

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Suburban Natural Gas Company,)	
)	Case No. 13-1216-GA-CSS
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)	

**COLUMBIA GAS OF OHIO, INC.'S REPLY MEMORANDUM
IN SUPPORT OF ITS MOTION TO DISMISS
AND MEMORANDUM CONTRA
SUBURBAN'S MOTION FOR JUDGMENT ON THE PLEADINGS**

INTRODUCTION

Columbia Gas of Ohio, Inc. ("Columbia") appreciates Suburban Natural Gas Company's ("Suburban") statement that it recognizes Columbia's right to compete with Suburban in all of Franklin and Delaware Counties.¹ In its Memorandum Contra, Suburban clarifies that its Complaint is limited to challenging Columbia's right to use its Northern Loop pipeline to supply gas to its distribution facilities and customers in southern Delaware and northern Franklin Counties. Suburban's clarification of its Complaint, however, does not cure its lack of merit. The Complaint still fails to state reasonable grounds for the relief sought because the linchpin of Suburban's theory – its interpretation of Paragraph A.10 of the Second Amended Joint Petition Application and Stipulation and Recommendation (also referred to as the "Stipulation") that the

¹ Suburban Memorandum Contra Columbia's Motion to Dismiss at 5.

Commission approved on January 18, 1996 – is still contrary to the plain meaning of the language used in the Stipulation and produces an unreasonable, anticompetitive result. Neither Suburban’s Memorandum Contra nor its own Motion for Judgment on the Pleadings explains how the Stipulation can be plausibly read to prevent Columbia from using the Northern Loop to provide natural gas to facilities or customers within southern Delaware or northern Franklin Counties. And Suburban’s interpretation of the Stipulation produces such an unreasonable anticompetitive result that, if it were accepted, it would require Paragraph A.10 to be stricken in its entirety.

Suburban accuses Columbia of “trying to relitigate what it already agreed to and what the Commission found was in the public interest – limiting the use of the Northern Loop [to points outside southern Delaware and northern Franklin Counties] as part of an omnibus settlement to resolve the parties’ competitive dispute.”² Columbia made no such agreement, and the Commission made no finding as to any such agreement.

What Columbia agreed to, and the Commission approved, was an agreement “to buy and sell to one another certain facilities and rights that are used to provide service to approximately 270 residential and commercial customers in Franklin and Delaware Counties.”³ At no time did Columbia agree to not use the then-anticipated high pressure pipeline which is now known as the Northern Loop to supply gas to its distribution facilities or customers in southern Delaware and northern Franklin Counties. And any such agreement would not be in the public interest as it would impose a costly and onerous restriction on Columbia’s ability to provide service in a significantly-sized and growing geographic area and would deprive residential and commercial customers in these counties of the benefits of effective competition, contrary to Ohio’s pro-competition policy and in violation of federal and state antitrust laws.

² Memorandum Contra at n. 3.

³ See Motion to Dismiss, Ex. A, Finding and Order at ¶ 6. See also, Stipulation at p. 2 (“the Parties are willing to agree, subject to the consent and approval of the Commission as more fully described herein, to (1) the transfer of certain customers and facilities between the Parties and (2) the modification of certain tariff provisions . . .”).

Suburban's theory that "Columbia may install mains, service lines, and any other infrastructure necessary to compete with Suburban in southern Delaware and northern Franklin Counties," so long as it does not "use the Northern Loop to supply gas to such facilities or customers"⁴ is not supported by the Stipulation on which it relies. Indeed, it is flatly contradicted by the very provision on which Suburban relies, because, even if Paragraph A.10 is read (wrongly), as Suburban suggests, to limit the use of the Northern Loop, the provision clearly states Columbia is free to use the Northern Loop to "transport[] gas from existing and future sources of supply to various gas distribution systems owned and operated by Columbia in southern Delaware and northern Franklin Counties." Thus, Suburban's latest contention that Columbia may not use the Northern Loop to supply gas to its distribution facilities (*i.e.*, mains, service lines and any other infrastructure) in southern Delaware or Northern Franklin Counties is belied by the exact opposite statement in the provision. Moreover, there would be no logically sound reason for Columbia to use the Northern Loop to transport gas to its various distribution systems in southern Delaware and northern Franklin Counties, if Columbia was simultaneously prevented from using those same distribution systems to actually deliver gas to its customers in southern Delaware and northern Franklin Counties.

Moreover, Suburban's reading of Paragraph A.10 makes no sense. The obvious reason why Columbia wanted to build a high pressure pipeline across Delaware County – and ultimately built the Northern Loop pipeline – was so that it could supply gas to its distribution facilities and serve customers in this rapidly growing part of the State. There was no logical business reason for Columbia to make the significant investment to build a expansive pipeline running more than twenty miles across the width of Delaware County if it could not use that line to supply gas to its distribution facilities closest to that line or to serve those customers in closest proximity to the line.

⁴ Memorandum Contra at 5.

LAW AND ARGUMENT

A. Paragraph A.10 does not limit Columbia's use of its Northern Loop.

Suburban's argument that Paragraph A.10 "stat[es] explicitly that 'the purpose of the [Northern Loop] is to be *limited* to transporting gas' from current and future supply sources to points outside southern Delaware and northern Franklin Counties"⁵ is wrong from the start because it ignores the fact that the plain language of Paragraph A.10 does not explicitly limit any use of that line. Quite to the contrary, the purpose of this paragraph, as is made clear by the introductory phrase, is to state what the Stipulation does not do. The only explicit statement in Paragraph A.10 is that the Stipulation shall not be construed to prohibit the pipeline described therein. Suburban asks the Commission to excise the introductory clause in Paragraph A.10 in its entirety and recast this sheltering provision as an affirmative prohibition to the effect that Columbia is prevented from installing any pipeline other than the pipeline described. But, one of the most fundamental rules of contract interpretation is that all the words used in a contractual provision must be given effect and must be ascribed their plain meaning. This fundamental rule means that the introductory phrase cannot simply be ignored, as Suburban does.⁶

B. Suburban's interpretation of Paragraph A.10 violates the fundamental plain meaning rule and is unreasonable.

Suburban denigrates Columbia's attempt to present to the Commission the several alternative reasons why Suburban's interpretation of the Stipulation is erroneous, suggesting that alternative arguments are inappropriate or evince a lack of confidence in Columbia's primary argument that the Stipulation does not

⁵ Memorandum Contra at 6.

⁶ *Cowan v. Henderson*, 4th Dist. No. 03762, 2003-Ohio-5546, 2003 Ohio App. LEXIS 4969, ¶ 15. ("It is axiomatic that we must give effect, when possible, to all words in a contract . . . we cannot ignore words the parties chose to employ in their contract.")

restrict Columbia in any way.⁷ There is nothing inappropriate about making alternative arguments. Parties often argue in the alternative, and courts routinely treat alternative arguments as having equal dignity and address them on the merits.⁸ So has this Commission.⁹ Indeed, parties are admonished to present all their arguments together so that a matter can be fully adjudicated on its merits.¹⁰

In order to determine if Suburban has advanced reasonable grounds for its Complaint, the Commission must focus primarily on the language used in Paragraph A.10 and give the words used their plain meaning.¹¹ The parties appear to be in agreement that the key issue is whether the term “said areas” in

⁷ Memorandum Contra at 6.

⁸ See, e.g., *Carpenter v. Long*, 196 Ohio App.3d 376, 2011-Ohio-5414, 963 N.E.2d 857, ¶ 61 (2nd Dist.) (Appellate courts are “required to address alternative grounds for summary judgment argued below.”); *Ohio Edison v. Wilkes*, 7th Dist. No. 10MA174, 2012-Ohio-2718, 2012 Ohio App. LEXIS 2384, ¶ 32-34 (finding that it was appropriate for Ohio Edison to have argued that it had an implied or prescriptive easement in the alternative to its claim that it had an express easement).

⁹ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates; In the Matter of the Application of Duke Energy Ohio, Inc. for Approval of an Alternative Rate Plan for Gas Distribution Service; In the Matter of the Application of Duke Energy Ohio, Inc. for Approval to Change Accounting Method*, Case No. 07-589-GA-AIR; Case No. 07-590-GA-ALT; Case No. 07-591-GA-AAM, 2008 Ohio PUC LEXIS 323, Opinion & Order (May 28, 2008), * 26; *In the Matter of the Commission’s Promulgation of Rules for Electric Transition Plans and of a Consumer Education Plan, Pursuant to Chapter 4928, Revised Code*, Case No. 99-1141-EL-ORD, 1999 Ohio PUC LEXIS 674, Finding & Order (Nov. 30, 1999), * 78.

¹⁰ *State ex rel. Quarto Mining Co. v. Foreman*, 79 Ohio St.3d 78, 81, 679 N.E.2d 706 (1997) (usual waiver rules apply in proceedings before administrative agencies).

¹¹ *National/Rs, Inc. v. Huff*, 10th Dist. No 10AP-306, 2010-Ohio-6530, 2010 Ohio App. LEXIS 5361, ¶ 12 (“[C]ommon words in a contract must be given their ordinary meaning, unless manifest absurdity results, or unless some other meaning is clearly intended, based upon the facts or overall context of the document.”) (citing *City of Alexander v. Buckeye PipeLine Co.*, 53 Ohio St.2d 241, 374 N.E.2d 146 (1978)).

the phrase “to points outside said areas” refers back to the “any of the areas described” in the Stipulation, as Columbia contends, or refers to “southern Delaware and northern Franklin Counties,” as Suburban contends. To determine the intent of this provision, the Commission must apply the plain meaning of the words used and the usual rules of grammar.¹² Doing so makes it clear that Columbia’s reading of the provision honors the plain meaning of the language, while Suburban’s clearly does not.

“Said, “as an adjective, is a synonym of “aforesaid.” When “said” is used as an adjective, as it is here, it modifies a particular noun – a noun that has been mentioned before. “Said” modifies the noun “areas” and, therefore, refers back to the only other use of the noun “areas” in Paragraph A.10, *i.e.* “any of the areas described.” The phrase, “southern Delaware and northern Franklin Counties” cannot be the antecedent noun for “said areas,” as Suburban argues in its Memo Contra at 7, because it is not referred to as an “area” or “areas” in Paragraph A.10 or elsewhere in the Stipulation. Suburban would have the Commission rewrite this paragraph to insert the words “the areas of” before the reference to “southern Delaware and northern Franklin Counties.” The Commission, however, is not free to add words into the paragraph to force it to fit Suburban’s unnatural reading of the language actually used.¹³

Finally, as Columbia pointed out in its Motion to Dismiss at 4, the Stipulation never defines “southern Delaware and northern Franklin Counties”

¹² *King v. State Farm Ins. Co.*, 8th Dist. No. 82672, 2003-Ohio-6950, 2003 Ohio App. LEXIS 6275, ¶ 42 (“In determining whether there is an ambiguity [in a contract], we must apply ordinary rules of grammar, and consider the provision at issue in context.”); *Maffei, S.A. v. Instrument Maker*, W.D. MI Case No. 99-cv-840, 2000 U.S. Dist. LEXIS 8132, *4 (June 3, 2000) (“Construing a contract is a holistic endeavor taking into consideration the contract’s grammar, structure and punctuation.”)

¹³ *Merz v. Motorists Mut. Ins. Co.*, 12th Dist. No. CA2006-08-203, 2007-Ohio-2293, 2007 Ohio App. LEXIS 2154, ¶ 54 (“[A] court may not delete or add words to a contract when determining the parties’ rights and obligations under it. . . . As this court has recently stated, “[p]rinciples of contract interpretation preclude a court from rewriting the contract by reading into it language or terms that the parties omitted.”) (Internal citations omitted.)

as a discrete area. There are no defined boundaries in the Stipulation and, contrary to Suburban's argument that the Commission can take "administrative notice" of "where southern Delaware and northern Franklin Counties are,"¹⁴ there is no map or generally-known or generally-accepted boundary maker that splits Delaware and Franklin Counties into "southern Delaware and northern Franklin Counties." Thus, as read by Suburban, Paragraph A.10 would be too vague to be enforceable, and the remedy would be to strike that provision from the Stipulation.¹⁵

Suburban urges the Commission to simply ignore the obvious uncertainty created by its reading of Paragraph A.10, because in its view this "issue is not before it."¹⁶ To support this argument Suburban suggests that there is no dispute that Jaycox Road is in southern Delaware County.¹⁷ The uncertainty created by Suburban's strained reading of the provision, however, is a material and very significant issue for the Commission to consider. In interpreting contracts, as in interpreting statutes, the adjudicator is to avoid interpretations that produce unreasonable or unworkable results.¹⁸

¹⁴ Memorandum Contra at 8, n. 9; Motion for Judgment on the Pleadings at 4.

