM portfolio (non-low-income plus low-income programs), it provides $1.52 of benefit to its customers. ELPC and the other opposing parties objected to the Stipulation's elimination of the non-low-income DSM programs because these popular programs benefit participating customers through bill reductions, and benefit all customers, whether they participate or not, through reductions in peak demand and reductions in system costs. R. 156 at 23; R. 157 at 7. Prior to the Stipulation, PUCO Staff supported continuation of the non-low-income DSM programs, as well. R. 41 at 20.

The Commission failed to support its approval of the Stipulation's elimination of Columbia's cost-effective, net-beneficial non-low-income programs effectively with substantive evidence in the record. First, the Commission pointed to OCC Witness Adkins testimony, which asserted that ratepayers would save $120 million with the elimination of the non-low-income DSM programs. R. 185 at ¶ 171 citing R. 146 at 10. However, Witness Adkins only considers the program costs and does not consider their benefits. While the Stipulation may remove $120 million in expenses from the rate base, it also removes an estimated $284.4 million in benefits (Columbia's estimate), which no party refuted. R. 25 at 9. Under the Commission's and OCC Witness Adkins' logic, Columbia should halt all spending on the system because customers would save on those expenses, regardless of the benefits that such spending might provide.

The Commission also asserted that "customers who wish to manage their usage will continue to have access to energy efficiency measures through the competitive marketplace." R. 185 at ¶ 171. However, the record contains no evidence supporting the Commission's conclusion. The Commission does not cite testimony or anything else in the record regarding the availability of DSM programs from competitive suppliers or the marketplace itself. Instead, the Commission relies on cross-examination questions posed to CUB Witness Bullock who "acknowledged that nothing in the stipulation precludes a customer from getting DSM services from a competitive natural gas supplier and that nothing in the Stipulation precludes a competitive natural gas supplier from offering demand-side management services to their customers." R. 185 at ¶171. Simply because customers are not precluded from receiving DSM products and services from the competitive market does not mean that they "have access" to these measures today or that they should expect to have such access anytime soon. In fact, the only evidence in the record regarding non-utility providers of DSM comes from ELPC Witness Rábago, who states that the overreliance on fixed charges would "stifle the growth of non-utility markets for energy services," because the pool of possible savings through reduced gas use is limited. R. 156 at 22.

C. The Interaction of the High Fixed Charges and Elimination of Non-Low-Income DSM is Contrary to the Public Interest and Commission Precedent

While each provision discussed above standing alone is contrary to the public interest, the interaction of these two provisions result in a Stipulation that, as a package, fails to benefit ratepayers and the public interest, failing the second prong of the Commission's test. Columbia's reliance on higher fixed charges reduces the opportunity for customers to save money on their bills by lowering usage, and then the elimination of non-low-income energy efficiency programs makes it more difficult for customers to reduce their usage. These dual pressures have a cascading effect: individual customers will have both less *incentive* and less *ability* to save on their bills, and in turn, less ability to lower peak demand and system costs for all ratepayers. R. 156 at 24. This result does not serve the public interest or benefit ratepayers. Rather, it benefits Columbia, which receives guaranteed cost recovery through ballooning fixed charges.

Most importantly, the Commission's approval of the Stipulation with these two features departs from precedent and the Commission's initial logic in introducing straight fixed variable rate design. The Commission set much of the precedent for the transition toward straight fixed variable rate design in a series of cases in 2007 and 2008 that included: *In re Duke Energy Ohio*, Case Nos. 07-589, et al. (May 28, 2008); *In re Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 07-0829 GA-AIR (Oct 15, 2008); and the prior Columbia rate case, *In re Columbia Gas*, Final Opinion and Order, Case No. 08-72-GA-AIR et al. (Dec. 3, 2008). At that time, DSM programs were relatively new and the Commission considered different ways to address, "the rate design that properly aligns the interests of Columbia and consumers in favor of energy efficiency and energy conservation." *Id.* at 6. In the Columbia Order the Commission relied on its order in the *Duke Energy* case where it rejected decoupling in favor of SFV:

> The SFV rate design would allow the company to recover most fixed costs through a flat monthly fee. Staff asserted that, as long as Duke's distribution costs are recovered through the volumetric component of base rates, the decline in per customer usage [due to energy efficiency] will continue to threaten the company's recovery of its fixed cost of providing service. Staff claimed the levelized rate design best addresses the issue while simultaneously removing the disincentives to utility-sponsored energy efficiency programs that exist with traditional rate design.

