

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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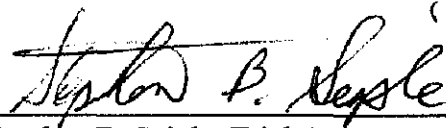
<p>In the Matter of the Regulation of the Pur-) chased Gas Adjustment Clause Contained) Within the Rate Schedules of Columbia Gas of) Ohio, Inc., and Related Matters.)</p>	<p>Case No. 05-221-GA-GCR</p>
<p>In the Matter of the Regulation of the Pur-) chased Gas Adjustment Clause Contained) Within the Rate Schedules of Columbia Gas) of Ohio, Inc.)</p>	<p>Case No. 04-221-GA-GCR</p>

**MOTION TO QUASH
THE OHIO OFFICE OF THE OHIO CONSUMERS' COUNSEL' SUBPOENAS OF
COLUMBIA GAS OF OHIO, INC.**

Now comes Columbia Gas of Ohio, Inc. ("Columbia"), and pursuant to O.A.C. § 4901-1-25(C) files its Motion to Quash the Office of the Ohio Consumers' Counsel's ("OCC") Subpoena Duces Tecum to Columbia and Subpoena to Energy Gateway ("Subpoenas") issued herein on January 25, 2007. Columbia submits that the OCC's subpoenas are unreasonable and oppressive and should be quashed for the reasons discussed in the attached Memorandum in Support.

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Respectfully submitted by
COLUMBIA GAS OF OHIO, INC.

A handwritten signature in black ink, reading "Stephen B. Seiple". The signature is written in a cursive style with a horizontal line crossing through the middle of the name.

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MEMORANDUM IN SUPPORT

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1. The OCC's Subpoenas Represent an Improper, Untimely Attempt to Subvert the Commission's Discovery Rules.

The OCC's subpoena duces tecum to compel the production of documents by Columbia a mere five days prior to the scheduled hearing in this matter is unconscionable. After many months of discovery by the OCC resulting in the production of thousands of pages of documents by Columbia and six depositions of Columbia personnel, the OCC has had more than sufficient time to seek whatever records and documents it deemed necessary to prepare for the hearing. The Commission's Rules for gas cost recovery cases require that "...no party may serve a discovery request later than ten days after the filing of the audit report..." O.A.C. § 4901-1-17(D), unless the time period has been extended by the Commission for good cause shown. O.A.C. § 4901-1-17(G). The management/performance audit report in this case was filed on September 15, 2006; thus, the deadline for discovery was September 25, 2006.

The Commission disfavors the abuse of subpoenas to obtain information that could have been explored through timely discovery. See, *In re Complaint of Westside Cellular dba Cellnet of Ohio, Inc. v GTE Mobilenet*, PUCO Case No. 93-1758-RC-CSS, Finding 7(c), Entry (July 7, 1999) at 11. The deadline for the submission of discovery requests in this case expired four months ago. The OCC has not shown any good cause for extending discovery at this late date in the proceeding. The OCC has had ample opportunity throughout the discovery phase of this proceeding to seek documents, books, records and data related to Columbia's Off-System Sales and Capacity Release programs. The OCC has made no showing whatsoever that it could not have

requested the information it now seeks many months ago. Requesting the production of these records now, only five days before the hearing, with no explanation for the delay, does not meet any standard of “good cause shown” as required by O.A.C. § 4901-1-17 (G) for extending the discovery phase at this late date. There is no justification for employing the Commission’s subpoena procedures to blatantly circumvent the established discovery deadlines, and the Commission should not countenance the OCC’s irresponsible actions. The subpoenas are thus unreasonable and oppressive, and should be quashed pursuant to O.A.C. § 4901-1-25(C).

2. The OCC is Attempting to Subvert the Rules Regarding Expert Testimony.

Not only is the OCC attempting to circumvent the established discovery procedure, but to the extent that the subpoena served upon Energy Gateway seeks to compel testimony by Energy Gateway regarding gas purchasing issues, OCC is also attempting to subvert the Commission’s rules for the submission of expert testimony. The OCC should have submitted written expert testimony at least seven days prior to the hearing in accordance with O.A.C. § 4901-1-29(A)(1)(f). In another blatant attempt to avoid compliance with the Commission’s Rules, OCC now seeks to provide expert testimony to support its position through compelling outside expert witnesses to testify through the issuance of a subpoena. The OCC has had ample time to prepare and timely file expert testimony to support its positions on the matters in this case. To now compel the appearance of outside expert witnesses and elicit expert testimony is not permissible. Such actions prejudice Columbia and other parties by denying them the opportunity to review prefiled written

testimony as otherwise required by the Commission's rules. The OCC's eleventh hour subpoena is a disingenuous attempt to subvert those Rules.

3. The OCC's Subpoenas Constitute Unnecessary Harassment.

The OCC has already conducted extensive, exhaustive discovery of Columbia in this case, consisting of over two hundred interrogatories, over seventy requests for production of documents, and six depositions. Given the thousands of pages of documents that Columbia has furnished in response to the OCC's discovery requests, it strains credulity to imagine that a mere five days before the hearing in this matter the OCC can possibly need to conduct yet more discovery to prepare for the hearing.