¹⁵ *McDonald v. State Farm Mut. Auto Ins. Co.*, 8th Dist. No. 76808, 2000 Ohio App. LEXIS 3621 (August 10, 2000), at 9 ("As a general rule, where an unenforceable provision is not material to the contract, courts will sever such a provision and enforce the balance of the contract." (citing, Restatement 2d, Contracts § 184); *Hudson v. Ernst & Young, LLP*, 189 Ohio App.3d 60, 2010-Ohio-2731, 937 N.E.2d 585 (10th Dist.), ¶ 25 (noting "the general principle that arbitration clauses may be severed from the underlying contract if unenforceable").

¹⁶ Memorandum Contra. at 7-8.

¹⁷ *Id.* at 8, n. 8.

¹⁸ *J.F. v. D.B.*, 165 Ohio App.3d 791, 797, 2006-Ohio-1175, 848 N.E.2d 873, ¶ 7 (9th Dist.) ("In construing an agreement, the court should prefer a meaning which gives it vitality rather than a meaning which renders its performance illegal or impossible.")

Thus, it is entirely proper for the Commission to consider the fact that Suburban's reading of the provision leaves Columbia in the untenable position of having to guess whether it is precluded from offering service to customers using its investment in its Northern Loop because the customers may later be found to be located in "southern Delaware" or "northern Franklin" Counties. Even in this specific instance, Suburban's position creates real uncertainty. It is not at all clear that Jaycox Road should be found to be in "southern Delaware County," because Lewis Center Road could reasonably be found to be the northern boundary of "southern Delaware County," as Columbia noted in its Motion to Dismiss at 4.

C. To the extent there is ambiguity as to the proper interpretation of Paragraph A.10, the extrinsic evidence in the record before the Commission supports Columbia's reading.

Columbia believes that the meaning of Paragraph A.10 is clear if the language used is accorded its plain meaning. However, to the extent that the Commission finds that Suburban's reading of the provision is plausible, the Commission may properly look to extrinsic evidence to resolve the ambiguity.¹⁹ As Suburban noted in its Complaint, the Stipulation that was ultimately approved was the product of a lengthy process that included two prior drafts.²⁰ If the Commission finds that Paragraph A.10 is at all ambiguous, it need only refer to the prior drafts to confirm Columbia's reading of that provision. The Commission can take these prior drafts into consideration for purposes of Columbia's motion to dismiss and Suburban's motion for judgment on the pleading because Suburban referenced them in its Complaint and because they are in the Commission's own record in Case No. 93-1569-GA-SLF.²¹

¹⁹ *National/Rs v. Huff*, 2010-Ohio-6530 at ¶ 15; *Pharmacia Hepar, Inc. v. City of Franklin*, 111 Ohio App.3d 468, 475, 676 N.E.2d 587 (12th Dist. 1996).

²⁰ Motion to Reopen at 4.

²¹ *Bentley v. Honeywell Int'l, Inc.*, S.D. Ohio No. 03-cv-79, 2004 U.S. Dist. LEXIS 21019 (Sept. 24, 2004), at 9-10 ("[E]ven though they technically are outside of the pleadings, ample authority exists which recognizes that matters of public record, including court records in related or *underlying cases which have a direct relation to the matters at issue*, may be looked to when ruling on a 12(b)(6) motion to dismiss.") (quoting

Paragraph A.10 is a variation of a provision that first appeared in the Joint Petition, Application, and Stipulation and Recommendation filed on May 23, 1994.²² In that first version of what ultimately became the approved Stipulation, the parties proposed in paragraph 9 that “each party would covenant that it would not compete with the other in the vicinity of the transferred facilities (as hereinafter defined) either by the retail sale of natural or synthetic gas, or by transporting natural or synthetic gas to any retail end-use customer in the described area, for a period of 10 years. . . .” The parties also proposed that “Columbia would agree, subject to the foregoing limitations, not to compete with Suburban in:

- a. The area bounded by Lazelle Road on the south, the Norfolk & Western Railroad tracks on the west, Lewis Center Road on the north, and Interstate Route 71 on the east to its intersection with Bale Kenyon Road and then by Alum Creek and Alum Creek Reservoir;

Paragraph 9 of that initial version then described in subparagraphs b., c., d. and e. other areas in which Columbia would agree not to compete with Suburban or Suburban would agree not to compete with Columbia. Paragraph 9 concluded with the following statement:

Notwithstanding the foregoing Columbia will be permitted to install *in the area described in a. above* a high pressure natural gas pipeline, the purpose of which is to be limited to transporting

In re American Continental Corporation/Lincoln Sav. & Loan Securities Litigation, 102 F.3d 1524, 1537 (9th Cir. 1996), *rev'd on other grounds by* 523 U.S. 26, 140 L. Ed.2d 62, 118 S. Ct. 956 (1998)); *Jackson v. City of Columbus*, 67 F. Supp.2d 839, 853 (S.D. Ohio 1998) (court may consider undisputedly authentic document attached to motion to dismiss when plaintiff's claims are based on document), *aff'd in part & rev'd in part*, 194 F.3d 737 (1999); *Charles v. Conrad*, 10th Dist. No. 05AP410, 2005-Ohio-6106, 2005 Ohio App. LEXIS 5502, ¶ 26 (“A trial court may take judicial notice of “appropriate matters in considering a Civil Rule 12(B)(6) motion to dismiss for failure to state a claim. . . .”; and prior proceedings in the immediate case are appropriate matters for purposes judicial notice.)

²² See attached Exhibit A.

natural gas from existing and future sources of supply to various gas distribution systems owned and operated by Columbia in southern Delaware and northern Franklin County, Ohio to points outside of *said area* unless Suburban agrees otherwise.

(Emphases added.) It is crystal clear in this first version of the provision at issue that “said area” refers to the “area described in a.” and was not a reference to the phrase “southern Delaware and northern Franklin County, Ohio,” which merely identifies the location of the gas distribution systems to which Columbia might transport natural gas using the anticipated pipeline. The provision as originally proposed in the initial version of the Stipulation was an important and logical clarification in light of the fact that Columbia was agreeing not to compete with Suburban in the areas described in the Paragraph 9 a.

Paragraph 9, containing the parties’ non-compete agreements as well as the sheltering clause, was removed in its entirety from the Amended Joint Petition, Application, and Stipulation and Recommendation filed with the Commission on September 30, 1994.²³ The sheltering clause then reappears as new Paragraph A.10 in the Second Amended Joint Petition, Application, and Stipulation and Recommendation submitted on November 9, 1995 (and which the Commission approved on January 18, 1996) even though the non-compete provisions do not reappear.²⁴ A comparison of Paragraph A.10 in the approved version of the Stipulation with the initial version of that paragraph from the May 23, 1994 submission reveals three changes, each of which further reinforces the fact that the proper reading of Paragraph A.10 is as Columbia states.

First, the introductory phrase in the provision is modified to read “Nothing in this Stipulation shall be construed as preventing Columbia from installing [a pipeline] . . .,” rather than “Notwithstanding the forgoing Columbia will be permitted to install [a pipeline]....” That change makes it all the more clear that Paragraph A.10 was intended only to make a statement about how the

²³ See Exhibit B, attached.

²⁴ See, Motion to Dismiss, Ex. A.

Stipulation was to be construed – as a sheltering proviso, not an agreed upon prohibition.

Second, Paragraph A.10 changes the reference to “the area described in a.” to a reference to “any of the areas described.” Because the structure of the provision remains intact despite this modification, the amendment of the provision reinforces the fact that “said areas” is a reference to the areas described in the Stipulation, not a reference to “southern Delaware and northern Franklin Counties.”

Third, the concluding proviso is amended to clarify that the pipeline will be available as a supply source for Suburban’s system. This change also supports Columbia’s reading of Paragraph A.10. The purpose clause on which Suburban relies to say Paragraph A.10 is an affirmative limitation qualifies the pipeline itself. Thus, if it creates an affirmative limitation, as Suburban contends, the limitation would affect any use of the pipeline by any natural gas distributor, not just Columbia. Just as it would make no sense for Columbia to build a long pipeline through Delaware County but agree never to use that pipeline to supply gas to its facilities closest to the line or to serve any customers along that long expanse, it would make no sense for Suburban to seek access to a pipeline that could not be used as a supply source for *its* facilities in southern Delaware or northern Franklin Counties.

Finally, if there is any ambiguity in Paragraph A.10, although Columbia contends there is not, the provision must be construed against the drafter and the ambiguity resolved in Columbia’s favor.²⁵ As established by Suburban’s July 6, 1995 letter to Columbia, attached as Exhibit C, Suburban proposed that the “the provision regarding Columbia’s proposed new supply line” be reinserted into the Stipulation and it did so to “confirm Suburban’s ability to obtain service from same subject to appropriate rates and service conditions.” The language used in the approved Stipulation was that proposed by Suburban, and based on the language Suburban used, as well as the prior negotiations memorialized in the original May 23, 1994 version of the Stipulation, Columbia rightfully believed that the reference to “said areas” was a reference to only the narrow areas

²⁵ *National/Rs, Inc. v. Huff*, 2010-Ohio-6530 at ¶ 15.

described in the Stipulation. While Suburban seeks to undermine this interpretation – the only reasonable interpretation of the provision – by arguing that there are no “areas described” in the third – and ultimately approved – version of the Stipulation,²⁶ its argument is plainly wrong. The approved Stipulation describes certain discrete service areas by identifying the specific facilities, subdivisions, and customers affected by that Stipulation, but, again, if there is any ambiguity in the phrase “any of the areas described,” the provision must be construed against Suburban, as the drafter of that particular phrase.

D. The Commission may and should consider the anticompetitive nature of Suburban’s misreading of the Second Amended Petition.

The Commission may and should consider the anticompetitive results produced by Suburban’s misreading of Paragraph A.10 as an agreement that Columbia will never use the Northern Loop to serve customers in southern Delaware and northern Franklin Counties. Columbia is not asking the Commission to adjudicate a federal or state antitrust claim, it is asking the Commission to consider the consequences of Suburban’s misreading of the provision. In construing an ambiguous contract, it is always proper and desirable to construe it to avoid a consequence that would render the contract illegal or void.²⁷

The fact that Suburban has clarified that it is not seeking to make southern Delaware and northern Franklin Counties its exclusive territory, but only seeking to preclude Columbia’s ability to use its Northern Loop to supply it facilities or to serve customers in southern Delaware or Northern Franklin Counties, does not avoid the anticompetitive results of its position. Suburban’s reading of Paragraph A.10 would prevent Columbia from using the Northern Loop effectively and efficiently to supply customers in a wide geographic area and the area immediately proximate to the pipeline. It would impose this irrational limitation in perpetuity. The limitation proposed by Suburban cannot be justified

²⁶ Memorandum Contra at 7, n. 6.

²⁷ *J.F. v. D.B.*, 165 Ohio App.3d at 797.

as necessary to effect the parties' agreement in the approved Stipulation to transfer facilities and customers in the very limited areas described in that Stipulation. In order to justify anticompetitive conduct, an ancillary restraint must be "subordinate and collateral to a separate, legitimate transaction . . . in the sense that it serves to make the main transaction more efficient in accomplishing its purpose. . . . If it is so broad that part of the restraint suppresses competition without creating efficiency, the restraint is, to that extent, not ancillary."²⁸

Suburban's interpretation of Paragraph A.10 creates a restraint on competition that is neither subordinate nor collateral to a separate, legitimate transaction. In particular, it does not make the main purpose of the transaction, in this case the transfer of specific groups of customers and related distribution assets and the modification of specific tariff provisions, more efficient in achieving its purpose. Instead, Suburban's interpretation creates a restraint that suppresses competition without creating efficiency and, therefore, is *not* an acceptable ancillary restraint. The Commission may, and should, consider this anti-competitive and unlawful consequence of Suburban's position in arriving at its decision regarding the proper interpretation of the Stipulation.

