DAVID S. LAPP
PEOPLE'S COUNSEL

WILLIAM F. FIELDS
DEPUTY PEOPLE'S COUNSEL

JULIANA BELL
DEPUTY PEOPLE'S COUNSEL

OPC
OFFICE OF PEOPLE'S COUNSEL
State of Maryland

6 ST. PAUL STREET, SUITE 2102
BALTIMORE, MARYLAND 21202
WWW.OPC.MARYLAND.GOV

MICHAEL F. SAMMARTINO
ASSISTANT PEOPLE'S COUNSEL
MICHAEL.SAMMARTINO@
MARYLAND.GOV

January 17, 2023

Andrew S. Johnston, Executive Secretary
Public Service Commission
Of Maryland
6 St. Paul Street, 16th Floor
Baltimore, Maryland 21202

Re: ML#242360 – Authorization to Modify Tariff to Establish Green Path Rider program – for January 18, 2022, Administrative Meeting

Dear Mr. Johnston:

On September 16, 2022, Columbia Gas of Maryland filed a proposed tariff change with the Public Service Commission to establish a Green Path Rider program.[1] Columbia claims that under the program, customers could pay an additional per-therm fee to offset either 50 percent or 100 percent of the CO2 emissions of their gas consumption. The offsets would be obtained by a third-party supplier under a contract negotiated with Columbia's affiliate, NiSource Corporate Services Company.

The Commission should reject Columbia's proposal. As further detailed below, a voluntary, fee-based emissions offset program is functionally a retail product that should not be offered to customers by a monopoly utility. Additionally, the program is potentially misleading to customers who are concerned about the environment and climate change. Moreover, the program provides little value to Columbia's customers, does not contribute to in-state greenhouse gas emission reductions, and unjustifiably burdens all Columbia ratepayers with program-specific costs.

The Commission has enough information now to deny the GPR. Given the proposal's novelty and the need for regulatory scrutiny about claims of carbon offsets, if the Commission does not deny the proposal, the Commission should establish a docketed proceeding to allow for further discovery and an evidentiary hearing on the merits of Columbia's proposal.

[1] ML#242360.

Background

Columbia's Green Path Rider proposal would establish the first "fee-based, opt-in" emissions offset program offered by a Maryland utility. Under the proposal, Columbia customers could elect to pay a per-therm fee to offset either 50 percent or 100 percent of CO2 emissions of their monthly gas consumption. The per-therm rate would be updated annually. Emissions would be offset through the procurement of renewable natural gas ("RNG") attributes (5 percent of program need) and carbon offsets (95 percent of program need). Columbia will not be involved in the administration and management of this program. Rather, Columbia's affiliate, NiSource Corporate Services Company ("NCSC") will work with Anew Climate LLC—a third party supplier—under a pre-negotiated contract to procure the RNG attributes and carbon offsets.

Columbia states that the purchase, sale, or retirement of RNG and carbon offsets will be verified by Anew Climate, LLC ("Anew"). For RNG attributes, Anew will use the Midwest Renewable Energy Tracking System ("M-RETS"). For carbon offsets, Anew will use an "internationally recognized carbon offset registry" selected at its discretion.[2]

Columbia further states that the majority of program administration costs will be handled by Anew and are thus included in the per-therm customer fee. While company-specific costs—such as customer education and enrollment—will be tracked separately, the company plans to seek recovery of such costs from all its customers in a future rate base proceeding.

Comments

Achieving Maryland's climate goals requires dramatically curtailing emissions from end-use gas consumption. Columbia's Green Path Rider proposal, however, will not help the State achieve its greenhouse gas emissions reduction goals. The program promotes a less certain way for customers to reduce carbon emissions, and, as such, provides little benefit to Columbia's customers. The company fails to demonstrate sufficient customer demand for this program, yet it plans to spread certain program costs across all customer classes. Moreover, the program would allow a monopoly utility with captive customers to compete in the carbon offset market.

[2] *Id.* at 2.

1. A fee-based opt-in emissions offset program is a retail product that the Commission should not authorize an incumbent utility to offer.