Id. at 16.

Essentially, under "traditional rate design," a utility would lose revenue from energy efficiency programs because they result in less gas sold. In order to offset this loss and align utility's incentives with its customers, the Commission introduced SFV rates, with fixed monthly charges. This allowed utilities a guaranteed revenue stream through fixed charges which helped to alleviate the reduction in volumetric rate loss from energy efficiency programs. Thus, the Commission approved the transition to SFV rate design to offset any utility "disincentive" to participate in and support energy efficiency programs.

This Court has previously held that, while "PUCO may change or modify earlier order," it must "justif[y] any changes." *Ohio Consumers' Counsel*, 2006-Ohio-4706, ¶ 25. As explained above, the 2007/2008 orders which established straight fixed variable rate design, did so based on the important role that energy efficiency must play in the utility's portfolio. In approving this Stipulation, the Commission eroded its initial justification for transitioning to a reliance on fixed charges—the reduced incentive for the utility to support energy efficiency.

In its order, the Commission acknowledged ELPC's argument regarding the interaction between SFV rate design and non-low-income DSM programs, but then failed to address it when analyzing the Stipulation's compliance with the three-prong test. *See* R. 185 at ¶ 147 ("ELPC disputes Staff's reliance on [SFV rate design] precedent because Columbia is also cancelling all but the low-income WarmChoice program"). The Commission's failure to address this argument or otherwise justify its departure from its own precedent was unlawful, and its approval of the settlement under such circumstances is "manifestly against the weight of the evidence." *In re Ohio Edison Co.*, 2019-Ohio-2401, ¶ 8.

II. Proposition of Law # 2— The Commission's Approval of the Stipulation Is Unlawful Because the Evidentiary Record Does Not Support the Commission's Finding that the Stipulation Does Not Violate Any Important Regulatory Principles

The third prong of the Commission's test to determine approval of settlements asks whether the Stipulation violates *any* regulatory principles. *See Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm'n*, 1994-Ohio-435, 426. In contrast to the second prong, which embodies a more subjective balancing test regarding benefit to ratepayers and the public interest, prong three presents a more absolute test. The Commission must reject a stipulation that violates "any" regulatory principles or practices. In this case, the Commission failed to support its finding that the Stipulation did not violate any regulatory principles or practices with substantive evidence in the record, relying only on conclusory testimony from Signatory Parties. Moreover, the Commission failed to refute significant evidence that the Stipulation's overreliance on fixed charges and rejection of energy-efficiency programs violated important regulatory principles and practices.

A. The Record is Devoid of Evidentiary Support for the Stipulation's Compliance with Prong Three

In its order, the Commission determined that "the Stipulation does not violate any important regulatory principle or practice." R. 185 at ¶ 198. The Commission based this decision primarily on testimony from Columbia Gas, OCC and Staff. *Id.* However, the conclusory testimony of those three parties cannot support the Commission's decision. Instead, the Commission's determination regarding the compliance of the Stipulation with the third prong is "devoid of evidentiary support," and should therefore be overturned. *Ohio Consumers' Counsel*, 2006-Ohio-5789, ¶¶ 28, 31.

Columbia Witness Thompson's testimony on this prong covers five lines and simply states:

Q: Does the Stipulation violate any important regulatory principles or practice?

> A: No. The Stipulation does not violate any important regulatory principle or practice, but instead affirms good regulatory principles, such as straight fixed variable rate design for the SGS class. The Stipulation reflects a compromise amongst many parties with diverse interests and litigation positions.

R. 142 at 5. Similarly, PUCO Staff Witness Lipthratt's testimony on this prong covers three lines, summarily concluding that: "[b]ased on my experience, involvement in this proceeding, and review of the Stipulation, Staff concludes that it does not violate any important regulatory principle or practice." R. 145 at 7. Witness Lipthratt does not mention or allude to any specific "important regulatory principle or practice" in his testimony. Finally, OCC Witness Adkins' testimony also fails to provide any meaningful evidence to support the sweeping conclusion that "[t]he Settlement package does not violate important regulatory principles and practices." R. 146 at 11. While the Commission pointed to the testimony of these three witnesses as sufficient to reach its conclusion, the threadbare testimony, which simply restates the test and asserts that it is met, cannot form the basis for the approval. *See Douglass*, 2003-Ohio-4006, ¶¶ 28, 30; *see also In re Ohio Edison Co.*, 2019-Ohio 2401, ¶ 8.