For the reasons provided above and in Columbia's Motion to Dismiss, Columbia respectfully requests that the Commission deny Suburban's Motion for Judgment on the Pleadings and dismiss the Complaint herein.

²⁸ *Rothery Storage & Van Co. v. Atlas Van Lines, Inc.*, 792 F.2d 210, 224 (D.D.C. 1986).

Respectfully submitted,

/s/ Daniel R. Conway

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Reply Memorandum and Memorandum Contra of Columbia Gas of Ohio, Inc. was served by regular U.S. mail and electronic mail upon the following counsel of record this 10th day of July, 2013:

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EXHIBIT A

May 23, 1994

Joint Petition, Application, and Stipulation and Recommendation

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

OHIO DOCKETING DIVISION
PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Self-
Complaint of Columbia Gas of
Ohio Concerning its Existing
Tariff Provisions.)

Case No. 93-1569-GA-SLF

In the Matter of the Joint
Petition of Columbia Gas of Ohio,
Inc. and Suburban Natural Gas
Company for Approval of an
Agreement to Transfer Certain
Facilities and Customers.)

Case No. 94-938-GA-ATR

In the Matter of the Joint
Application of Columbia Gas of
Ohio, Inc. and Suburban Natural
Gas Company for Approval of
Certain Tariff Modifications.)

Case No. 94-939-GA-ATA

JOINT PETITION, APPLICATION,
AND STIPULATION AND RECOMMENDATION OF
COLUMBIA GAS OF OHIO, INC. AND
SUBURBAN NATURAL GAS COMPANY

Now come Columbia Gas of Ohio, Inc. (hereinafter "Columbia") and Suburban Natural Gas Company (hereinafter "Suburban") (both of which are collectively referred to as "the Parties") and submit their Joint Application, Petition, and Stipulation and Recommendation (hereinafter jointly referred to as "the Stipulation") in the above-captioned proceedings.

WHEREAS, Columbia and Suburban are public utilities and natural gas companies, as defined by R. C. §§ 4905.02 and 4905.03, and are therefore subject to the regulatory jurisdiction

EXHIBIT A

THIS IS TO CERTIFY THAT THE MICROPHOTOGRAPH APPEARING ON THIS FILM STRIP IS AN ACCURATE AND COMPLETE REPRODUCTION OF A CASE FILE DOCUMENT DELIVERED IN THE REGULAR COURSE OF BUSINESS FOR PHOTOGRAPHING. CAMERA OPERATOR John M. Schaeffer DATE PROCESSED 5-24-84

of the Public Utilities Commission (hereinafter "Commission");
and

WHEREAS, Columbia filed a self-complaint with the Commission on September 17, 1993 in Case No. 93-1569-GA-SLF, pursuant to R. C. § 4905.26, seeking to resolve an existing controversy with Suburban involving competition between the Parties in certain areas of Ohio; and

WHEREAS, Suburban has been granted leave to intervene in, and is a party to, that proceeding; and

WHEREAS, Ohio Administrative Code Rule 4901-1-30 provides that any two or more parties may enter into a written stipulation concerning the issues presented in any Commission proceeding; and

WHEREAS, the Commission, through meetings conducted by its Attorney Examiner and Staff, has actively encouraged and actively supervised the Parties' resolution of their competitive dispute and rationalization of their distribution systems (in Delaware and Franklin Counties) in the public interest by means of agreement rather than adversary procedure; and

WHEREAS, the Parties are willing to agree, subject to the consent and approval of the Commission as more fully described herein, to (1) the transfer of certain customers and facilities between the Parties and certain ancillary covenants of the Parties arising out of, and directly related to, said transfer of customers and facilities, and (2) the modification of

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certain tariff provisions which are currently contained in the Parties' tariffs on file with this Commission; and

WHEREAS, said agreement, if approved by the Commission in the manner described herein, would resolve all contested issues in Case No. 93-1569-GA-SLF and terminate the proceedings in that case;

NOW, THEREFORE, the Parties hereby stipulate and recommend that the Commission:

(1) Grant the Joint Petition of the Parties for approval of the Agreement embodied in this Stipulation, pursuant to R. C. § 4905.48 (as more fully described in Section A, infra);

(2) Grant the Joint Application of the Parties to modify their existing tariff provisions, making certain findings of fact and conclusions of law (as more fully described in Section B, infra); and

(3) Approve the remaining portions of the Stipulation (as more fully described in Section C, infra).

A. Joint Petition for Approval of Agreement to Transfer Customers and Facilities

1. The Parties are willing to enter into an agreement as set forth herein to transfer certain customers and facilities located in the Counties of Franklin and Delaware, State of Ohio, subject to the active supervision, direction, and consent and approval of the Commission pursuant to R.C. § 4905.48.

2. Under the Agreement, Suburban would convey to Columbia all right, title, and interest in the following natural

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gas pipelines, along with any connected meters, regulators, appurtenant facilities, and any associated easements or rights-of-way or similar interests in real property on or through which such pipeline being transferred lies:

- a. That portion of the "ARCO" pipeline, a six-inch steel pipeline which is currently leased by Suburban from Atlantic Richfield Company, which lies in Franklin County south of Lazelle Road;
- b. That portion of Suburban's pipeline which runs west from the western boundary of the Olentangy High School property on Lewis Center Road across U. S. Route 23; then south along U. S. Route 23 to Home Road where the pipeline terminates; and
- c. Suburban's pipeline which runs west of the Norfolk & Western Railroad tracks along Cheshire Road to U. S. Route 23.

3. In connection with the sale and transfer of such pipelines and other facilities, Columbia would acquire the right and obligation to render natural gas service to all customers currently served by Suburban from such facilities, and Suburban would have no further rights or obligations in that regard. The names and addresses of such customers are set forth in Exhibit 1 hereto.

4. Under the Agreement, Columbia would convey to Suburban all right, title, and interest in the following natural gas pipelines, along with any connected meters, regulators, appurtenant facilities, and any associated easements or rights-of-way or similar interests in real property on or through which such pipeline being transferred lies:

- a. Columbia's pipeline on Orange Road commencing at the middle of the Norfolk & Western Railroad

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tracks and continuing east along Orange Road until the intersection of Orange Road and Old State Road; and

- b. Columbia's pipeline which runs from the intersection of Orange Road and Old State Road north along Old State Road to "The Shores" subdivision and beyond to its terminus, including all piping currently owned by Columbia within that subdivision.

5. Under the Agreement, Columbia would also sell to Suburban its pipeline which runs from the intersection of Lazelle Road and Sancus Boulevard north along Sancus Boulevard, then northwest along Polaris Parkway, then north along Old State Road, then west along Powell Road to the point at which the pipeline enters the Oak Creek Subdivision being developed by Borrer Corporation and known as the Callahan Farm Property (comprising approximately 150 acres and 385 lots and depicted in Exhibit 2 hereto) as well as the extension along Anvares Avenue. Suburban would then lease that pipeline back to Columbia for five years or until the Commission authorizes abandonment by Suburban of the line (pursuant to R.C. § 4905.21, as amended from time to time), whichever occurs later, for the sum of \$5500 per annum (such payments to continue for no more than 20 years notwithstanding a longer lease term) as full and complete consideration for allowing Columbia jointly to utilize the facilities to transport natural and/or synthetic gas from existing Columbia facilities along Lazelle Road to Columbia's pipeline facilities within the Oak Creek Subdivision, in such quantities and at such times as are necessary to serve customers within that Subdivision as it is

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built out. Columbia's payment to Suburban for the lease is to be offset against the net book cost of the pipeline and other facilities that Columbia is transferring to Suburban with the result that Columbia would make no other payment to Suburban. Suburban would be responsible for the operation, maintenance, and repair of this leased pipeline, and Columbia would have no right to make new taps on, or construct additional laterals from, that pipeline. To the extent that the natural gas facilities described above in this paragraph 5 become inadequate for the joint use by both Columbia and Suburban described herein, Columbia's use of the natural gas facilities to serve the Oak Creek Subdivision would have priority over Suburban's use of the natural gas facilities.

6. In connection with the sale and transfer of such pipelines and other facilities, except as otherwise provided herein, Suburban would acquire the right and obligation to render natural gas service to all customers currently served by Columbia from such facilities and Columbia would have no further rights or obligations in that regard. The names and addresses of such customers are set forth in Exhibit 3 hereto. Suburban will also assume Columbia's rights and obligations under a Refundable Line Relocation Agreement with N.P. Limited Partnership, a copy of which is annexed hereto as Exhibit 4. Suburban is to receive from Columbia the \$22,573 deposit paid to Columbia under said Refundable Line Relocation Agreement with N.P. Limited Partnership.

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7. In connection with the sale and transfer of such pipelines and other facilities, Suburban and Columbia would execute--and, as necessary, record--all documents necessary to affect the transfers of personal and real property described herein. In addition, Suburban and Columbia would transfer and deliver to each other all accounting records pertaining to the transfer of property, including documents establishing the net book cost of the assets exchanged and the accounting and billing records for all customers listed on Exhibits 1 and 3 hereto. All transfers described herein would be completed within 60 days from the Commission's approval of this Stipulation.

8. As consideration for the conveyance of pipelines and other facilities under the Agreement, each company would agree to pay the net book cost (i.e., original cost less accrued depreciation), as reflected on the selling company's books and records, for any facilities acquired from the other company under the Agreement. Columbia would receive title in fee simple to that portion of the ARCO line which is being transferred to Columbia pursuant to the Agreement. In addition, Suburban would pay to Columbia the sum of sixty thousand dollars (\$60,000) in ten (10) installments of \$6,000 each, with the first payment due within five (5) business days of the approval of this Stipulation by the Commission and the next nine payments due on the yearly anniversaries of that approval.

9. In connection with, and ancillary to, the conveyance and transfer of customers and facilities under the

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Agreement, each party would covenant that it would not compete with the other in the vicinity of the transferred facilities (as hereinafter defined) either by the retail sale of natural or synthetic gas, or by transporting natural or synthetic gas to any retail or end-use customer in the described area, for a period of 10 years from the date the Commission approves the Stipulation. Specifically, Columbia would agree, subject to the foregoing limitations, not to compete with Suburban in

- a. the area bounded by Lazelle Road on the south, the Norfolk & Western Railroad tracks on the west, Lewis Center Road on the north, and Interstate Route 71 on the east to its intersection with Bale-Kenyon Road and then by Alum Creek and Alum Creek Reservoir;
- b. the area consisting of that portion of the Village of Lewis Center lying west of the Norfolk & Western Railroad tracks; and
- c. the area bordered on the west by the western boundary of the Olentangy High School property on Lewis Center Road, on the south by Lewis Center Road, on the east by the Norfolk & Western Railroad tracks, and on the north by the northern boundary of the Olentangy High School property extended eastward to the Norfolk & Western Railroad tracks.

Suburban would agree not to compete with Columbia in

- d. all phases of the Oak Creek Subdivision, as defined herein in paragraph 5 of this Section and Exhibit 2; and
- e. the area bounded by the Norfolk & Western Railroad tracks on the east, Cheshire Road on the north, U.S. Route 23 on the west, and Lewis Center Road on the south, except as provided in subparts "b" and "c" of this paragraph.

In any instance in this Stipulation in which a road, highway or railroad track is given as a boundary, the middle of the road,

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highway or railroad track is considered to be the boundary, except in the case of Cheshire Road, in which case Columbia may serve customers on both sides of the road.

