

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

2007 DEC 31 PM 1:23
PUCO

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)	
)	

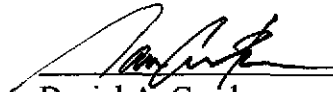
MOTION TO DISMISS OF
COLUMBIA GAS OF OHIO, INC

Now comes the Respondent, Columbia Gas of Ohio, Inc. ("Columbia"), and files its Motion to Dismiss the Complaint (i.e. *Motion to Reopen and for Enforcement of Finding and Order Entered January 18, 1996 in Subject Proceedings Approving Joint Stipulation and Recommendation*) 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. For the reasons more fully discussed in the attached Memorandum in Support, Columbia submits that the Complainant has failed to state reasonable grounds for a complaint as required by § 4905.26, Ohio Rev. Code. Therefore, Columbia respectfully requests that the Commission dismiss the Complaint herein.

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Respectfully submitted,

COLUMBIA GAS OF OHIO, INC.

A handwritten signature in black ink, appearing to read "Daniel A. Creekmur", is written over a horizontal line.

Daniel A. Creekmur
Trial Attorney

MEMORANDUM IN SUPPORT

The Complaint in this case revolves around unilateral interpretations regarding 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"). The Complainant alleges Columbia has engaged in conduct in violation of the Stipulation by proposing service to an "area affected by the Stipulation".

Reasonable grounds for a complaint must exist before the Public Utilities Commission of Ohio ("Commission"), upon the complaint of another party, can order a hearing, pursuant to § 4905.26, Ohio Rev. Code. In the case of *In the Matter of the Complaint of John M. Bere v. Ameritech Ohio*, the PUCO stated "[f]or a complaint to state reasonable grounds under O.R.C. § 4905.26, it must allege facts that would lead to a finding that the public utility has engaged or will engage in unjust, unreasonable, or unlawful behavior." 2000 Ohio PUC LEXIS 377, (Ohio PUC 2000).

Suburban alleges the intended purpose of the Stipulation is to establish exclusive non-compete service territories. (Complaint at 9) However, Suburban admits that "the second amended stipulation contained no express covenant not to compete." (*Id.*) 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) Rather, the intended purpose of the Stipulation was 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) Suburban also alleges 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) Although Columbia has not offered inducements to customers in the aforementioned service area, such flexible delivery terms are permitted pursuant to Columbia’s tariffs.¹ Accordingly, Columbia has competed lawfully and in a manner that is consistent with the Stipulation.

Suburban’s request that Columbia be directed to transfer facilities to Suburban or alternatively to abandon facilities and withdraw service provided there from, and its request for treble damages, should be dismissed for the same reasons set forth above. (Complaint at 2) Columbia has complied with the Stipulation, Order, all applicable Ohio Statutes, the Commission’s rules and regulations, and Columbia’s Tariffs. As a result, the Complainant is unable to meet the statutory requirements of § 4905.26, Ohio Rev. Code.

WHEREFORE, Columbia respectfully requests that the Commission dismiss the Complaint herein.

¹ Section V, General Transportation Service, Second Revised Sheet No. 53.

Respectfully submitted,

COLUMBIA GAS OF OHIO, INC.



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Trial Attorney

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Attorney for
COLUMBIA GAS OF OHIO, INC.

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.



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

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