

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Columbia Gas)	
of Ohio, Inc. for Approval of Tariffs to Recover)	
Through an Automatic Adjustment Clause Costs)	Case No. 07-478-GA-UNC
Associated with the Establishment of an)	
Infrastructure Replacement Program and for)	
Approval of Certain Accounting Treatment)	

**MOTION TO STRIKE OF
COLUMBIA GAS OF OHIO, INC.**

Now comes Columbia Gas of Ohio, Inc. ("Columbia"), and files its Motion to Strike portions of the initial Briefs filed herein by Utility Service Partners, Inc. ("USP"), ABC Gas Repair Inc. ("ABC") and Interstate Gas Supply, Inc. ("IGS") on December 31, 2007. For the reasons discussed in the attached Memorandum in Support, Columbia submits that USP, ABC and IGS have set forth numerous arguments regarding customers' rights and obligations. USP, ABC and IGS may only assert its own rights, not the claims of third parties. Thus, USP, ABC and IGS lack standing to assert the rights of customers. Columbia respectfully requests that the Public Utilities Commission of Ohio ("Commission") strike all related portions of USP's, ABC's and IGS's Briefs, including but not limited to the following:

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USP Brief	Page 1	Lines 15 - 19
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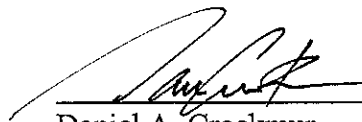
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ABC Brief	Page 4	Lines 9 – 11
ABC Brief	Page 5	Lines 17 – 21
ABC Brief	Page 13	All Lines
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ABC Brief	Page 15	All Lines
ABC Brief	Page 16	All Lines
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For the reasons discussed in the Memorandum in Support, Columbia respectfully requests that the Commission strike all portions of USP's, ABC's and IGS's Briefs, as set forth herein, that assert customers' rights and obligations.

Respectfully Submitted,

COLUMBIA GAS OF OHIO, INC.



Daniel A. Creekmur
Trial Attorney

Mark R. Kempic, Assistant General Counsel
Kenneth W. Christman, Associate General Counsel
Stephen B. Seiple, Lead Counsel
Daniel A. Creekmur, Trial Attorney
200 Civic Center Drive
P.O. Box 117
Columbus, OH 43216-0117
Telephone: (614) 460-4680
Fax: (614) 460-6986
Email: dcreekmur@nisource.com

January 9, 2008

MEMORANDUM IN SUPPORT

USP, ABC and IGS have asserted numerous arguments on behalf of Columbia's customers and their rights and obligations. However, USP, ABC and IGS do not represent these customers and have no standing to assert the rights of customers. Thus, USP, ABC and IGS are asserting claims of third parties. It is axiomatic that a litigant must assert its own rights, not the claims of third parties. *State ex rel. Harrell*, (1989), 46 Ohio St.3d at 63, 544 N.E.2d 924; *Bernardini v. Conneaut Area City School Dist. Bd. of Edn.* (1979), 58 Ohio St.2d at 3, 387 N.E.2d 1222. An exception to this principle may exist "when a claimant: (i) suffers its own injury in fact; (ii) possesses a sufficiently close relationship with the person who possesses the right; and (iii) shows some hindrance that stands in the way of the claimant seeking relief". *N. Canton v. Canton*, (2007), 114 Ohio St.3d at 256, 871 N.E.2d at 588, quoting *Kowalski v. Tesmer*, (2004), 543 U.S. at 129-130.

While USP and ABC contend they will suffer injury by impairment of contract if the Amended Stipulation and Recommendation ("Stipulation") is approved¹, this injury is not intertwined with the injuries customers will allegedly suffer as surmised by USP, ABC and IGS.² Rather, USP, ABC and IGS repeatedly assert customers' rights, specifically that customers will experience: 1) an unlawful taking³; 2) a lack of customer choice⁴; 3) a violation of property rights⁵; 4) the obligation to pay for services as a non-rate payer⁶; 5) the obligation to subsidize other

¹ Initial Post-Hearing Brief of ABC Gas Repair, Inc. (hereinafter "ABC Brief") at 21; Initial Brief of Utility Service Partners, Inc. (hereinafter "USP Brief") at 51.

² *City of East Liverpool v. Columbiana County Budget Comm.*, 114 Ohio St.3d 133, 2007-Ohio-3759, 870 N.E.2d 705, at ¶23 (where Appellant asserted the rights of a third party and was deemed to suffer a direct injury that was intertwined with that third party).

³ 5th Amendment of the United States Constitution; Article 1, Section 19 of the Ohio Constitution; ABC Brief at 17; USP Brief at 29 and 55

⁴ ABC Brief at 16; USP Brief at 5, 19, 23, 26, 27, and 28; Interstate Gas Supply, Inc.'s Brief In Opposition To Proposed Stipulation and Recommendation at 5.

⁵ ABC Brief at 15; USP Brief at 29.