The Commission's reliance on the conclusory testimony of the three stipulating parties fails to conform to the Commission's own practice, requiring meaningful evidence to approve a settlement. In other cases, the Commission approved settlements based on a much more comprehensive discussion of prong three. *See, e.g., In re East Ohio Gas Company*, Case No. 19-0468-GA-ALT, Opinion and Order (Dec. 30, 2020) at ¶ 74 (identifying several important regulatory principles in the Company Witness's testimony); *In re Vectren Energy Delivery of Ohio*, Case No. 18-298-GA-AIR, et al., Opinion & Order (Aug. 28, 2019) at ¶ 106 (where the Commission cited to Staff Witness Lipthratt testimony on compliance with the principles of "adherence to cost-causation" and "avoidance of improper subsidization"). This more thorough analysis of the prong three standard is absent from the Signatory Parties' record testimony and the Commission order.

While a Stipulation fails the test if it violates "any" regulatory principle or practice, the Commission has not established a specified set of principles or practices by which it judges settlements. From case to case, the Commission applies a differing set of principles based on the record and its own discretion. In this case, the Commission did not rely on any specific regulatory principles identified by Signatory Parties to make its finding, despite the burden for establishing compliance with this prong resting with those Signatory Parties. R. 185 at ¶ 60.

B. ELPC and CUB Demonstrated That the Stipulation Violates Several Important Principles

ELPC Witness Rábago presented comprehensive testimony on important regulatory principles and their conflict with the Stipulation. Witness Rábago introduced testimony on foundational principles of utility regulation articulated by scholar James Bonbright. R. 156. Both this Court and the U.S. Supreme Court have relied on "Bonbright's Principles" as a guide. *See Centerior Fuel Corp. v. Zaino*, 2001-Ohio-13, 90 Ohio St. 3d 540, 542; *Verizon Communications v. F.C.C.*, 545 U.S. 467 (2002).

While Witness Rábago discusses several of Bonbright's Principles, he focused on three in particular: (1) energy efficiency as a principle; (2) relatedly, that rates should advance economic efficiency and promote the efficient use of energy; and (3) rates should be fair in apportioning costs. R. 156 at 25-26. As discussed further below, Witness Rábago went on to explain why the Stipulation's extreme overreliance on fixed charges for residential customers and discontinuation of the non-low-income DSM programs violated violates these principles. *Id.* at 27-30; *see also* R. 164 at 18-30. Ultimately, Rábago concluded that the Stipulation "fail[ed] to meet the standard established in Commission precedent." R. 156 at 31. Rábago recommended that the Commission reject the Stipulation and order a redesign of base rates and a reinstatement of all DSM programs. R. 156 at 31. Neither the Signatory Parties nor the Commission effectively rebutted these arguments.

1. *The Stipulation Violates the Important Regulatory Principle of Energy Efficiency*

Not only is energy efficiency a bedrock regulatory principle according to Bonbright, but it is also recognized by the Ohio legislature, as CUB Witness Bullock highlighted. R. 157 at 4-5; R. 165 at 23-27. While Ohio eliminated the State goals for energy efficiency programs in HB 6, it left intact R.C. 4905.70 which states, "[t]he public utilities commission shall initiate programs that will promote and encourage conservation of energy and a reduction in the growth rate of energy consumption, promote economic efficiencies, and take into account long-run incremental costs." R.C. 4905.70. In addition, R.C. 4929.02(A)(12) explicitly declares that "[i]t is the policy of this state to, throughout this state promote an alignment of natural gas company interests with consumer interests in energy efficiency and energy conservation."

Moreover, Columbia Gas emphasized the importance of its efficiency programs to its customers in testimony prior to the Stipulation. *See* R. 25 at 9. For example, the Company has previously stated that its non-low-income DSM programs are "in the continued best interest of its customers." R. 7 at 11. Similarly, PUCO Staff in its Report, recommended continuing the Company's non-low-income DSM programs at the current level which is only $2 million below the level Columbia proposed. R. 41 at 20. As explained above, the Company's non-low-income DSM programs demonstrably save participating and non-participating customers money, and there is no evidence that the competitive market provides comparable offerings. Approving these programs would have aligned with the state's energy-efficiency policy goals and established regulatory principles, as discussed by ELPC Witness Rábago and CUB Witness Bullock. R. 156 at 8; R. 157 at 11.