Notwithstanding the foregoing Columbia will be permitted to install in the area described in a. above a high pressure natural gas pipeline, the purpose of which is to be limited to transporting gas from existing and future sources of supply to various gas distribution systems owned and operated by Columbia in southern Delaware County and northern Franklin County, Ohio to points outside of said area unless Suburban agrees otherwise.

B. Joint Application for Approval of Certain Tariff Modifications

1. The Commission-approved tariffs of both Columbia and Suburban currently contain language which restricts the ability of said companies to provide or pay for, directly or indirectly, customer service lines, house piping, and appliances when competing with another regulated natural gas company which does not provide or pay for such items.

2. In Columbia's tariffs, this language appears in Section 23(b) (Fourth Revised Sheet No. 6); Section 28 (Fifth Revised Sheet No. 7), and Section 29 (Fifth Revised Sheet No. 7).

3. In Suburban's tariffs, this language appears in Section 23(b) (Section III, Original Sheet No. 1), Section 27 (Section III, Original Sheet No. 2), and Section 28 (Section III, Original Sheets Nos. 2 and 3).

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4. The Parties hereby jointly request authority to modify their tariffs so as to permit each of them to provide or pay for customer service lines, house piping, and appliances, irrespective of any competition from another regulated natural gas company. This application is made pursuant to R. C. § 4909.18, and the Parties represent that the requested tariff modifications will not result in an increase in any rate, joint rate, toll, classification, charge, or rental. Revised tariff sheets showing the proposed changes are attached hereto as Exhibit 5 for Columbia and Exhibit 6 for Suburban. The Parties request that the Commission authorize them to file such revised tariff sheets to become effective immediately, and recommend that the Commission expressly find that the Parties may lawfully provide or pay for customer service lines, house piping, and appliances as marketing incentives for builders, developers, and existing and prospective customers.

C. Additional Recommendations

1. The Parties stipulate and recommend that the Commission consolidate all three of the above-captioned proceedings for purposes of consideration and decision.

2. Suburban has installed and intends to install substantial natural gas facilities in the area of Delaware County bounded by the Norfolk & Western Railroad tracks on the west, Lewis Center Road on the south, Alum Creek Reservoir on the east and U.S. Route 36 and State Route 37 on the north. Columbia

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stipulates that it has no pipeline in that area and does not foresee expanding into said area of Delaware County in the foreseeable future. The parties submit that it would not serve either maximum efficiency or the public interest for

- (i) Suburban's investment to be stranded in this area and
- (ii) duplication of facilities to take place. Therefore, the parties recommend that the Commission issue findings of fact and conclusions of law, pursuant to its general powers set forth in R.C. §§ 4905.04, 4905.05, 4905.06, and any other relevant provision of law, finding that the public interest requires that Columbia not construct, own, finance or operate any pipe or other facilities for the sale or use of natural gas in said area unless Columbia first applies to the Commission for, and receives, a final order of the Commission, issued after hearing, determining that the pipe or other facilities would not constitute a wasteful duplication of facilities and would not result in any stranded investment or operating inefficiencies and is in the public interest. Columbia agrees that it will serve a copy of any such application on Suburban at the time of its filing with the Commission and will not oppose Suburban's participation as a party in such proceedings.

3. Columbia has installed and intends to install substantial natural gas facilities in the area of Delaware County bounded by the Norfolk & Western Railroad tracks on the east, Lewis Center Road on the north, U.S. Route 23 on the west and Lazelle Road on the south except to the extent set forth in

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¶ A.9. Suburban stipulates that it has no pipeline in that area and does not foresee expanding into said area of Delaware County in the foreseeable future. The parties submit that it would not serve either maximum efficiency or the public interest for (i) Columbia's investment to be stranded in this area and (ii) duplication of facilities to take place. Therefore, the parties recommend that the Commission issue findings of fact and conclusions of law, pursuant to its general powers set forth in R.C. §§ 4905.04, 4905.05, 4905.06, and any other relevant provision of law, finding that, except to the extent set forth in ¶ A.9., the public interest requires that Suburban not construct, own, finance or operate any pipe or other facilities for the sale or use of natural gas in said area unless Suburban first applies to the Commission for, and receives, a final order of the Commission, issued after hearing, that the pipe or other facilities would not constitute a wasteful duplication of facilities and would not result in any stranded investment or operating inefficiencies and is in the public interest. Suburban agrees that it will serve a copy of any such application on Columbia at the time of its filing with the Commission and will

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not oppose Columbia's participation as a party in such proceedings.

4. This Stipulation represents a compromise and settlement of any and all existing disputes between the parties concerning competition between said parties. As a result, upon approval of the Stipulation by the Commission, the parties agree to execute mutual releases and covenants not to sue, in the forms attached hereto as Exhibit 7.

5. If the Commission rejects any part or all of this Stipulation, the Parties agree that the Stipulation shall be null and void and will be withdrawn, and shall not constitute any part of the record in this proceeding, nor shall it be used for any purpose whatsoever by any party to this or any other proceeding.

6. The undersigned respectfully join in requesting that the Commission approve the Joint Stipulation and Recommendation of the Parties, in the manner described above.

7. The Commission shall retain continuing jurisdiction in this matter to supervise and assure the parties' compliance with this Joint Stipulation and Recommendation of the Parties.

Agreed this _____ day of May, 1994.

COLUMBIA GAS OF OHIO, INC.
an Ohio corporation,

SUBURBAN NATURAL GAS COMPANY,
an Ohio corporation,

By: Richard J. Gordon
Richard J. Gordon

By: _____

Its President

Its _____

Date: May 20, 1994

Date: _____

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Stuart W. Gold

Stuart W. Gold
CRAVATH, SWAIN & MOORE
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019-7475

Attorneys for
COLUMBIA GAS OF OHIO, INC.

William R. Case

William R. Case
THOMPSON, HINE & FLORY
One Columbus
10 West Broad Street
Columbus, Ohio 43215

Attorneys for
SUBURBAN NATURAL GAS COMPANY

Verification

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State of Ohio)
County of Delaware) ss

Before me, a notary public in and for the State of Ohio, personally appeared David L. Pemberton, President, and Joan B. Rood, Secretary, who, having first been sworn, deposed and said that they are the President and Secretary, respectively, of Suburban Natural Gas Company, and that they have read the portions of the foregoing Stipulation entitled "Joint Petition for Approval of Agreement to Transfer Customers and Facilities" and "Joint Application for Approval of Certain Tariff Modifications," and that the statements set forth therein are true and accurate to the best of their knowledge and belief.

Sworn to and subscribed in my presence this _____ day of May, 1994.

Notary Public

David L. Pemberton, President

Joan B. Rood, Secretary

EXHIBIT B

September 30, 1994

Amended Joint Petition, Application, and Stipulation and Recommendation

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

RECEIVED
SEP 30 1994
DOCKETING DIVISION
PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Self-Complaint of Columbia Gas of Ohio Concerning its Existing Tariff Provisions.) Case No. 93-1569-GA-SLF

In the Matter of the Joint Petition of Columbia Gas of Ohio, Inc. and Suburban Natural Gas Company for Approval of an Agreement to Transfer Certain Facilities and Customers.) Case No. 94-938-GA-ATR

In the Matter of the Joint Application of Columbia Gas of Ohio, Inc. and Suburban Natural Gas Company for Approval of Certain Tariff Modifications.) Case No. 94-939-GA-ATA

AMENDED JOINT PETITION, APPLICATION,
AND STIPULATION AND RECOMMENDATION OF
COLUMBIA GAS OF OHIO, INC. AND
SUBURBAN NATURAL GAS COMPANY

Now come Columbia Gas of Ohio, Inc. (hereinafter "Columbia") and Suburban Natural Gas Company (hereinafter "Suburban") (both of which are collectively referred to as "the Parties") and submit their Amended Joint Petition, Application, and Stipulation and Recommendation (hereinafter jointly referred to as "the Stipulation") in the above-captioned proceedings.

WHEREAS, Columbia and Suburban are public utilities and natural gas companies, as defined by R. C. §§ 4905.02 and 4905.03, and are therefore subject to the regulatory jurisdiction

EXHIBIT B

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of the Public Utilities Commission (hereinafter "Commission");
and

WHEREAS, Columbia filed a self-complaint with the Commission on September 17, 1993 in Case No. 93-1569-GA-SLF, pursuant to R. C. § 4905.26, seeking to resolve an existing controversy with Suburban involving competition between the Parties in certain areas of Ohio; and

WHEREAS, Suburban has been granted leave to intervene in, and is a party to, that proceeding; and

WHEREAS, Ohio Administrative Code Rule 4901-1-30 provides that any two or more parties may enter into a written stipulation concerning the issues presented in any Commission proceeding; and

WHEREAS, the Commission, through meetings conducted by its Attorney Examiner and Staff, has actively supervised the Parties' resolution of their competitive dispute and rationalization of their distribution systems (in Delaware and Franklin Counties) in the public interest by means of agreement rather than adversary procedure; and

WHEREAS, the Parties are willing to agree, subject to the consent and approval of the Commission as more fully described herein, to (1) the transfer of certain customers and facilities between the Parties and (2) the modification of certain tariff provisions which are currently contained in the Parties' tariffs on file with this Commission; and

WHEREAS, said agreement, if approved by the Commission in the manner described herein, would resolve all contested issues in Case No. 93-1569-GA-SLF and terminate the proceedings in that case;

NOW, THEREFORE, the Parties hereby stipulate and recommend that the Commission:

(1) Grant the Joint Petition of the Parties for approval of the Agreement embodied in this Stipulation, pursuant to R. C. § 4905.48 (as more fully described in Section A, infra); and

(2) Grant the Joint Application of the Parties to modify their existing tariff provisions.

A. Amended Joint Petition for Approval of Agreement to Transfer Customers and Facilities

1. The Parties are willing to enter into an agreement as set forth herein to transfer certain customers and facilities located in the Counties of Franklin and Delaware, State of Ohio, subject to the active supervision, direction, and consent and approval of the Commission pursuant to R.C. § 4905.48.

2. Under the Agreement, Suburban would convey to Columbia all right, title, and interest in the following natural gas pipelines, along with any connected meters, regulators, appurtenant facilities, and any associated easements or rights-

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of-way or similar interests in real property on or through which such pipeline being transferred lies:

- a. That portion of the "ARCO" pipeline, a six-inch steel pipeline which is currently leased by Suburban from Atlantic Richfield Company, which lies in Franklin County south of Lazelle Road;
 - b. That portion of Suburban's pipeline which runs west from the western boundary of the Olentangy High School property on Lewis Center Road across U. S. Route 23; then south along U. S. Route 23 to Home Road where the pipeline terminates; and
 - c. Suburban's pipeline which runs west of the Norfolk & Western Railroad tracks along Cheshire Road to U. S. Route 23.
3. In connection with the sale and transfer of such pipelines and other facilities, Columbia would acquire the right and obligation to render natural gas service to all customers currently served by Suburban from such facilities, and Suburban would have no further rights or obligations in that regard. The names and addresses of such customers are set forth in Exhibit 1 hereto.
4. Under the Agreement, Columbia would convey to Suburban all right, title, and interest in the following natural gas pipelines, along with any connected meters, regulators, appurtenant facilities, and any associated easements or rights-of-way or similar interests in real property on or through which such pipeline being transferred lies:
- a. Columbia's pipeline on Orange Road commencing at the middle of the Norfolk & Western Railroad tracks and continuing east along Orange Road until

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the intersection of Orange Road and Old State Road; and

- b. Columbia's pipeline which runs from the intersection of Orange Road and Old State Road north along Old State Road to "The Shores" subdivision and beyond to its terminus, including all piping currently owned by Columbia within that subdivision.