Columbia Gas's potential entry into the carbon offset market is inappropriate because the carbon offset market is a competitive market. The proposal creates risks that customers will be harmed by reduced competition in that market.[3] A regulated utility is able to leverage its resources—employees, equipment, customer data, business relationships and reputation—to gain and maintain an unearned advantage over others competing in the market.[4] Relative to competitive firms, the advantages that utilities have are unearned. Recognizing these concerns, the Commission has carefully scrutinized utility forays into retail markets.[5] While utilities sometimes are permitted to participate in competitive markets, that permission is strictly regulated to ensure that utility customers do not subsidize such activities, that customers are appropriately compensated for the competitive use of ratepayer-funded utility resources, and the utility's entry does not lead to customer price increases or service degradation.[6]

Columbia's proposal harms its customers in two ways. *First,* under Columbia's proposal, utility customers would subsidize Columbia's entry into a competitive market but Columbia would not compensate customers for providing that subsidy. Columbia has a captive audience and market with its existing customers. The company can leverage its brand name and its captive customer base to promote and foster its own business goals through consumer engagement regarding carbon offsets and RNG attributes.[7] Columbia has that brand name recognition and its captive customer base as a result of its government-granted monopoly franchise, not because it has earned it. Moreover, the company plans to spread its program administrative costs amongst all customer classes—another advantage.

Second, customers are harmed when a market's competitiveness is reduced due to a monopoly utility's participation. Effective competition encourages economic pricing

[3] Affidavit of Alice Napoleon at 7–8.
[4] *Id.* at 7 ¶ 12.
[5] Order No. 74038, Case No. 8747, *In the Matter of the Investigation by the Commission into Affiliated Standards of Conduct of Companies Providing Gas or Electric Service*, 89 Md. PSC 54 (1998) ("[I]f regulated markets are to be supplanted, customers must be assured that the rigors and protections provided by true competition take their place."); Delmarva Power & Light Co. v. Pub. Serv. Comm'n of Md., 370 Md. 1, 11– 17 (2002) (discussing development of Commission's regulation of restructured energy markets).
[6] *See* COMAR 20.40.02.01 *et seq.* (Utility Code of Conduct); Order No. 8747 ("[I]t remains the Commission's duty to ensure that customers of the regulated utility are protected from price increases or service degradation arising from non-regulated activities of the utility's affiliates.).
[7] Napoleon Affidavit at 7 ¶ 12.

and innovation that may lead to higher quality products.[8] A competitive market for carbon offsets may afford Columbia's customers the ability to purchase higher quality offsets—those more likely to result in actual emissions reductions—at a better price. Promoters of higher quality offsets may leave or never enter the market. For RNG attributes, Columbia's procurement of cheaper out of-state RNG attributes may restrain the development of in-state RNG and, accordingly, limit any in-state GHG emissions reductions.[9]Thus, the utility's unearned advantages undermine competition and harm customers.

While it may be that carbon offsets can achieve actual and credible emissions reductions, that achievement is more likely gained through a competitive offset market that facilitates the development of cost-efficient, higher quality offsets. Allowing a monopoly utility to enter the carbon offset market may limit the market's development, to the detriment of consumers.

2. **The Green Path Rider program is likely to deceive customers into paying for emissions reductions that will never occur.**

The Green Path Rider proposal promises emissions reductions from carbon offsets and RNG attributes, but that promise is overstated and misrepresents to consumers the greenhouse gas emissions reduced. This type of deception, designed to make consumers feel better about actions with little actual environmental benefit, is known as "greenwashing." The Green Path Rider raises two greenwashing concerns: (1) it deceives customers about the actual emissions reduced through carbon offsets and RNG attributes; and (2) it induces customers seeking to reducing their carbon footprint to engage in activities that actually increase emissions.