Indeed, the Commission touts the low-income WarmChoice program as furthering the state's policy regarding energy efficiency. R. 185 at ¶ 203. At the same time, the Commission supports the Stipulation's elimination of cost-effective, net-beneficial spending on non-low-income energy efficiency. But the Commission cannot have it both ways: if the WarmChoice program furthers the state's energy-efficiency policy, then so do the Company's non-low-income DSM programs. The parties and the Commission never distinguish why middle-class customers falling outside the low-income threshold should not be able to benefit from the programs. By approving the Stipulation's elimination of those non-low-income DSM programs, the Commission violates the regulatory principle of energy efficiency and for that reason alone it fails the third prong of its own test.

2. *The Stipulation Violates the Important Regulatory Principle that Rates Should Advance Economic Efficiency and Promote the Efficient Use of Energy*

The Commission continues to defend straight fixed variable rates as the proper method to recover utility system costs. R. 185 at ¶¶ 200, 201. However, the evidence in this record demonstrates that overreliance on fixed charges disincentivizes customers to use gas efficiently and does not send accurate, economically efficient price signals. As discussed above, ELPC Witness Rábago dispelled the Commission's false premise that fixed costs must be recovered through fixed charges and explained why such an imbalanced allocation harms customers and disincentivizes energy conservation. In addition, in testimony presented prior to the Stipulation, OCC Witness Fortney concluded that "the price signal that [the proposed fixed charge] sends to consumers is 'usage doesn't matter'" R. 83 at 17. Further, Witness Fortney testified that "[p]ricing structures that are weighted heavily on fixed charges are much more inferior from a conservation and energy efficiency standpoint than pricing structures that require consumers to incur more costs with additional consumption." R. 83 at 18.

3. *The Stipulation Violates the Important Regulatory Principle That Rates Should Be Fair in Apportioning Costs*

As discussed above, ELPC Witness Rábago also demonstrates that high fixed charges are discriminatory and inequitable towards low-income and low-volume gas users. Low-volume consumers do not put the same strain on the system as high-volume consumers, and thus the shift to high fixed charges does not align with cost causation principles. R. 156 at 19-20. As OCC Witness Fortney explained, when capacity costs are allocated to the fixed charge, "the signal is that all residential consumers require the same amount of system capacity, regardless of the size of the residence (or, the size of the connected load)." R. 83 at 16. However, "size does matter." *Id.* Witness Fortney went on to describe a situation that illustrates the inequity of the rate design, where "a consumer who lives in a 5,000 square foot house, heats with gas, has a gas water heater, and a multitude of gas appliances. . . pay[s] the same distribution bill as a consumer living in a 500 square foot apartment with gas heat." R. 83 at 16.

As discussed above, the record in this case is replete with evidence that high fixed charges are economically regressive and unfair towards low-volume users (more often than not low-income individuals). The bare numbers in the Stipulation illustrate this point better than anything else. By 2027, all residential customers, in the middle of summer, will pay $58 per month in fixed charges, regardless of whether they turn on their furnace or use the gas system. ELPC Witness Rábago described this imbalanced allocation as a "cross subsidy from low users and lower-wealth customers to higher-use and wealthier customers." R. 156 at 28.

OCC Witness Colton confirmed Witness Rábago's assertion with a detailed analysis of the relationship between income and usage. *See generally* R. 84. Colton emphasized that "[l]ow-income consumers use less gas, period." R. 84 at 8. And that "as usage decreases, the percentage bill increase proposed by Columbia increases." R. 84 at 7. Colton concluded that "[b]y dramatically increasing the portion of the Columbia bill that is unavoidable as a fixed monthly charge, Columbia is impeding, if not outright preventing the ability of its low-income consumers to reduce their bills." R. 84 at 41.

4. *The Record Does Not Support the Commission's Defense of Its Finding that the Stipulation Does Not Violate Any Regulatory Principles*

The Commission defended its finding that the drastic increase in the fixed charge does not violate any regulatory principles by pointing to its historic approval of straight fixed variable rate designs, without discussing its prior justification that the SFV rate design supported energy efficiency and without support from evidence in the record beyond conclusory testimony from Signatory Parties. As discussed above, the Commission's implementation of SFV rate design rested on its finding that adoption of more significant fixed charges would offset any utility disincentive to offer energy-efficiency programs, since such programs reduce energy usage and thus volumetric cost recovery. *In re Columbia Gas,* Final Opinion and Order, Case No. 08-72-GA-AIR, et al. (Dec. 3, 2008) at 6, 18. Contrary to this Court's requirement in *Ohio Consumers' Counsel*, 2006-Ohio-4706, ¶ 25, that the Commission must justify such a change, the Commission does not address its departure from its own precedent in increasing fixed charges while *rejecting* the majority of Columbia's energy-efficiency programs. More specifically, the Commission does not address how this departure now conflicts with several important regulatory principles and practices, as discussed by Witnesses Rábago and Bullock.