5. Under the Agreement, Columbia would also sell to Suburban its pipeline which runs from the intersection of Lazelle Road and Sancus Boulevard north along Sancus Boulevard, then northwest along Polaris Parkway, then north along Old State Road, then west along Powell Road to the point at which the pipeline enters the Oak Creek Subdivision being developed by Borror Corporation and known as the Callahan Farm Property (comprising approximately 150 acres and 385 lots and depicted in Exhibit 2 hereto) as well as the extension along Antares Avenue. Suburban would then lease that pipeline back to Columbia for five years or until the Commission authorizes abandonment by Suburban of the line (pursuant to R.C. § 4905.21, as amended from time to time), whichever occurs later, for the sum of \$5500 per annum for no more than 20 years as full and complete consideration for allowing Columbia jointly to utilize the facilities to transport natural and/or synthetic gas from existing Columbia facilities along Lazelle Road to Columbia's pipeline facilities within the Oak Creek Subdivision, in such quantities and at such times as are necessary to serve customers within that Subdivision as it is built out. Columbia's payment to Suburban for the lease is to be

offset against the net book cost of the pipeline and other facilities that Columbia is transferring to Suburban with the result that Columbia would make no other payment to Suburban. Suburban would be responsible for the operation, maintenance, and repair of this leased pipeline, and Columbia would have no right to make new taps on, or construct additional laterals from, that pipeline. To the extent that the natural gas facilities described above in this paragraph 5 become inadequate for the joint use by both Columbia and Suburban described herein, Columbia's use of the natural gas facilities to serve the Oak Creek Subdivision would have priority over Suburban's use of the natural gas facilities.

5. In connection with the sale and transfer of such pipelines and other facilities, except as otherwise provided herein, Suburban would acquire the right and obligation to render natural gas service to all customers currently served by Columbia from such facilities and Columbia would have no further rights or obligations in that regard. The names and addresses of such customers are set forth in Exhibit 3 hereto. Suburban will also assume Columbia's rights and obligations under a Refundable Line Relocation Agreement with N.P. Limited Partnership, a copy of which is annexed hereto as Exhibit 4. Suburban is to receive from Columbia the balance remaining of a \$22,573 deposit, specifically \$____, paid to Columbia under said Refundable Line Relocation Agreement with N.P. Limited Partnership.

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7. In connection with the sale and transfer of such pipelines and other facilities, Suburban and Columbia would execute--and, as necessary, record--all documents necessary to effect the transfers of personal and real property described herein. In addition, Suburban and Columbia would transfer and deliver to each other all accounting records pertaining to the transfer of property, including documents establishing the net book cost of the assets exchanged and the accounting and billing records for all customers listed on Exhibits 1 and 3 hereto. All transfers described herein would be completed within 60 days from the Commission's approval of this Stipulation.

8. As consideration for the conveyance of pipelines and other facilities under the Agreement, each company would agree to pay the net book cost (i.e., original cost less accrued depreciation), as reflected on the selling company's books and records, for any facilities acquired from the other company under the Agreement. Columbia would receive title in fee simple to that portion of the ARCO line which is being transferred to Columbia pursuant to the Agreement. In addition, Suburban would pay to Columbia the sum of sixty thousand dollars (\$60,000) in ten (10) installments of \$6,000 each, with the first payment due within five (5) business days of the approval of this Stipulation by the Commission and the next nine payments due on the yearly anniversaries of that approval.

9. In any instance in this stipulation in which a road, highway or railroad track is given as a boundary, the middle of the road, highway or railroad track is considered to be the boundary, except in the case of Cheshire Road, in which case Columbia may serve customers on both sides of the road.

B. Amended Joint Application for Approval of Certain Tariff Modifications

1. The Commission-approved tariffs of both Columbia and Suburban currently contain language which restricts the ability of said companies to provide or pay for, directly or indirectly, customer service lines, house piping, and appliances when competing with another regulated natural gas company which does not provide or pay for such items.

2. In Columbia's tariffs, this language appears in Section 23(b) (Fourth Revised Sheet No. 6); Section 28 (Fifth Revised Sheet No. 7), and Section 29 (Fifth Revised Sheet No. 7).

3. In Suburban's tariffs, this language appears in Section 23(b) (Section III, Original Sheet No. 1), Section 27 (Section III, Original Sheet No. 2), and Section 28 (Section III, Original Sheets Nos. 2 and 3).

4. The Parties hereby jointly request authority to modify their tariffs regarding customer service lines, house piping, and appliances. This application is made pursuant to R. C. § 4909.18, and the Parties represent that the requested tariff modifications will not result in an increase in any rate,

joint rate, toll, classification, charge, or rental. Revised tariff sheets showing the proposed changes are attached hereto as Exhibit 5 for Columbia and Exhibit 6 for Suburban. The Parties request that the Commission authorize them to file such revised tariff sheets to become effective immediately.

C. Miscellaneous Recommendations

1. This Stipulation represents a compromise and settlement of any and all existing dispute between the parties concerning competition between said parties. As a result, upon approval of the Stipulation by the Commission, the parties agree to execute mutual releases and covenants not to sue, in the forms attached hereto as Exhibit 7.

2. If the Commission rejects any part or all of this Stipulation, the Parties agree that the Stipulation shall be null and void and will be withdrawn, and shall not constitute any part of the record in this proceeding, nor shall it be used for any purpose whatsoever by any party to this or any other proceeding.

3. The undersigned respectfully join in requesting that the Commission approve the Joint Stipulation and Recommendation of the Parties, in the manner described above.

4. The Commission shall retain continuing jurisdiction in this matter to supervise and assure the parties' compliance with this Joint Stipulation and Recommendation of the Parties.

Agreed this 30th day of September, 1994.

COLUMBIA GAS OF OHIO, INC.,
an Ohio corporation,

By: Andrew R. Dunkel

Its General Counsel

Date: Sept. 30, 1994

Stuart W. Gold
Stuart W. Gold ACK
CRAVATH, SWAINE & MOORE
Worldwide Plaza
825 Eighth Avenue
New York, New York 10019-7475

Attorneys for
COLUMBIA GAS OF OHIO, INC.

SUBURBAN NATURAL GAS COMPANY,
an Ohio corporation,

By: David H. Pemberton

Its President

Date: September 30, 1994

William R. Case
William R. Case CP
THOMPSON, HINE & FLORY
One Columbus
10 West Broad Street
Columbus, Ohio 43215

Attorneys for
SUBURBAN NATURAL GAS COMPANY

EXHIBIT C

**Suburban Natural Gas Co.'s July 6, 1995, Letter
to Columbia Gas of Ohio, Inc.**

SUBURBAN NATURAL GAS COMPANY



274 E. FRONT STREET, P.O. BOX 130
CYGNET, OHIO 43413-0130
(419) 655-2345

DAVID L. PEMBERTON, SR.
PRESIDENT

2626 LEWIS CENTER ROAD
LEWIS CENTER, OHIO 43035-9206
(614) 548-2450

RECEIVED

July 6, 1995

JUL 26 1995

Andrew J. Sonderman

7/25/95

Andy,

I'm available Thurs.

p.m. or Friday a.m. to discuss
this. I would prefer my Delaware
office. Please confirm with
Margie.

Dave

P.S. I have not discussed
renewal of this with my attorney.

Andrew J. Sonderman, Esquire
Columbia Gas of Ohio, Inc.
200 Civic Center Drive
P. O. Box 117
Columbus, OH 43216-0117

Dear Andy:

In a further effort to settle and resolve the issues involved in the pending PUCO complaint case, I would suggest the following amendments to the pending stipulation:

1. We would eliminate entirely the Ancillary Covenants And Agreement.
2. Suburban would retain the Cheshire Road line west of the N&W Railroad tracks.
3. Any new facilities or customers added while the current stipulation has been pending will be exchanged with no net increase in cost to either company. If the previous net book value differential has increased or decreased, such increase or decrease can be offset by increasing or decreasing the rent payable on the Oak Creek line.
4. The restrictive language in our respective tariffs would be eliminated, but Suburban would not release its right to bring suit for future activities in an expanded area bounded on the south by Lazelle Road, on the west by U.S. Route 23, on the east by Interstate Route 71 and Alum Creek Reservoir, and on the north by U.S. Route 36 and State Route 37.
5. We would want to retain the provision regarding Columbia's proposed new supply line and confirm Suburban's ability to obtain service from same subject to appropriate rates and service conditions.

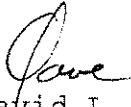
EXHIBIT C

Andrew J. Sonderman, Esquire
Page 2
July 6, 1995

I am submitting herewith for your review a Second Amended Joint Petition, Application, And Stipulation And Recommendation which contains the changes necessary to carry into effect the foregoing proposal. Obviously, Exhibits 1 and 3 will have to be updated. To avoid further complications, I would suggest that we move rapidly to finalize and file the enclosed as soon as possible and simultaneously meet with Commissioners Glazer and Fanelly and appropriate staff to apprize them of our new proposal.

Thank you in advance for your attention to this matter. Kindest regards.

Very truly yours,


David L. Pemberton
President

DLP:mew
Enclosure

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Self-)
Complaint of Columbia Gas of)
Ohio Concerning its Existing) Case No. 93-1569-GA-SLF
Tariff Provisions.)

In the Matter of the Joint)
Petition of Columbia Gas of)
Ohio, Inc. and Suburban Natural)
Gas Company for Approval of an) Case No. 94-938-GA-ATR
Agreement to Transfer Certain)
Facilities and Customers.)

In the Matter of the Joint)
Application of Columbia Gas of)
Ohio, Inc. and Suburban Natural) Case No. 94-939-GA-ATA
Gas Company for Approval of)
Certain Tariff Modifications.)

**SECOND AMENDED JOINT PETITION, APPLICATION,
AND STIPULATION AND RECOMMENDATION OF
COLUMBIA GAS OF OHIO, INC. AND
SUBURBAN NATURAL GAS COMPANY**

Now come COLUMBIA GAS OF OHIO, INC. (hereinafter "Columbia") and SUBURBAN NATURAL GAS COMPANY (hereinafter "Suburban") (both of which are collectively referred to as "the Parties") and submit their Second Amended Joint Petition, Application, And Stipulation And Recommendation (hereinafter jointly referred to as "the Stipulation") in the above-captioned proceedings.

WHEREAS, Columbia and Suburban are public utilities and natural gas companies, as defined by R.C. §§4905.02 and 4905.03, and are therefore subject to the regulatory jurisdiction of the Public Utilities Commission (hereinafter "Commission"); and

WHEREAS, Columbia filed a self-complaint with the Commission on September 17, 1993 in Case No. 93-1569-GA-SLF, pursuant to R.C. §4905.26, seeking to resolve an existing controversy with Suburban involving competition between the Parties in certain areas of Ohio; and

WHEREAS, Suburban has been granted leave to intervene in, and is a party to, that proceeding; and

WHEREAS, Ohio Administrative Code Rule 4901-1-30 provides that any two or more parties may enter into a written stipulation concerning the issues presented in any Commission proceeding; and

WHEREAS, the Commission, through meetings conducted by its Attorney Examiner and Staff, has actively supervised the Parties' resolution of their competitive dispute and rationalization of their distribution systems (in Delaware and Franklin Counties) in the public interest by means of agreement rather than adversary procedure; and

WHEREAS, the Parties are willing to agree, subject to the consent and approval of the Commission as more fully described herein, to (1) the transfer of certain customers and facilities between the Parties and (2) the modification of certain tariff provisions which are currently contained in the Parties' tariffs on file with this Commission; and

WHEREAS, said agreement, if approved by the Commission in the manner described herein, would resolve all contested issues in Case No. 93-1569-GA-SLF and terminate the proceedings in that case.

NOW, THEREFORE, the Parties hereby stipulate and recommend that the Commission:

- (1) Grant the Joint Petition of the Parties for approval of the Agreement embodied in this Stipulation, pursuant to R.C. §4905.48 (as more fully described in Section A, infra); and
- (2) Grant the Joint Application of the Parties to modify their existing tariff provisions.

A. SECOND AMENDED JOINT PETITION FOR APPROVAL OF AGREEMENT TO TRANSFER CUSTOMERS AND FACILITIES

1. The parties are willing to enter into an agreement as set forth herein to transfer certain customers and facilities located in the Counties of Franklin and Delaware, State of Ohio, subject to the active supervision, direction, and consent and approval of the Commission pursuant to R.C. §4905.48.