A. Overstating Emissions

i. Carbon Offsets

Known and longstanding quality issues call into question the veracity of carbon offsets to reduce greenhouse gas emissions. These issues are present with the Green Path Rider program, raising significant concerns about the veracity of the emissions reductions promised to customers. As OPC's expert explains in the affidavit accompanying these comments, credible offsets should satisfy the "PAVER" criteria:

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[8] Order No. 74038 ("If [competitive] markets can be achieved, consumers should benefit through lower prices and expanded choices for these services."). Notably, Columbia provides no justification for its offset rates and has no information about how much a consumer may pay of these offsets on the open market. Napoleon Affidavit at 23 ¶ 41.
[9] Napoleon Affidavit at 7 ¶ 12.

(1) **Permanent**: emissions reductions or removals should not be reversible;
(2) **Additional**: the emissions reductions should not occur but for the offset;
(3) **Verifiable**: emissions reductions should be monitored and regularly verified by an independent third-party;
(4) **Enforceable**: ownership of an offset should be enforceable to ensure that only one credit is claimed for an offset; and
(5) **Real:** emissions reductions should reflect actual net emissions reductions without carbon leakage occurring.[10]

While offset programs may strive to provide trustworthy offsets, as noted in Staff's comments, "'many carbon credits fail to live up to their promise.'"[11] Even offsets purchased through the most respected offset programs may still overstate the actual emissions reduced.[12] Despite a company's good faith efforts to comport with offset quality standards, a significant risk remains that customers will pay for emissions reductions that never occur.

At least three of the registries identified in Columbia's proposal— Verra, the American Carbon Registry, and the UN Clean Development Mechanism—have verified and sold offsets that do not meet PAVER criteria.[13] For example, as reported by Pro Publica in 2019, Verra sold offsets for a forest protection project launched in Cambodia.[14] The project claimed 88 percent of the forested area was protected; 10 years later, only 46 percent of the forest was standing.[15] A recent study of the UN Clean Development Mechanism found that 85 percent of the certified emissions reduction projects analyzed were unlikely to be additional.[16] In 2020, offsets sold through the American Carbon Registry concerned the protection of forests owned by the Nature Conservancy and thus not under threat of removal.[17] Moreover, a recent analysis released in December 2022 detected no real climate benefit over 10 years for forest carbon offsets

[10] Napoleon Affidavit at 5–6 ¶ 10. Staff identifies four similar criteria underlying the quality of carbon offset. *See Staff Comments on Columbia Green Path Rider*, TG-486 at 4.
[11] TG-486 at 5 (footnote omitted) (quoting Derik Broekhoff *et al.*, Stockholm Environmental Institute & Greenhouse Gas Management Institute, *Securing Climate Benefit: A Guide to Using Carbon Offsets* at 18 (November 13, 2019)). *See also* Last Week Tonight with John Oliver, *Carbon Offsets,* YOUTUBE (Aug. 22, 2022), https://www.youtube.com/watch?v=6p8zAbFKpW0.
[12] TG-486 at 5.
[13] Napoleon Affidavit at 10–14.
[14] *Id.* 10 ¶ 17
[15] *Id.*.
[16] *Id.* at 11 ¶ 18.
[17] *Id.* at 10 ¶ 17.

administered by the American Carbon Registry and the Climate Action Reserve.[18] Though offset providers are making efforts to improve the quality of offsets available—such as no longer accepting renewable energy projects, which are plagued with dubious additionality claims[19]—some registries have grandfathered in older, non-additional, projects and will continue to offer offsets for such projects until 2030.[20]

Given the known quality and credibility issues with carbon offsets, it is likely that the emissions reductions benefits promised to GPR participants will not be fully realized.[21] While Staff correctly notes that the carbon offsets require regular scrutiny, a post-purchase independent audit does little to assure customers that carbon emissions have actually been offset.[22] To avoid lower quality offset credits, offset purchasers should vet offset projects or limit the purchase of offsets to lower-risk project types and ensure that any offset programs provide long-term benefits and exhibit additionality.[23] Columbia, however, has no plans to impose additional quality requirements or restrictions on the offsets procured for the GPR.[24]

