

**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. 94-938-GA-ATR
Columbia Gas of Ohio, Inc.,	)	
	)	Case No. 94-939-GA-ATA
Respondent	)	

**SUBURBAN NATURAL GAS COMPANY'S MOTION TO STRIKE PREPARED DIRECT  
TESTIMONY OF MICHAEL D. ANDERSON ON BEHALF OF COLUMBIA GAS OF  
OHIO, INC. AND MOTION IN LIMINE TO EXCLUDE ARGUMENT AND EVIDENCE  
REGARDING THE ANDERSON TESTIMONY'S STATED PURPOSE**

**I. Introduction**

The issue in this case is the meaning of the Second Amended Joint Petition, Application, and Stipulation and Recommendation of Columbia Gas of Ohio, Inc. ("Columbia") and Suburban Natural Gas Company ("Suburban") reached in PUCO Case Nos. 93-1569-GA-SLF, 94-938-GA-ATR, and 94-939-GA-ATA ("Stipulation") and, more specifically, paragraph A.10 of the Stipulation. The Prepared Direct Testimony of Michael D. Anderson on Behalf of Columbia Gas of Ohio, Inc. ("Anderson Testimony") does not, even on its own terms, address that issue. Accordingly, the Commission should enter an Order striking the Anderson Testimony and excluding argument and evidence regarding the Anderson Testimony's stated purpose. See Anderson Testimony at p. 2, lines 13-26 (purpose of testimony).

**II. Argument**

**A. Irrelevant And Otherwise Inadmissible Evidence Should Be Stricken And Excluded**

Under O.A.C. sec. 4901-1-27, the Commission and the Attorney Examiner may take such actions to prevent the presentation of irrelevant evidence. Evidence is irrelevant unless it has the tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Ev. R. 401; *see also* O.R.C. sec. 4903.22 (applicability of rules of evidence).

"By their very nature, the Commission's attorney examiners are authorized to exclude evidence that is deemed inadmissible in a Commission proceeding." *In the Matter of the Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, 2006 Ohio PUC Lexis 746, \*88 (PUCO 2006).

The Stipulation is a settlement agreement. See, e.g., Finding and Order adopting Stipulation at para. 10. As such, the settlement agreement is a contract – like any other contract. *In re All Kelley & Ferraro Asbestos Cases*, 104 Ohio St. 3d 605, 613 (2004) (citations omitted); *State ex rel. Petro v. R.J. Reynolds Tobacco Co.*, 104 Ohio St. 3d 559, 564 (2004). "A settlement agreement is a contract to which general rules of contract law apply." *Huffy Corp. v. MRED Properties*, 1993 Ohio App. Lexis 5620, \*6 (Mercer 1993). "In matters of construction, it is the duty of the court to give effect to the words used, not to delete words used or to insert words not used." *Cleveland Electric Illuminating Co. v. Cleveland*, 37 Ohio St. 3d 50, syllabus para. 3 (1988); *Salem Community Hosp. v. Sankovic*, 1997 Ohio App. LEXIS 6069, \*7-8 (Columbia 1997) (citing *Cleveland Electric Illuminating Co.* and explaining that a court must give meaning to all words in a contract and cannot overlook the fact that certain words exist or that they have meaning). Evidence that does not give effect to the words used in a contract, or results in deleting words or inserting words not used, should be held inadmissible. See *id.* Further, even if a contract is ambiguous, parole evidence that varies or contradicts the contract is inadmissible. See, e.g., *Stalloy Metals, Inc. v. Kennametal, Inc.*, 2012 Ohio 5597, p. 91 (Geauga 2012).

It is appropriate for irrelevant and otherwise inadmissible argument and evidence to be stricken from the record and excluded. See, e.g., *In the Matter of the Regulation of the Electrical Fuel Component Contained Within the Rate Schedules of the Ohio Edison Company and Related Matters*, 1984 PUC Lexis 60, \*15 (PUCO 1984); *In the Matter of the Review of Chapters 4901-1, 4901-3, and 4901-9 of the Ohio Administrative Code*, 2006 Ohio PUC Lexis at \*88.