2. Under the Agreement, Suburban would convey to Columbia all right, title, and interest in the following natural gas pipelines, along with any connected meters, regulators, appurtenant facilities, and any associated easements or rights-of-way or similar interests in real property on or through which such pipeline being transferred lies:

- a. That portion of the "ARCO" pipeline, a six-inch steel pipeline which is currently leased by Suburban from Atlantic Richfield Company, which lies in Franklin County south of Lazelle Road; and
- b. That portion of Suburban's pipeline which runs west from the western boundary of

the Olentangy High School property on Lewis Center Road across U.S. Route 23; then south along U.S. Route 23 to Home Road which the pipeline terminates.

3. In connection with the sale and transfer of such pipelines and other facilities, Columbia would acquire the right and obligation to render natural gas service to all customers currently served by Suburban from such facilities, and Suburban would have no further rights or obligations in that regard. The names and addresses of such customers are set forth in Exhibit 1 hereto.

4. Under the Agreement, Columbia would convey to Suburban all right, title, and interest in the following natural gas pipelines, along with any connected meters, regulators, appurtenant facilities, and any associated easements or rights-of-way or similar interests in real property on or through which such pipeline being transferred lies:

- a. Columbia's pipeline on Orange Road commencing at the middle of the Norfolk & Western Railroad tracks and continuing east along Orange Road until the intersection of Orange Road and Old State Road; and
- b. Columbia's pipeline which runs from the intersection of Orange Road and Old State Road north along Old State Road to "The Shores" Subdivision and beyond to its terminus, including all piping currently owned by Columbia within that subdivision.

5. Under the Agreement, Columbia would also sell to Suburban its pipeline which runs from the intersection of Lazelle Road and Sancus Boulevard north along Sancus Boulevard, then northwest along

Polaris Parkway, then north along Old State Road, then west along Powell Road to the point at which the pipeline enters the Oak Creek Subdivision being developed by Borrer Corporation and known as the Callahan Farm Property (comprising approximately 150 acres and 385 lots and depicted in Exhibit 2 hereto), as well as the extension along Gemini Parkway and Antares Avenue. Suburban would then lease that pipeline back to Columbia for five years or until the Commission authorizes abandonment by Suburban of the line (pursuant to R.C. §4905.21, as amended from time to time), whichever occurs later, for the sum of \$5,500 per annum for no more than 20 years as full and complete consideration for allowing Columbia jointly to utilize the facilities to transport natural and/or synthetic gas from existing Columbia facilities along Lazelle Road to Columbia's pipeline facilities within the Oak Creek Subdivision, in such quantities and at such times as are necessary to serve customers within that subdivision as it is built out. Columbia's payment to Suburban for the lease is to be offset against the net book cost of the pipeline and other facilities that Columbia is transferring to Suburban with the result that Columbia would make no other payment to Suburban. Suburban would be responsible for the operation, maintenance, and repair of this leased pipeline, and Columbia would have no right to make new taps on, or construct additional laterals from, that pipeline. To the extent that the natural gas facilities described above in this Paragraph 5 become inadequate for the joint use by both Columbia and Suburban described herein, Columbia's use of the natural gas facilities to serve the Oak Creek Subdivision

would have priority over Suburban's use of the natural gas facilities.

6. In connection with the sale and transfer of such pipelines and other facilities, except as otherwise provided herein, Suburban would acquire the right and obligation to render natural gas service to all customers currently served by Columbia from such facilities and Columbia would have no further rights or obligations in that regard. The names and addresses of such customers are set forth in Exhibit 3 hereto. Suburban will also assume Columbia's rights and obligations under a Refundable Line Relocation Agreement with N.P. Limited Partnership, a copy of which is annexed hereto as Exhibit 4. Suburban is to receive from Columbia the balance remaining of a \$22,573 deposit, specifically \$14,286.02, paid to Columbia under said Refundable Line Relocation Agreement with N.P. Limited Partnership.

7. In connection with the sale and transfer of such pipelines and other facilities, Suburban and Columbia would execute--and, as necessary, record--all documents necessary to effect the transfers of personal and real property described herein. In addition, Suburban and Columbia would transfer and deliver to each other all accounting records pertaining to the transfer of property, including documents establishing the net book cost of the assets exchanged and the accounting and billing records for all customers listed on Exhibits 1 and 3 hereto. All transfers described herein would be completed within 60 days from the Commission's approval of this Stipulation.

8. As consideration for the conveyance of pipelines and other facilities under the Agreement, each company would agree to pay the net book cost (i.e., original cost less accrued depreciation), as reflected on the selling company's books and records, for any facilities acquired from the other company under the Agreement. Columbia would receive title in fee simple to that portion of the ARCO line which is being transferred to Columbia pursuant to the Agreement. In addition, Suburban would pay to Columbia the sum of Sixty Thousand Dollars (\$60,000) in ten (10) installments of Six Thousand Dollars (\$6,000) each, with the first payment due within five (5) business days of the approval of this Stipulation by the Commission and the next nine (9) payments due on the yearly anniversaries of that approval.

9. In any instance in this Stipulation in which a road, highway, or railroad track is given as a boundary, the middle of the road, highway, or railroad track is considered to be the boundary. °

10. Nothing in this Stipulation shall be construed as preventing Columbia from installing, in any of the areas described, a high-pressure natural gas pipeline, the purpose of which is to be limited to transporting gas from existing and future sources of supply to various gas distribution systems owned and operated by Columbia in southern Delaware and northern Franklin Counties to points outside of said areas, which pipeline shall also be available, subject to appropriate rate and service conditions, as a supply source for Suburban's system.

B. SECOND AMENDED JOINT APPLICATION FOR APPROVAL OF CERTAIN
TARIFF MODIFICATIONS

1. The Commission-approved tariffs of both Columbia and Suburban currently contain language which restricts the ability of said companies to provide or pay for, directly or indirectly, customer service lines, house piping, and appliances when competing with another regulated natural gas company which does not provide or pay for such items.

2. In Columbia's tariffs, this language appears in Section 23(b) (Fourth Revised Sheet No. 6), Section 28 (Fifth Revised Sheet No. 7), and Section 29 (Fifth Revised Sheet No. 7).

3. In Suburban's tariffs, this language appears in Section 23(b) (Section III, Original Sheet No. 1), Section 27 (Section III, Original Sheet No. 2), and Section 28 (Section III, Original Sheet Nos. 2 and 3).

4. The Parties hereby jointly request authority to modify their tariffs regarding customer service lines, house piping, and appliances. This application is made pursuant to R.C. §4909.18, and the Parties represent that the requested tariff modifications will not result in an increase in any rate, joint rate, toll, classification, charge, or rental. Revised tariff sheets showing the proposed changes are attached hereto as Exhibit 5 for Columbia and Exhibit 6 for Suburban. The Parties request that the Commission authorize them to file such revised tariff sheets to become effective immediately.

C. MISCELLANEOUS RECOMMENDATIONS

1. This Stipulation represents a compromise and settlement of any and all existing disputes between the Parties concerning competition between said Parties. As a result, upon approval of the Stipulation by the Commission, the Parties agree to execute mutual releases and covenants not to sue, in the forms attached hereto as Exhibit 7.

2. If the Commission rejects any part or all of this Stipulation, the Parties agree that the Stipulation shall be null and void and will be withdrawn and shall not constitute any part of the record in this proceeding, nor shall it be used for any purpose whatsoever by any party to this or any other proceeding.

3. The undersigned respectfully join in requesting that the Commission approve the Joint Stipulation and Recommendation of the Parties in the manner described above.

4. The Commission shall retain continuing jurisdiction in this matter to supervise and assure the Parties' compliance with this Joint Stipulation and Recommendation of the Parties.

Agreed this _____ day of _____, 1995.

COLUMBIA GAS OF OHIO, INC.,
an Ohio corporation

SUBURBAN NATURAL GAS COMPANY,
an Ohio corporation

By _____

By _____

Its _____

Its _____

Date _____

Date _____

VERIFICATION

STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

Before me, a notary public in and for the State of Ohio, personally appeared Richard J. Gordon and Andrew J. Sonderman, who, having first been sworn, deposed and said that they are the President and Secretary, respectively, of Columbia Gas of Ohio, Inc., that they have read the portions of the foregoing document entitled "SECOND AMENDED JOINT PETITION, APPLICATION, AND STIPULATION AND RECOMMENDATION OF COLUMBIA GAS OF OHIO, INC. AND SUBURBAN NATURAL GAS COMPANY", and that the statements set forth therein are true and accurate to the best of their knowledge and belief.

Richard J. Gordon, President

Andrew J. Sonderman, Secretary

Sworn to and subscribed in my presence this _____ day of _____, 1995.

Notary Public

VERIFICATION

STATE OF OHIO)
) ss:
COUNTY OF DELAWARE)

Before me, a notary public in and for the State of Ohio, personally appeared David L. Pemberton and Joan B. Rood, who, having first been sworn, deposed and said that they are the President and Secretary, respectively, of Suburban Natural Gas Company, that they have read the portions of the foregoing document entitled "SECOND AMENDED JOINT PETITION, APPLICATION, AND STIPULATION AND RECOMMENDATION OF COLUMBIA GAS OF OHIO, INC. AND SUBURBAN NATURAL GAS COMPANY", and that the statements set forth therein are true and accurate to the best of their knowledge and belief.

David L. Pemberton, President

Joan B. Rood, Secretary

Sworn to and subscribed in my presence this _____ day of _____, 1995.

Notary Public

RELEASE AND COVENANT NOT TO SUE

TO ALL WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT SUBURBAN NATURAL GAS COMPANY, 274 East Front Street, Cygnet, Ohio, on behalf of itself and its controlled affiliates, divisions, members, officers, directors, shareholders, agents, and attorneys (and the respective predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing) (herein separately and collectively, the "Releasor"), in consideration of good and valuable consideration received from COLUMBIA GAS OF OHIO, INC., 200 Civic Center Drive, Columbus, Ohio ("Columbia"), the receipt and sufficiency of which is hereby acknowledged, hereby releases and forever discharges Columbia and its controlled affiliates, divisions, members, officers, directors, shareholders, agents, and attorneys (and the respective predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing) (herein separately and collectively, the "Releasee") from any and all claims, causes of action and suits, obligations, or liabilities of any nature whatsoever, in law or in equity, costs, expenses, or compensation for or on account of any damages, loss, or injury, whether now known or unknown, which the Releasor ever had or now has from the beginning of the world to the execution date of this Release.

Releasor further covenants and agrees that it will forever refrain from instituting, reinstating, or prosecuting any action or proceeding against Releasee upon any claims, causes of action and suits, obligations, or liabilities of any nature whatsoever, in law

or equity, costs, expenses, or compensation for any damages, loss, or injury, whether or not now or hereafter known, suspected, or claimed which Releasor ever hereafter can, shall, or may have or allege against Releasee constituting, relating to, or based on (1) the Buckeye Builder program, the Scarlet Builder program, the Gray Builder program, the High Volume Single Family Builder program, the Mark of Efficiency program, or any program substantially similar to such programs offered by Releasee, and (2) the direct or indirect payments for customer service lines, house piping, and appliances (collectively, the "Settled Claims") forevermore after the date of this Release, except any claims that might be asserted against Releasee in common law tort (other than a claim alleging unfair competition, which does not include interference with contractual relations or prospective business relations).

Notwithstanding the foregoing, this Release and Covenant Not to Sue shall not be asserted as a defense to or bar against any claim, cause of action, or suite by Releasor against Releasee involving activities conducted within the area of Delaware County bounded by U.S. Route 23 on the west, Lazelle Road on the south, Alum Creek Reservoir and Interstate 71 on the east, and U.S. Route 36 and State Route 37 on the north.

Releasor represents and warrants that it has duly considered, approved, and authorized the Second Amended Joint Petition, Application, and Stipulation and Recommendation of Columbia Gas of Ohio, Inc. and Suburban Natural Gas Company dated _____,

1995 (the "Agreement") and this Release and Covenant Not to Sue, has taken all necessary actions for the Agreement and this Release and Covenant Not to Sue to be valid and binding and warrants that the execution of the Agreement and this Release and Covenant Not to Sue by the undersigned signatories on behalf of Suburban Natural Gas Company binds and commits Suburban Natural Gas Company and its controlled affiliates, divisions, officers, directors, employees, agents, and attorneys (and the predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing).