ii. RNG Attributes

Similarly, it is likely that the emissions benefits of RNG attributes may be overstated. While RNG may "repurpose" methane gas that may otherwise escape into the atmosphere, many types of RNG are not carbon negative. RNG from landfills and wastewater, for example, typically produces net increases in carbon emissions.[25] And while RNG from animal manure may result in emissions reductions, such supply is typically limited. In short, not all types of RNG produce zero emissions energy and any associated attributes should not be considered as emissions reducing. Columbia could improve the certainty that the RNG attributes it procures actually reduce emissions by limiting attribute procurement to certain RNG feedstock types.[26] But, Columbia does not plan to do so. Absent such restrictions, the emissions reductions associated with RNG attributes procured through the GPR will be overstated.

B. Inducing Customers into Emissions-Increasing Activities

[18] Napoleon Affidavit at 10 ¶ 17.
[19] *Id.* at 11 ¶ 18.
[20] *Id.*
[21] *Id.* at 15–16 ¶ 22.
[22] A further void in the GPR proposal is any plan for addressing carbon offsets that are later learned to be overstated or non-existent.
[23] Napoleon Affidavit at 14–15 ¶¶ 22, 24.
[24] *Id.* at 14 ¶ 22.
[25] *Id.* at 18 ¶ 31.
[26] *Id.*

In the absence of measures to reduce emissions from gas consumption, Columbia's reliance on carbon offsets may encourage environmentally conscious consumers to continue consuming gas, thereby "locking in" higher emissions over the long run. Thus, customers may believe the company's purchase of offsets is mitigating climate change when, in fact, customers' continued gas consumption is contributing to it.

Moreover, the GPR incentivizes customers and businesses to defer GHG reductions. As numerous studies have found, the most effective way to reduce GHG emissions from natural gas is to stop consuming it.[27] Maryland's policy preference for electrification recognizes the need for residential customers to shift off of fossil gas.[28] But residential customers seeking to reduce the emissions of their gas use may be dissuaded from electrifying their home heating and household appliances because they are led to believe they can offset their natural gas emissions through the GPR. Similarly, commercial and industrials customers may be disincentivized from reducing the emissions intensity of their business practices by Columbia's assurances that their natural gas emissions are being offset.

In short, Columbia proposes to take advantage of customers' good intentions with the likely effect of retaining customers and maintaining higher volumes of natural gas consumption. As discussed above, under no circumstances can procurement of carbon offsets and RNG attributes completely offset the emissions resulting from a customer's gas consumption. Through the GPR, Columbia seeks to leverage consumer environmental consciousness to maintain its gas business. The GPR is not needed to make it "easier" for a customer to reduce GHG emissions: customers already have cost-effective alternatives—such as reducing overall consumption or electrifying—outside of the GPR that can more effectively reduce GHG emissions. Columbia, however, is

[27] *See* Energy + Environmental Economics (E3), *Maryland Building Decarbonization Study* (October 20, 2021), https://mde.maryland.gov/programs/Air/ClimateChange/MCCC/Documents/MWG_Buildings%20Ad%20Hoc%20Group/E3%20Maryland%20Building%20Decarbonization%20Study%20-%20Final%20Report.pdf; Baltimore Gas & Electric, *Integrated Decarbonization Strategy* (October 2022) https://www.bge.com/SafetyCommunity/Environment/Documents/BGE%20Integrated%20Decarbonization%20White%20Paper_FINAL%202022-10-06.pdf; Maryland Office of People's Counsel, Climate Policy for Maryland's Gas Utilities: Financial Implications, https://opc.maryland.gov/LinkClick.aspx?fileticket=9bGKYWhy2C4%3d&tabid=55&portalid=0&mid=1487.

[28] Climate Solutions Now Act, 2022 Md Laws Ch, 38, §§ 10(a)(1)-(2) ("(1) the General Assembly supports moving toward broader electrification of both existing buildings and new construction as a component of decarbonization; and (2) it is the intent of the General Assembly that the State move toward broader electrification of both existing buildings and new construction on completion of the study required under subsection (b) of this section.").

promoting a far less certain method for customers to mitigate their impact on climate change. This makes the GPR proposal misleading and contrary to the public interest.

