

FILE

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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Suburban Natural Gas Company,	)	
	)	
Complainant,	)	Case No. 93-1569-GA-SLF
	)	
v.	)	Case No. 84-938-GA-ATR
	)	
Columbia Gas of Ohio, Inc.	)	Case No. 94-939-GA-ATA
	)	
Respondent	)	
	)	

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ANSWER OF COLUMBIA GAS OF OHIO, INC

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Now comes the Respondent, Columbia Gas of Ohio, Inc. ("Columbia"), and files its Answer to the Complaint filed herein on December 11, 2007 by Suburban Natural Gas Company ("Suburban") in Case Nos. 93-1569-GA-SLF, 84-938-GA-ATR, and 94-939-GA-ATA. Although Suburban has styled its Complaint as a "Motion to Reopen and for Enforcement of Finding and Order Entered January 18, 1996 in Subject Proceedings Approving Joint Stipulation and Recommendation," it is clear that Suburban has no basis to request a reopening of the referenced proceedings because no cause of action is available to Suburban under those proceedings. Perhaps for that reason, Suburban has requested that the Public Utilities Commission of Ohio ("Commission") alternatively treat Suburban's Motion as a Complaint pursuant to Section 4905.26 of the Ohio Revised Code. Regardless of Suburban's motives,

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Columbia believes that a Motion to Reopen has no basis, and Columbia is answering Suburban's pleading as though it were properly styled as a Complaint.

Columbia cannot make conforming responses to the numerous statements and allegations raised by Suburban in its Complaint because Suburban has failed to number its statements and allegations by paragraph. For that reason, Columbia generally denies the specific allegations of improper action by Columbia contained in Suburban's Complaint. To the extent that Suburban is relying on public documents for its contentions, Columbia states that those documents speak for themselves and denies any allegations related thereto that suggest Columbia has acted improperly. Without limiting its general denial stated above, Columbia expressly denies:

1. Suburban's allegation that Columbia has acquiesced in what Suburban states is the "intended purpose" of the Stipulation to establish exclusive non-compete service territories. (Complaint at 9)
2. Suburban's allegation that Columbia has engaged in conduct in violation of the Stipulation by proposing service to an "area affected by the Stipulation". (Complaint at 10)

In addition to the denials set forth above, Columbia makes the following affirmative assertions. The entire basis for Suburban's Complaint is its contention that Columbia has violated the provisions of the November 9, 1995 Second Amended Joint Petition, Application, and Stipulation and Recommendation of Columbia Gas of Ohio, Inc. and Suburban Natural Gas Company ("Stipulation") and the Commission's January 18, 1996 Finding and Order ("Order") approving the Stipulation. However, try as it might, Suburban is unable to produce any language

from the Stipulation or the Order that establishes exclusive non-compete service areas for Suburban or prohibits Columbia, or Suburban, from installing duplicate facilities. Rather, Suburban admits that “the second amended stipulation contained no express covenant not to compete.” (Complaint at 9) Suburban also admits that the Commission refused to approve a stipulation that would have the “precedential impact of approving essentially exclusive service areas for competing natural gas companies.” (Complaint at 8)

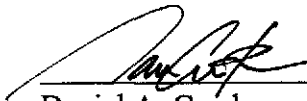
Notwithstanding these frank and controlling admissions, Suburban argues that such a right can be read into the Stipulation based on parole evidence and Suburban’s desire to restrain competition. The Commission, in identifying the essentials of the Stipulation in the Order, states that the essential purpose of the Stipulation is for Columbia and Suburban to exchange existing customers “as a result of purchasing and selling to one another the various facilities and equipment.” (Order at 2-3) It strains credulity that Suburban could obtain the right to establish a monopoly in certain service areas without an express statement in the Stipulation, or by the Commission in the Order. Further, Suburban’s effort to establish an exclusive non-compete service area reflect an attempt to create a monopoly in violation of the Sherman Act and Ohio anti-trust laws. (15 U.S.C. § 1 et. seq.)

Suburban also contends that Columbia has offered marketing incentives, direct payments, and similar inducements to various customers and/or prospective customers “within the area affected by the Stipulation” to cause customers to take natural gas service from Columbia and not Suburban in violation of the Stipulation and various Ohio statutes. (Complaint at 2) While Columbia has not offered an inducement of any type within the aforementioned service areas, it

should be noted that flexible delivery terms are permitted pursuant to Columbia's tariffs.<sup>1</sup>  
Accordingly, Columbia has competed lawfully and in a manner that is consistent with the  
Stipulation.

Respectfully submitted,

**COLUMBIA GAS OF OHIO, INC.**



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<sup>1</sup> Section V, General Transportation Service, Second Revised Sheet No. 53.

### **CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing Answer by mailing same by regular U.S. mail to John W. Bentine this 31st day of December, 2007.



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Daniel A. Creekmur  
Attorney for  
**COLUMBIA GAS OF OHIO, INC.**

### **SERVICE LIST**

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