Releasor represents and warrants that Releasor has not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand, or cause of action of any party thereof relating to any matter covered by this Release and Covenant Not to Sue and agrees to indemnify Releasee against any and all claims by third persons resulting from such sale, assignment, transfer, conveyance, or other disposition.

Nothing in this Release and Covenant Not to Sue affects or otherwise alters any liability of any party for any breach of the Agreement.

This Release and Covenant Not to Sue shall not be altered or modified in any way except by written consent of authorized representatives of Releasor and Releasee.

In the event that the Public Utilities Commission of Ohio fails to approve the Agreement or any part thereof, this Release and Covenant Not to Sue shall be null and void.

This Release and Covenant Not to Sue shall be governed by the laws of the State of Ohio.

IN WITNESS WHEREOF, Releasor has caused this Release and Covenant Not to Sue to be executed by its duly authorized officers as of _____, 1995.

SUBURBAN NATURAL GAS COMPANY

By: _____
David L. Pemberton, President

RELEASE AND COVENANT NOT TO SUE

TO ALL WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT COLUMBIA GAS OF OHIO, INC., 200 Civic Center Drive, Columbus, Ohio, on behalf of itself and its controlled affiliates, divisions, members, officers, directors, shareholders, agents, and attorneys (and the respective predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing) (herein separately and collectively, the "Releasor"), in consideration of good and valuable consideration received from SUBURBAN NATURAL GAS COMPANY, 274 East Front Street, Cygnet, Ohio ("Suburban"), the receipt and sufficiency of which is hereby acknowledged, hereby releases and forever discharges Suburban and its controlled affiliates, divisions, members, officers, directors, shareholders, agents, and attorneys (and the respective predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing) (herein separately and collectively, the "Releasee") from any and all claims, causes of action and suits, obligations, or liabilities of any nature whatsoever, in law or in equity, costs, expenses, or compensation for or on account of any damages, loss, or injury, whether now known or unknown, which the Releasor ever had or now has from the beginning of the world to the execution date of this Release.

Releasor further covenants and agrees that it will forever refrain from instituting, reinstating, or prosecuting any action or proceeding against Releasee upon any claims, causes of action and suits, obligations, or liabilities of any nature whatsoever, in law

or equity, costs, expenses, or compensation for any damages, loss, or injury, whether or not now or hereafter known, suspected, or claimed which Releasor ever hereafter can, shall, or may have or allege against Releasee constituting, relating to, or based on (1) Columbia's Buckeye Builder program, the Scarlet Builder program, the Gray Builder program, the High Volume Single Family Builder program, the Mark of Efficiency program, or any program substantially similar to such programs offered by Releasee, and (2) the direct or indirect payments for customer service lines, house piping, and appliances (collectively, the "Settled Claims") forevermore after the date of this Release, except any claims that might be asserted against Releasee in common law tort (other than a claim alleging unfair competition, which does not include interference with contractual relations or prospective business relations).

Releasor represents and warrants that it has duly considered, approved, and authorized the Second Amended Joint Petition, Application, and Stipulation and Recommendation of Columbia Gas of Ohio, Inc. and Suburban Natural Gas Company dated _____, 1995 (the "Agreement") and this Release and Covenant Not to Sue, has taken all necessary actions for the Agreement and this Release and Covenant Not to Sue to be valid and binding and warrants that the execution of the Agreement and this Release and Covenant Not to Sue by the undersigned signatories on behalf of Columbia Gas of Ohio, Inc. binds and commits Columbia Gas of Ohio, Inc. and its controlled affiliates, divisions, officers, directors, employees,

agents, and attorneys (and the predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing).

Releasor represents and warrants that Releasor has not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand, or cause of action of any party thereof relating to any matter covered by this Release and Covenant Not to Sue and agrees to indemnify Releasee against any and all claims by third persons resulting from such sale, assignment, transfer, conveyance, or other disposition.

Nothing in this Release and Covenant Not to Sue affects or otherwise alters any liability of any party for any breach of the Agreement.

This Release and Covenant Not to Sue shall not be altered or modified in any way except by written consent of authorized representatives of Releasor and Releasee.

In the event that the Public Utilities Commission of Ohio fails to approve the Agreement or any part thereof, this Release and Covenant Not to Sue shall be null and void.

This Release and Covenant Not to Sue shall be governed by the laws of the State of Ohio.

IN WITNESS WHEREOF, Releasor has caused this Release and Covenant Not to Sue to be executed by its duly authorized officers as of _____, 1995.

COLUMBIA GAS OF OHIO, INC.

By: _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Self-)
Complaint of Columbia Gas of)
Ohio Concerning its Existing) Case No. 93-1569-GA-SLF
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**SECOND AMENDED JOINT PETITION, APPLICATION,
AND STIPULATION AND RECOMMENDATION OF
COLUMBIA GAS OF OHIO, INC. AND
SUBURBAN NATURAL GAS COMPANY**

Now come COLUMBIA GAS OF OHIO, INC. (hereinafter "Columbia") and SUBURBAN NATURAL GAS COMPANY (hereinafter "Suburban") (both of which are collectively referred to as "the Parties") and submit their Second Amended Joint Petition, Application, And Stipulation And Recommendation (hereinafter jointly referred to as "the Stipulation") in the above-captioned proceedings.

WHEREAS, Columbia and Suburban are public utilities and natural gas companies, as defined by R.C. §§4905.02 and 4905.03, and are therefore subject to the regulatory jurisdiction of the Public Utilities Commission (hereinafter "Commission"); and

WHEREAS, Columbia filed a self-complaint with the Commission on September 17, 1993 in Case No. 93-1569-GA-SLF, pursuant to R.C. §4905.26, seeking to resolve an existing controversy with Suburban involving competition between the Parties in certain areas of Ohio; and

WHEREAS, Suburban has been granted leave to intervene in, and is a party to, that proceeding; and

WHEREAS, Ohio Administrative Code Rule 4901-1-30 provides that any two or more parties may enter into a written stipulation concerning the issues presented in any Commission proceeding; and

WHEREAS, the Commission, through meetings conducted by its Attorney Examiner and Staff, has actively supervised the Parties' resolution of their competitive dispute and rationalization of their distribution systems (in Delaware and Franklin Counties) in the public interest by means of agreement rather than adversary procedure; and

WHEREAS, the Parties are willing to agree, subject to the consent and approval of the Commission as more fully described herein, to (1) the transfer of certain customers and facilities between the Parties and (2) the modification of certain tariff provisions which are currently contained in the Parties' tariffs on file with this Commission; and

WHEREAS, said agreement, if approved by the Commission in the manner described herein, would resolve all contested issues in Case No. 93-1569-GA-SLF and terminate the proceedings in that case.

NOW, THEREFORE, the Parties hereby stipulate and recommend that the Commission:

- (1) Grant the Joint Petition of the Parties for approval of the Agreement embodied in this Stipulation, pursuant to R.C. §4905.48 (as more fully described in Section A, infra); and
- (2) Grant the Joint Application of the Parties to modify their existing tariff provisions.

A. SECOND AMENDED JOINT PETITION FOR APPROVAL OF AGREEMENT TO TRANSFER CUSTOMERS AND FACILITIES

1. The parties are willing to enter into an agreement as set forth herein to transfer certain customers and facilities located in the Counties of Franklin and Delaware, State of Ohio, subject to the active supervision, direction, and consent and approval of the Commission pursuant to R.C. §4905.48.

2. Under the Agreement, Suburban would convey to Columbia all right, title, and interest in the following natural gas pipelines, along with any connected meters, regulators, appurtenant facilities, and any associated easements or rights-of-way or similar interests in real property on or through which such pipeline being transferred lies:

- a. That portion of the "ARCO" pipeline, a six-inch steel pipeline which is currently leased by Suburban from Atlantic Richfield Company, which lies in Franklin County south of Lazelle Road; and
- b. That portion of Suburban's pipeline which runs west from the western boundary of

the Olentangy High School property on Lewis Center Road across U.S. Route 23; then south along U.S. Route 23 to Home Road which the pipeline terminates.

3. In connection with the sale and transfer of such pipelines and other facilities, Columbia would acquire the right and obligation to render natural gas service to all customers currently served by Suburban from such facilities, and Suburban would have no further rights or obligations in that regard. The names and addresses of such customers are set forth in Exhibit 1 hereto.

4. Under the Agreement, Columbia would convey to Suburban all right, title, and interest in the following natural gas pipelines, along with any connected meters, regulators, appurtenant facilities, and any associated easements or rights-of-way or similar interests in real property on or through which such pipeline being transferred lies:

- a. Columbia's pipeline on Orange Road commencing at the middle of the Norfolk & Western Railroad tracks and continuing east along Orange Road until the intersection of Orange Road and Old State Road; and
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5. Under the Agreement, Columbia would also sell to Suburban its pipeline which runs from the intersection of Lazelle Road and Sancus Boulevard north along Sancus Boulevard, then northwest along

Polaris Parkway, then north along Old State Road, then west along Powell Road to the point at which the pipeline enters the Oak Creek Subdivision being developed by Borrer Corporation and known as the Callahan Farm Property (comprising approximately 150 acres and 385 lots and depicted in Exhibit 2 hereto), as well as the extension along Gemini Parkway and Antares Avenue. Suburban would then lease that pipeline back to Columbia for five years or until the Commission authorizes abandonment by Suburban of the line (pursuant to R.C. §4905.21, as amended from time to time), whichever occurs later, for the sum of \$5,500 per annum for no more than 20 years as full and complete consideration for allowing Columbia jointly to utilize the facilities to transport natural and/or synthetic gas from existing Columbia facilities along Lazelle Road to Columbia's pipeline facilities within the Oak Creek Subdivision, in such quantities and at such times as are necessary to serve customers within that subdivision as it is built out. Columbia's payment to Suburban for the lease is to be offset against the net book cost of the pipeline and other facilities that Columbia is transferring to Suburban with the result that Columbia would make no other payment to Suburban. Suburban would be responsible for the operation, maintenance, and repair of this leased pipeline, and Columbia would have no right to make new taps on, or construct additional laterals from, that pipeline. To the extent that the natural gas facilities described above in this Paragraph 5 become inadequate for the joint use by both Columbia and Suburban described herein, Columbia's use of the natural gas facilities to serve the Oak Creek Subdivision

would have priority over Suburban's use of the natural gas facilities.

6. In connection with the sale and transfer of such pipelines and other facilities, except as otherwise provided herein, Suburban would acquire the right and obligation to render natural gas service to all customers currently served by Columbia from such facilities and Columbia would have no further rights or obligations in that regard. The names and addresses of such customers are set forth in Exhibit 3 hereto. Suburban will also assume Columbia's rights and obligations under a Refundable Line Relocation Agreement with N.P. Limited Partnership, a copy of which is annexed hereto as Exhibit 4. Suburban is to receive from Columbia the balance remaining of a \$22,573 deposit, specifically \$14,286.02, paid to Columbia under said Refundable Line Relocation Agreement with N.P. Limited Partnership.

7. In connection with the sale and transfer of such pipelines and other facilities, Suburban and Columbia would execute--and, as necessary, record--all documents necessary to effect the transfers of personal and real property described herein. In addition, Suburban and Columbia would transfer and deliver to each other all accounting records pertaining to the transfer of property, including documents establishing the net book cost of the assets exchanged and the accounting and billing records for all customers listed on Exhibits 1 and 3 hereto. All transfers described herein would be completed within 60 days from the Commission's approval of this Stipulation.

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9. In any instance in this Stipulation in which a road, highway, or railroad track is given as a boundary, the middle of the road, highway, or railroad track is considered to be the boundary.

10. Nothing in this Stipulation shall be construed as preventing Columbia from installing, in any of the areas described, a high-pressure natural gas pipeline, the purpose of which is to be limited to transporting gas from existing and future sources of supply to various gas distribution systems owned and operated by Columbia in southern Delaware and northern Franklin Counties to points outside of said areas, which pipeline shall also be available, subject to appropriate rate and service conditions, as a supply source for Suburban's system.