3. The emissions offsets offered through the Green Path Rider proposal do not benefit Columbia's customers.

The Green Path Rider program provides no service or product that customers cannot acquire on their own. Carbon offsets are widely available to individual consumers through offset marketers. These marketers procure offsets for their customers using the same verification registries that will be used for the Green Path Rider. In fact, 95 percent of Columbia's offsets would be procured from the same pool of verified offsets already available to customers through other providers.[29]

Moreover, compared to purchases from an independent offset marketer, GPR participants have less transparency regarding the type of offsets procured on their behalf. Many offset marketers allow customers to select offsets based on the type or location of the project that the offset will fund. Columbia's proposal would provide no such option for its customers—neither Columbia, nor its customers, have any input in the types of offsets Anew would be procuring.

Further, as addressed above, there are significant questions about the actual emissions reduction benefits carbon offsets will achieve. Absent any heightened criteria for offset procurement or pre-purchase vetting of offsets, it is unlikely that the emissions reduced by the offset-funded activities will equal the emissions generated by GPR program participants. The GPR provides little, if any, assured emissions reductions benefits to Columbia's customers.

4. The Green Path Rider proposal will not reduce GHG emissions in Maryland and may impede achievement of the State's climate goals.

The Green Path Rider will not contribute to the State's efforts to reduce greenhouse gas emissions, for at least two reasons. First, the program only compensates for CO2 emissions rather than methane, and Columbia does not plan to offset any methane emissions from its distribution system.[30] Methane is a far more potent greenhouse gas and reducing methane emissions in the short term would have a more appreciable impact on Maryland's greenhouse gas reduction goals.[31] Reducing gas consumption is the most cost-effective way to reduce methane emissions from natural gas

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[29] Napoleon Affidavit at 11 ¶ 21.
[30] *Id.* at 20 ¶ 33.
[31] EPA, *Importance of Methane*, https://www.epa.gov/gmi/importance-methane#:~:text=Methane%20(CH4)%20is%20a,%2Dinfluenced)%20and%20natural%20sources.

use, but the promise of CO_2 emissions reductions could disincentivize customers from curtailing their natural gas use and thus have little impact on statewide methane emissions. Though Columbia tracks fugitive methane emissions from the distribution system and could offset methane emissions using this data, the GPR's focus is strictly limited to less potent (and more limited) CO_2 emissions.[32]

Second, the majority of any emissions reductions achieved by the company's proposal would likely occur outside of Maryland. Columbia has no plans to restrict offset projects by location, and the offset projects included in the registries the company plans to use are located nationally and internationally.[33] Through the GPR, Columbia's customers would be funding projects that will not reduce in-state greenhouse gas emissions.[34] The emissions reductions promised would not count towards the emissions reductions targets set forth in the Climate Solutions Now Act.[35] Nor would the proposed offsets provide long-term Maryland-specific benefits and support further emissions reductions initiatives in Maryland that may otherwise not occur. Here, offsetting would likely not result in actual emissions reductions in Maryland, because Columbia's and the customers' emissions would continue unabated.[36]

The company may point to the proposed RNG attributes as potentially able to reduce in-state GHG emissions. However, RNG attributes would only comprise 5 percent of the procured emissions offsets. Columbia would not itself be selecting the RNG attributes and has no intention to restrict the location or feedstock type of the RNG associated with the procured attributes.[37] Accordingly, the company has no control over whether any emissions reductions attributable to RNG attributes occur within Maryland.[38] Since different RNG feedstocks have different carbon intensities— for example, RNG from landfills creates net emissions comparable to those generated from fossil gas—any assessment of GPR emissions reductions attributable to RNG attributes would likely be inaccurate.[39]

The offsets procured through the GPR would not contribute to meeting Maryland's greenhouse gas reduction goals, and the availability of offsets may ultimately frustrate efforts to lower in-state GHG emissions through reduced gas consumption.