Given the length of time this case has been pending, the OCC has had more than ample opportunity to pursue any additional discovery it thought necessary. At the December 15, 2006, hearing in this matter the Attorney Examiner granted the parties a continuance, over the objections of the OCC. At that time the OCC argued that it was ready to proceed and that the hearing should go forward as scheduled. Transcript of hearing (December 15, 2006) at 11-12. Since that time there have been no new developments in Columbia's Off-System Sales and Capacity Release programs. The OCC did not just suddenly become aware of these programs since the December 15 hearing. There can be no justifiable explanation for this last minute attempt by the OCC to extend discovery other than an attempt to harass Columbia. This reason alone justifies quashing the OCC's Subpoenas.

4. The OCC's Subpoenas are Unreasonable and Oppressive.

As demonstrated above, it is manifestly unreasonable for the OCC to seek additional discovery of documents and records at this late hour, long past the deadline for discovery. However, even if one were to assume for purposes of argument that the OCC's subpoenas were legitimate, the subpoenas were served late in the day and, a mere five calendar days before hearing, with two of those days being Saturday and Sunday. Columbia cannot physically comply with the OCC's subpoena in three business days, particularly in light of the fact that the personnel who would have to try to assemble the requested documents are trying to prepare for the hearing in this matter. Compliance with the OCC's subpoena will require up to two weeks to provide the hard copy data requested by OCC. The OCC's irresponsible use of subpoenas is a burdensome, oppressive attempt to unreasonably extend the discovery window for this proceeding.

Furthermore, the OCC's subpoena requests copies of documents stored on electronic media. Columbia does not have any means of effectively searching all electronic media in order to identify the documents OCC has requested. To do so likely would require the retention of a third-party electronic data discovery vendor, at considerable cost and with substantial delay. Even were the OCC's subpoenas not otherwise flawed, as noted herein, Columbia would not be able to produce the requested electronic media files unless the OCC bore the expense of complying with its request.

5. The OCC's subpoena requests discovery about affiliate transactions which are irrelevant to this proceeding.

The OCC's subpoena requests, among other things, certain agreements and related documents between companies affiliated with Columbia and certain customers. Such documents are irrelevant – any Off-System Sales and Capacity Release transactions in which Columbia's affiliates may have engaged has no bearing upon, and no relevance to, Columbia's Off-System Sales and Capacity Release transactions under review in this proceeding. Such a discovery request is not reasonably designed to lead to the discovery of any documents or information relevant to the issues in this proceeding. Furthermore, such documents are not in the custody or control of Columbia. Such an overbroad discovery request, especially through an eleventh hour subpoena, is again nothing short of harassment that is unreasonable.

6. The OCC's Subpoenas Improperly Attempt to Collaterally Attack the 2003 Stipulation

The subject matter of the OCC's subpoena demonstrates the OCC's true purpose is yet another blatant attempt by OCC to collaterally attack the 2003 Stipulation in Case Nos. 94-987-GA-AIR et al., and such an attempted collateral attack is unlawful. As Columbia pointed out in its Motion to Strike¹, filed on December 14, 2006, the OCC is not lawfully permitted to seek to overturn the Commission's approval of the 2003 Stipulation under the doctrines of res judicata and collateral estoppel. Since the purpose of the untimely discovery by OCC is not permissible for the same reasons cited in Columbia's arguments in the Motion to Strike, which are herein in-

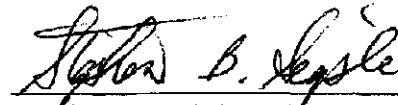
¹ By Entry dated December 29, 2006, the Attorney Examiner denied Columbia's Motion to Strike. Columbia respectfully submits that the Attorney Examiner was incorrect.

incorporated by reference, the subpoenas should be quashed. Subpoenas cannot be upheld when their purpose is to support a legal argument barred by res judicata and/or collateral estoppel.

Summary

For the reasons discussed above, Columbia submits that the OCC's last minute subpoenas are an attempt to subvert the Commission's normal procedures that govern discovery and the filing of expert testimony. The OCC has had ample time for discovery in this proceeding and cannot possibly need additional information at this time, particularly when it professed to be ready for hearing on December 15, 2006. Thus, it is apparent that the true intent of the OCC subpoenas is the unreasonable, oppressive harassment of Columbia and its witnesses on the eve of hearing. Furthermore, the subpoenas are overbroad to the extent that they seek affiliate information. The subpoenas are also oppressive in that they seek electronic media records which cannot be effectively produced without considerable expense and delay. The OCC's subpoenas to Columbia and Energy Gateway are part of the OCC's ongoing improper and unlawful collateral attack of the Commission's orders in Case Nos. 94-987-GA-AIR. For all of these reasons, the OCC's subpoenas are unreasonable and oppressive, and should be quashed pursuant to O.A.C. § 4901-1-25(C).

Respectfully submitted by
COLUMBIA GAS OF OHIO, INC.

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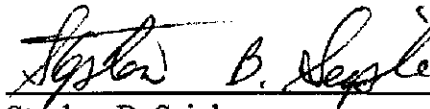
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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion to Quash the Office of the Ohio Consumers' Counsel's Subpoenas by regular U.S. mail to the persons named on the attached Service List this 30th day of January, 2007.



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