⁶ USP Brief at 20, 23, 24, 27, 28, 55, 56, and 57.

customers repairs⁷; 6) the rights of customers generally under §4929.02(A)(2), (3) and (5), Ohio Rev. Code⁸; and 7) the obligation of customers to maintain property tax records⁹. Customer rights can only be asserted by customers, or an organization or attorney that represents the customer class as a whole. In fact, as Counsel for the Staff of the Public Utilities Commission of Ohio (“Staff”) established:

All of the “regulatory principles” [USP] advances appear to protect the interests of residential landowners rather than any interest of [USP] even though [USP] does not represent residential landowners. This is significant because residential landowners do not contest the Amended Stipulation. No residential landowner has appeared to contest Columbia’s Application, this Stipulation, or the Amended Stipulation. Moreover, the parties to this case protecting and representing interests that include residential landowners (i.e. Staff, the Office of the Ohio Consumers’ Counsel and Ohio Partners for Affordable Energy) are signatories to the Amended Stipulation and advocate its adoption by the Commission. That means the representatives of residential landowners disagree with [USP’s] claims.¹⁰

To be sure, § 4911.02(C), Ohio Rev. Code, implements the obligation and authority of the Office of the Ohio Consumers’ Counsel to “institute, intervene in, or otherwise participate in proceedings in both state and federal courts and administrative agencies on behalf of the residential consumers concerning review of decisions rendered by, or failure to act by, the public utilities commission.” No such authority to represent the rights of customers has been given to USP, ABC or IGS.

The aforementioned claims also demonstrate no relationship exists, let alone a “close” relationship, between Columbia’s customers and USP, ABC or IGS. Further, the customer base of USP, ABC and IGS *combined* represent less than 10% of Columbia’s customers.¹¹ In other words, at least 90% of Columbia’s customers have no relationship whatsoever with USP, ABC and IGS.

Lastly, there has not been a hindrance that stands in the way of a claimant seeking relief.

The Office of the Ohio Consumers’ Counsel, Ohio Partners for Affordable Energy and Staff have

⁷ *Id.* at 22, 26, and 27.

⁸ *Id.* at 24-25.

⁹ *Id.* at 49.

¹⁰ Post-Hearing Brief Submitted On Behalf of the State of the Public Utilities Commission of Ohio at 16.

¹¹ Transcript Vol. IV at 123-124; ABC Ex. 3 at 4.

vigorously engaged in litigation, negotiations and signed the Stipulation on behalf of Columbia's customers – the same customers that USP, ABC and IGS improperly try to protect. Further, customers have not been denied intervention in this proceeding to advance their own rights. USP, ABC and IGS have also participated, or had the opportunity to participate, fully in the proceedings. Thus, no stakeholder has experienced a hindrance that precludes it from seeking relief.

Accordingly, Columbia respectfully request that the Commission strike all portions¹² of USP's, ABC's and IGS's Brief that discuss customer rights, including, but not limited to, the following:

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¹² Line numbers were counted only where text exists on a line, thus a blank line was not counted as a line number.

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WHEREFORE, for the reasons discussed above Columbia respectfully requests that the Commission strike all portions of USP's, ABC's and IGS's Briefs, as set forth herein, that assert customers' rights and obligations.

Respectfully Submitted,

COLUMBIA GAS OF OHIO, INC.




Daniel A. Creekmur
Trial Attorney

Mark R. Kempic, Assistant General Counsel
Kenneth W. Christman, Associate General Counsel
Stephen B. Seiple, Lead Counsel
Daniel A. Creekmur, Attorney
200 Civic Center Drive
P.O. Box 117
Columbus, OH 43216-0117
Telephone: (614) 460-4680
Fax: (614) 460-6986
Email: dcreekmur@nisource.com

Attorneys for
COLUMBIA GAS OF OHIO, INC.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Motion to Strike and Memorandum in Support by electronic mail on all parties of record this 9th day of January, 2008.



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

SERVICE LIST

David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima St., P.O. Box 1793
Findlay, OH 45839-1793
drinebolt@aol.com

Joseph P. Serio
Associate Consumers' Counsel
10 W. Broad St., Suite 1800
Columbus, OH 43215
serio@occ.state.oh.us

Vincent A. Parisi
5020 Bradenton Avenue
Dublin, Ohio 43017
vparisi@igsenergy.com

Joseph M. Clark
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
jclark@mwncmh.com

Carl A. Aveni, II
Carlile, Patchen & Murphy LLP
366 E. Broad St.
Columbus, OH 43215
caa@cpmlaw.com

Anne L. Hammerstein
Stephen B. Reilly
180 East Broad St., 9th Floor
Columbus, Ohio 43215-3793
Anne.hammerstein@puc.state.oh.us
Stephen.reilly@puc.state.oh.us

Stephen M. Howard
Vorys Sater Seymour and Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008
smhoward@vssp.com

John W. Bentine
Chester, Wilcox & Saxbe LLP
65 East State St., Suite 1000
Columbus, OH 43215-4213
jbentine@cwsllaw.com

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Summary: Motion Motion to Strike Portions of Initial Briefs on behalf of Columbia Gas of Ohio, Inc. electronically filed by Mr. Daniel A Creekmur on behalf of Columbia Gas of Ohio, Inc.