[32] Napoleon Affidavit at 20 ¶ 33.
[33] *Id.*
[34] *Id.* at 20 ¶ 32.
[35] *Id.* at 19, 20 ¶¶ 30, 32.
[36] *Id.* at 20 ¶ 32.
[37] *Id.* at 19 ¶ 31.
[38] *Id.* ¶ 30.
[39] *Id.* ¶ 31.

5. Columbia Gas has not adequately demonstrated existing demand for the Green Path Rider program.

Whether Columbia's customers are actually interested in a carbon offset program is uncertain. While the company conducted a survey to assess customer interest in renewable energy and a green path program, only 23 customers responded.[40] The questions on the survey primarily concerned customer interest in "renewable natural gas" and their willingness to pay extra each month to reduce their emissions.[41] It failed to explain that any gas they consume under the program would continue to be fossil gas, not RNG.[42] More critically, the survey did not ask about customers' awareness of or interest in carbon offsets as a means for emissions reductions, a critical inquiry given that the GPR proposal consists predominantly of offsets.[43] Columbia thus asks the Commission to approve a program that it claims customers are interested in without adequately gauging whether any customers would be interested in it.

6. Recovery of GPR-related expenses should be limited to participating customers.

Columbia's costs associated with the Green Path Rider should be borne by the cost-causers—Green Path Rider program participants. The Commission—and regulatory principles more generally—favors utilities recovering costs from the cost-causers.[44] Columbia, however, plans to spread GPR-related program administration among all customers. As proposed, the company would separately track its program administration costs for consideration in a future base rate proceeding.[45] These costs would include customer enrollment and education.[46] Given the lack of demonstrated interest in the program, it would be inappropriate for the company to spread program-specific costs across all customer classes. Since Columbia has yet to provide any educational or marketing materials, the extent to which any program-specific customer education would benefit all eligible customers remains unclear.[47]

Unless the company can show how all eligible customers—not just participants—would benefit from the administrative costs incurred by this program, program costs should only be recovered from program participants.

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[40] CMD Response to OPC DR 1-017, Attachment A.
[41] Napoleon Affidavit at 22 ¶ 36.
[42] *Id.* ¶ 37.
[43] *Id.*
[44] *E.g.,* Order No. 81260, *In re Southern Md. Elec. Co-op.,* 98 Md. P.S.C. 71 (Feb. 13, 2007).
[45] ML# 242360 at 3.
[46] Napoleon Affidavit at 22 ¶ 38.
[47] *Id.* at 23 ¶ 39.

7. If not rejected outright, the Commission should require an evidentiary proceeding to address the Green Path Rider's significant legal and policy concerns.

Columbia's Green Path Rider program is the first fee-based, opt-in emissions offset program proposed by *any* public utility in Maryland.[48] The proposed program raises a number of significant and broad legal and policy issues, including, among others: (1) whether emissions offsets are in the public interest; (2) whether utilities should be permitted to offer carbon-offset products; and (3) what regulatory standards should apply to carbon offset programs It raises similar issues about RNG attributes.

The Commission's order in this proceeding has significant implications for Maryland's utility customers as well as Maryland's climate goals. An administrative meeting is not the proper forum in which to address such broader issues.[49] If the Commission does not choose to immediately deny approval of the GPR, a docketed proceeding is necessary to afford stakeholders greater opportunity to weigh in on the merits of this program.

Recommendation

The Commission should reject Columbia's Green Path Rider proposal. Absent immediate denial, the Commission should establish a docketed proceeding and allow for additional discovery and an evidentiary hearing on the merits. OPC appreciates the Commission's consideration of its comments.

Respectfully submitted,

/electronic signature/
Michael F. Sammartino
Assistant People's Counsel

cc: Kenneth Albert, *Counsel for Commission Staff*
Ted Gallagher, *Counsel for Columbia Gas of Maryland*

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[48] While certain electric utilities in Maryland offer "Green Riders," these programs allow customers to reduce carbon emissions through purchasing additional renewable energy rather through procuring carbon offsets.
[49] *See* Order No. 90057 at 6 ¶ 18.