## **B. The Anderson Testimony Is Irrelevant And Otherwise Inadmissible**

### **1. The Anderson Testimony Is Irrelevant**

Mr. Anderson in the Anderson Testimony does not even allege that he participated in the negotiations that resulted in the Stipulation. See Anderson Testimony. This is not surprising given that, although Mr. Anderson has been employed by Columbia for nearly a quarter of a century (including during the negotiations that resulted in the Stipulation) and participated on Columbia's behalf in responding to Suburban's First Set of Discovery Requests, Columbia identified in its sworn responses to Suburban's Interrogatories Mr. Andrew J. Sonderman as, to the best of its knowledge and belief, the sole negotiator of the Stipulation. See Anderson Testimony at p. 1, line 29; Columbia Gas of Ohio, Inc. Response to Suburban's Discovery Requests Set One Dated December 6, 2013, Interrogatory No. 9 (attached as Exhibit A). The Anderson Testimony does not discuss the Stipulation's language, nor does it offer any analysis of its terms, meaning, or history.

Acknowledging his inability to offer any relevant testimony about the Stipulation's meaning, Columbia offers the Anderson Testimony to describe the purported consequences were the Northern Loop's use to be restricted as required by the Stipulation. See Anderson Testimony.<sup>1</sup> Such purported consequences shed no light on the Stipulation's plain meaning or the parties' intent behind it and, therefore, are irrelevant. See, e.g., *Ervin v. Gardner*, 25 Ohio St. 2d 231, 239-40 (1971) (contract will not be rewritten to relieve party of what it perceives to be a bad bargain); *Hodge v. Prater*, 2014 Ohio 3152, p. 11 (Franklin 2014) (same).

The Anderson Testimony offers nothing about the Stipulation's meaning. It is therefore irrelevant. Accordingly, the Commission should enter an Order striking the Anderson Testimony and excluding argument and evidence regarding the Anderson Testimony's stated purpose.

## **2. The Anderson Testimony Is Inadmissible Because It Varies And Contradicts The Stipulation**

To the degree the Anderson Testimony discusses why Columbia constructed the Northern Loop, it is inadmissible for the additional reason that the plain language of paragraph A.10 already answers the question:

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, . . .*

Stipulation at p. 7, para. A.10 (italics added); see also *Stalloy Metals, Inc.*, *supra*. Since the Stipulation's plain language already describes the only permissible reason why the Northern Loop could have been built – “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 said areas” – and the Anderson Testimony goes well beyond the only permissible reason for the Northern Loop's construction in such a way that varies and contradicts the Stipulation, it should be stricken and argument and evidence

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<sup>1</sup> Notably, Mr. Anderson does not describe the consequences were regulated utilities in Ohio unable to rely on the plain language in Orders from the Commission, such as the limitation on the Northern Loop's use in the Stipulation, which was adopted as a Commission Order. Also notable in Mr. Anderson's description of the purported “parade of horrors” that would result in limiting the Northern Loop's use as required by the Stipulation is his omission to address part of the relief sought by Suburban that would not have the impact on Columbia's ability to serve customers as described by Mr. Anderson – a specific finding that Columbia violated the Commission's Order, which adopted the Stipulation, thus setting the foundation for an action under O.R.C. sec. 4905.61 for treble damages.

regarding the Anderson Testimony's stated purpose excluded.<sup>2</sup>

### **3. The Anderson Testimony Is Inadmissible Because It Varies And Contradicts The Stipulation, Ignores Words In The Stipulation, And Renders Its Provisions Meaningless**

The stated purpose of the Anderson Testimony confirms that it varies and contradicts the Stipulation, ignores words in the Stipulation, and renders its provisions meaningless and, thus, is inadmissible, because it is fundamentally incompatible with a clear, explicitly stated purpose of the Stipulation – rationalization of the parties' systems. See Stipulation at 2. "Rationalization" as used here has a plain, ordinary meaning: "To make a business, industry, manufacturing process, etc., more efficient by reorganizing it in accordance with rational principles so as to reduce or eliminate waste of labour, time, or materials; to reduce the number of personnel, industrial plants, etc. in such a way that the remainder are more efficiently deployed." See Oxford English Dictionary.

As applied here, it is clear that the Stipulation's aim as reflected in the rationalization of the parties' systems is to dispense with duplication of Columbia's and Suburban's systems, thereby making natural gas distribution in southern Delaware and northern Franklin County more efficient. Suburban's position here – that, under paragraph A.10's plain language, Columbia may compete in southern Delaware County by installing mains, service lines, and any other infrastructure but may not use the Northern Loop to supply gas to such facilities or customers – is entirely consistent with the rationalization of the parties' systems supervised by the Commission's Attorney Examiner and Staff as spelled out on page 2 of the Stipulation.