B. SECOND AMENDED JOINT APPLICATION FOR APPROVAL OF CERTAIN
TARIFF MODIFICATIONS

1. The Commission-approved tariffs of both Columbia and Suburban currently contain language which restricts the ability of said companies to provide or pay for, directly or indirectly, customer service lines, house piping, and appliances when competing with another regulated natural gas company which does not provide or pay for such items.

2. In Columbia's tariffs, this language appears in Section 23(b) (Fourth Revised Sheet No. 6), Section 28 (Fifth Revised Sheet No. 7), and Section 29 (Fifth Revised Sheet No. 7).

3. In Suburban's tariffs, this language appears in Section 23(b) (Section III, Original Sheet No. 1), Section 27 (Section III, Original Sheet No. 2), and Section 28 (Section III, Original Sheet Nos. 2 and 3).

4. The Parties hereby jointly request authority to modify their tariffs regarding customer service lines, house piping, and appliances. This application is made pursuant to R.C. §4909.18, and the Parties represent that the requested tariff modifications will not result in an increase in any rate, joint rate, toll, classification, charge, or rental. Revised tariff sheets showing the proposed changes are attached hereto as Exhibit 5 for Columbia and Exhibit 6 for Suburban. The Parties request that the Commission authorize them to file such revised tariff sheets to become effective immediately.

C. MISCELLANEOUS RECOMMENDATIONS

1. This Stipulation represents a compromise and settlement of any and all existing disputes between the Parties concerning competition between said Parties. As a result, upon approval of the Stipulation by the Commission, the Parties agree to execute mutual releases and covenants not to sue, in the forms attached hereto as Exhibit 7.

2. If the Commission rejects any part or all of this Stipulation, the Parties agree that the Stipulation shall be null and void and will be withdrawn and shall not constitute any part of the record in this proceeding, nor shall it be used for any purpose whatsoever by any party to this or any other proceeding.

3. The undersigned respectfully join in requesting that the Commission approve the Joint Stipulation and Recommendation of the Parties in the manner described above.

4. The Commission shall retain continuing jurisdiction in this matter to supervise and assure the Parties' compliance with this Joint Stipulation and Recommendation of the Parties.

Agreed this _____ day of _____, 1995.

COLUMBIA GAS OF OHIO, INC.,
an Ohio corporation

SUBURBAN NATURAL GAS COMPANY,
an Ohio corporation

By _____

By _____

Its _____

Its _____

Date _____

Date _____

VERIFICATION

STATE OF OHIO)
) ss:
COUNTY OF FRANKLIN)

Before me, a notary public in and for the State of Ohio, personally appeared Richard J. Gordon and Andrew J. Sonderman, who, having first been sworn, deposed and said that they are the President and Secretary, respectively, of Columbia Gas of Ohio, Inc., that they have read the portions of the foregoing document entitled "SECOND AMENDED JOINT PETITION, APPLICATION, AND STIPULATION AND RECOMMENDATION OF COLUMBIA GAS OF OHIO, INC. AND SUBURBAN NATURAL GAS COMPANY", and that the statements set forth therein are true and accurate to the best of their knowledge and belief.

Richard J. Gordon, President

Andrew J. Sonderman, Secretary

Sworn to and subscribed in my presence this _____ day of _____, 1995.

Notary Public

VERIFICATION

STATE OF OHIO)
) ss:
COUNTY OF DELAWARE)

Before me, a notary public in and for the State of Ohio, personally appeared David L. Pemberton and Joan B. Rood, who, having first been sworn, deposed and said that they are the President and Secretary, respectively, of Suburban Natural Gas Company, that they have read the portions of the foregoing document entitled "SECOND AMENDED JOINT PETITION, APPLICATION, AND STIPULATION AND RECOMMENDATION OF COLUMBIA GAS OF OHIO, INC. AND SUBURBAN NATURAL GAS COMPANY", and that the statements set forth therein are true and accurate to the best of their knowledge and belief.

David L. Pemberton, President

Joan B. Rood, Secretary

Sworn to and subscribed in my presence this _____ day of _____, 1995.

Notary Public

RELEASE AND COVENANT NOT TO SUE

TO ALL WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT SUBURBAN NATURAL GAS COMPANY, 274 East Front Street, Cygnet, Ohio, on behalf of itself and its controlled affiliates, divisions, members, officers, directors, shareholders, agents, and attorneys (and the respective predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing) (herein separately and collectively, the "Releasor"), in consideration of good and valuable consideration received from COLUMBIA GAS OF OHIO, INC., 200 Civic Center Drive, Columbus, Ohio ("Columbia"), the receipt and sufficiency of which is hereby acknowledged, hereby releases and forever discharges Columbia and its controlled affiliates, divisions, members, officers, directors, shareholders, agents, and attorneys (and the respective predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing) (herein separately and collectively, the "Releasee") from any and all claims, causes of action and suits, obligations, or liabilities of any nature whatsoever, in law or in equity, costs, expenses, or compensation for or on account of any damages, loss, or injury, whether now known or unknown, which the Releasor ever had or now has from the beginning of the world to the execution date of this Release.

Releasor further covenants and agrees that it will forever refrain from instituting, reinstating, or prosecuting any action or proceeding against Releasee upon any claims, causes of action and suits, obligations, or liabilities of any nature whatsoever, in law

or equity, costs, expenses, or compensation for any damages, loss, or injury, whether or not now or hereafter known, suspected, or claimed which Releasor ever hereafter can, shall, or may have or allege against Releasee constituting, relating to, or based on (1) the Buckeye Builder program, the Scarlet Builder program, the Gray Builder program, the High Volume Single Family Builder program, the Mark of Efficiency program, or any program substantially similar to such programs offered by Releasee, and (2) the direct or indirect payments for customer service lines, house piping, and appliances (collectively, the "Settled Claims") forevermore after the date of this Release, except any claims that might be asserted against Releasee in common law tort (other than a claim alleging unfair competition, which does not include interference with contractual relations or prospective business relations).

Notwithstanding the foregoing, this Release and Covenant Not to Sue shall not be asserted as a defense to or bar against any claim, cause of action, or suite by Releasor against Releasee involving activities conducted within the area of Delaware County bounded by U.S. Route 23 on the west, Lazelle Road on the south, Alum Creek Reservoir and Interstate 71 on the east, and U.S. Route 36 and State Route 37 on the north.

Releasor represents and warrants that it has duly considered, approved, and authorized the Second Amended Joint Petition, Application, and Stipulation and Recommendation of Columbia Gas of Ohio, Inc. and Suburban Natural Gas Company dated _____,

1995 (the "Agreement") and this Release and Covenant Not to Sue, has taken all necessary actions for the Agreement and this Release and Covenant Not to Sue to be valid and binding and warrants that the execution of the Agreement and this Release and Covenant Not to Sue by the undersigned signatories on behalf of Suburban Natural Gas Company binds and commits Suburban Natural Gas Company and its controlled affiliates, divisions, officers, directors, employees, agents, and attorneys (and the predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing).

Releasor represents and warrants that Releasor has not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand, or cause of action of any party thereof relating to any matter covered by this Release and Covenant Not to Sue and agrees to indemnify Releasee against any and all claims by third persons resulting from such sale, assignment, transfer, conveyance, or other disposition.

Nothing in this Release and Covenant Not to Sue affects or otherwise alters any liability of any party for any breach of the Agreement.

This Release and Covenant Not to Sue shall not be altered or modified in any way except by written consent of authorized representatives of Releasor and Releasee.

In the event that the Public Utilities Commission of Ohio fails to approve the Agreement or any part thereof, this Release and Covenant Not to Sue shall be null and void.

This Release and Covenant Not to Sue shall be governed by the laws of the State of Ohio.

IN WITNESS WHEREOF, Releasor has caused this Release and Covenant Not to Sue to be executed by its duly authorized officers as of _____, 1995.

SUBURBAN NATURAL GAS COMPANY

By: _____
David L. Pemberton, President

RELEASE AND COVENANT NOT TO SUE

TO ALL WHOM THESE PRESENTS SHALL COME OR MAY CONCERN, KNOW THAT COLUMBIA GAS OF OHIO, INC., 200 Civic Center Drive, Columbus, Ohio, on behalf of itself and its controlled affiliates, divisions, members, officers, directors, shareholders, agents, and attorneys (and the respective predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing) (herein separately and collectively, the "Releasor"), in consideration of good and valuable consideration received from **SUBURBAN NATURAL GAS COMPANY**, 274 East Front Street, Cygnet, Ohio ("Suburban"), the receipt and sufficiency of which is hereby acknowledged, hereby releases and forever discharges Suburban and its controlled affiliates, divisions, members, officers, directors, shareholders, agents, and attorneys (and the respective predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing) (herein separately and collectively, the "Releasee") from any and all claims, causes of action and suits, obligations, or liabilities of any nature whatsoever, in law or in equity, costs, expenses, or compensation for or on account of any damages, loss, or injury, whether now known or unknown, which the Releasor ever had or now has from the beginning of the world to the execution date of this Release.

Releasor further covenants and agrees that it will forever refrain from instituting, reinstating, or prosecuting any action or proceeding against Releasee upon any claims, causes of action and suits, obligations, or liabilities of any nature whatsoever, in law

or equity, costs, expenses, or compensation for any damages, loss, or injury, whether or not now or hereafter known, suspected, or claimed which Releasor ever hereafter can, shall, or may have or allege against Releasee constituting, relating to, or based on (1) Columbia's Buckeye Builder program, the Scarlet Builder program, the Gray Builder program, the High Volume Single Family Builder program, the Mark of Efficiency program, or any program substantially similar to such programs offered by Releasee, and (2) the direct or indirect payments for customer service lines, house piping, and appliances (collectively, the "Settled Claims") forevermore after the date of this Release, except any claims that might be asserted against Releasee in common law tort (other than a claim alleging unfair competition, which does not include interference with contractual relations or prospective business relations).

Releasor represents and warrants that it has duly considered, approved, and authorized the Second Amended Joint Petition, Application, and Stipulation and Recommendation of Columbia Gas of Ohio, Inc. and Suburban Natural Gas Company dated _____, 1995 (the "Agreement") and this Release and Covenant Not to Sue, has taken all necessary actions for the Agreement and this Release and Covenant Not to Sue to be valid and binding and warrants that the execution of the Agreement and this Release and Covenant Not to Sue by the undersigned signatories on behalf of Columbia Gas of Ohio, Inc. binds and commits Columbia Gas of Ohio, Inc. and its controlled affiliates, divisions, officers, directors, employees,

agents, and attorneys (and the predecessors, heirs, executors, administrators, successors, and assigns of each of the foregoing).

Releasor represents and warrants that Releasor has not sold, assigned, transferred, conveyed, or otherwise disposed of any claim, demand, or cause of action of any party thereof relating to any matter covered by this Release and Covenant Not to Sue and agrees to indemnify Releasee against any and all claims by third persons resulting from such sale, assignment, transfer, conveyance, or other disposition.

Nothing in this Release and Covenant Not to Sue affects or otherwise alters any liability of any party for any breach of the Agreement.

This Release and Covenant Not to Sue shall not be altered or modified in any way except by written consent of authorized representatives of Releasor and Releasee.

In the event that the Public Utilities Commission of Ohio fails to approve the Agreement or any part thereof, this Release and Covenant Not to Sue shall be null and void.

This Release and Covenant Not to Sue shall be governed by the laws of the State of Ohio.

IN WITNESS WHEREOF, Releasor has caused this Release and Covenant Not to Sue to be executed by its duly authorized officers as of _____, 1995.

COLUMBIA GAS OF OHIO, INC.

By: _____

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 13-1216-GA-CSS

Summary: Reply Memorandum in Support of its Motion to Dismiss and Memorandum Contra Suburban's Motion for Judgment on the Pleadings electronically filed by Ms. Shana L Eiselstein on behalf of Columbia Gas of Ohio, Inc. and Conway, Daniel R. Mr.