Furthermore, the Commission did not discuss the *magnitude* of the total fixed charge rate increase in its Order, nor did its Staff analyze the resulting rate impacts. R. 149 at 3. The drastic fixed charge increase embodied in the Stipulation takes straight fixed variable charges to an extreme. When the Commission approved straight fixed variable charges for the first time, it approved only $12 per month worth of fixed charges, and, critically, it approved the SFV rate design to properly align the interests of Columbia and consumers in favor of energy efficiency and energy conservation. *In re Columbia Gas*, Final Opinion and Order, 08-72-GA-AIR, et al. (Dec. 3, 2008) at 21. With this Stipulation, that fixed-charge number ballooned to $58 dollars per month, 70% of the total revenue requirement. However, neither the Commission nor Signatory Parties examined the rate impacts and effects on customers of their overreliance on fixed charges, in tandem with the elimination of Columbia's non-low-income energy efficiency programs.

CONCLUSION

As set forth above, the Commission Order fails to justify its finding that the Stipulation meets prongs two and three of the three part test: (2) Does the settlement, as a package, benefit ratepayers and the public interest? And (3) Does the settlement package violate any important regulatory principle or practice?

First, in terms of the public interest, the Commission fails to justify allowing Columbia to eliminate its non-low-income efficiency programs. In its filing Columbia itself emphasizes the significant customer benefits from its energy-efficiency programs and backs up those claims with evidence that no party adequately refutes. While OCC asserts that the market provides customers with energy-efficiency opportunities that obviate the need for utility run programs, it fails to support that assertion. Second, Columbia fails to justify raising its already high fixed customer charge to $58 per month, which unjustly requires low-use customers to pay for more than their fair share of the Columbia's costs. And, importantly, the Commission fails to explain its basis for ignoring its previous rationale for allowing Columbia to recover such a high percentage of its cost through fixed charges. The Commission originally increased Columbia's fixed charge to remove the Company's disincentive to run effective energy-efficiency programs that reduced Columbia's sales and revenues. Columbia's spending on the Warm Choice low-income programs has minimal impact on its rates and requires no such concession to Columbia. While the law allows the

Commission to change its position, it requires the Commission to justify its change. *See Ohio Consumers' Counsel,* 2006-Ohio-4706, ¶ 25.

In terms of the third prong, it is a fundamental regulatory principle to encourage energy efficiency, and it remains Ohio's energy policy under R.C. 4905.70 for the Commission to encourage energy efficiency. Similarly, it is a fundamental principle that rates should encourage economic efficiency and efficient use of energy. High fixed charges send the wrong price signals and violate that principle by prejudicing low use customers and benefiting high use customers.

While all settlements involve compromise, the Commission erred in its analysis of the Stipulation. Supposedly, the benefit from the Stipulation is that Columbia lowered its revenue request from its original ask of $221.4 million to $68 million, the record contains no evidence that Columbia had any chance of getting an increase anywhere close to that approved. In fact, Staff only supported a small increase in the $35-$57 million range. In its totality, the Commission fails to justify its findings that the Stipulation is both in the public interest and does not violate *any* regulatory principle. Accordingly, Appellants request that the Court direct the Commission to amend the Stipulation, and reinstate Columbia's non-low-income efficiency programs and reject Columbia's proposed increase to the fixed monthly customer charge.

Respectfully submitted,

/s/ Trent Dougherty
Trent Dougherty (0079817)
(Counsel of Record)
Hubay Dougherty
1391 Grandview Ave. #12460
Columbus, OH 43212
T: (614) 330-6752
trent@hubaydougherty.com

Counsel for Appellant,
Citizens' Utility Board of Ohio

/s/ Erica S. McConnell
Erica S. McConnell (0102799)
(Counsel of Record)
Staff Attorney
Robert Kelter (pro hac vice pending)
Managing Attorney
Daniel Abrams (pro hac vice pending)
Senior Associate Attorney
Environmental Law & Policy Center
35 E. Wacker Dr., Ste. 1600
Chicago, IL 60601
T: (312) 673-6500
F: (312) 795-3730
emcconnell@elpc.org
rkelter@elpc.org
dabrams@elpc.org

Counsel for Appellant,
Environmental Law & Policy Center