The Anderson Testimony is not. Admitting it would require reading out the clear, explicitly stated purpose of the Stipulation to rationalize the parties' systems. Using the Northern Loop to, paraphrasing the Anderson Testimony, provide service to current and future customers in southern Delaware County and the purported adverse impacts were Columbia not permitted to do so is the very antithesis of the Stipulation's explicitly stated aim to rationalize the parties' systems by, among other things, restricting the Northern Loop's use. See Anderson Testimony at p. 2, lines 14-21. It would render the Stipulation's explicitly stated aim of rationalizing the parties' systems and restricting the Northern Loop's use meaningless, thus varying and contradicting the Stipulation, all contrary to well-established contract law. See *Cleveland Electric Illuminating Co.*, *supra*; *Salem Community Hosp.*, *supra*; *Stalloy Metals, Inc.*, *supra*.

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<sup>2</sup> It cannot be said too many times, nor over emphasized, that the Stipulation and its limitation on the Northern Loop was explicitly found to be in the public interest. See Stipulation at p. 2. Columbia should not be permitted to relitigate the matter here by way of the Anderson Testimony – yet another reason the Anderson Testimony should be stricken and argument and evidence regarding the stated purpose of the Anderson Testimony excluded.

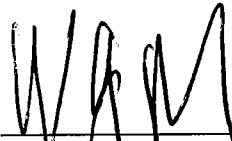
Since the Anderson Testimony varies and contradicts the Stipulation, ignores words in the Stipulation, and renders its provisions meaningless, the Commission should enter an Order striking the Anderson Testimony and excluding argument and evidence regarding the Anderson Testimony's stated purpose.

### **III. Conclusion**

Mr. Anderson did not participate in negotiating the Stipulation, nor does he in his prepared direct testimony even claim that he did. The Anderson Testimony does not discuss the Stipulation's terms, meaning, or history. Columbia itself has identified in its sworn answers to Suburban's Interrogatories that Mr. Andrew J. Sonderman was, to the best of its knowledge and belief, Columbia's sole negotiator. Recognizing that Mr. Anderson has no testimony to offer regarding the Stipulation's meaning, Columbia offers the Anderson Testimony in a blatant effort to enlist the Commission in helping it get out of the bargain it struck, render provisions of the Stipulation meaningless, and vary and contradict the Stipulation's plain language, all in violation of well-established principles of contract law. For these reasons, collectively and independently, the Commission should enter an Order striking the Anderson Testimony and excluding argument and evidence regarding the Anderson Testimony's stated purpose.

Respectfully submitted,

SUBURBAN NATURAL GAS COMPANY



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William J. Michael (0070921)  
Vice President and General Counsel  
Suburban Natural Gas Company  
2626 Lewis Center Road  
Lewis Center, Ohio 43035  
Tel: 740-548-2450  
Fax: 740-548-2455  
bmichael@sngco.com

# CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Motion was served upon the following counsel through the PUCO's Docketing System, this 11 day of August 2014.

Daniel R. Conway, Esq.  
Kathleen M. Trafford, Esq.  
Porter Wright Morris & Arthur, LLP  
41 S. High Street  
Columbus, OH 43215



William J. Michael

PUCO Case No. 2013-1216-GA-CSS  
Response to Suburban Interrogatories Set One No. 9  
Respondents: Stephen B. Seiple and Daniel R. Conway

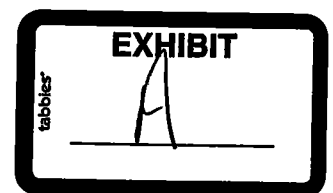
**COLUMBIA GAS OF OHIO, INC.**  
**RESPONSE TO SUBURBAN'S DISCOVERY REQUESTS SET ONE**  
**DATED DECEMBER 6, 2013**

**Interrogatory No. 9:**

Identify each person involved in negotiating the Stipulation on your behalf, each such person's title at the time, a brief description of the role each such person played in the negotiations, and each such person's current business address and phone number.

**Response:**

Columbia is without sufficient knowledge or information to respond fully to this question. To the best of Columbia's knowledge and belief the sole negotiator for Columbia was Andrew J. Sonderman, who at the time was Columbia's General Counsel. To the best of Columbia's knowledge and belief, Mr. Sonderman is currently employed by the law firm of Kegler, Brown, Hill & Ritter Co., L.P.A., 65 East State Street, Suite 1800, Columbus, OH 43214.



AFFIDAVIT

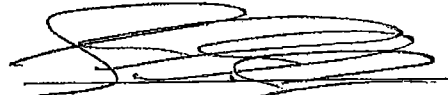
STATE OF OHIO )

) SS:


FRANKLIN COUNTY )

I, Shawn Anderson, after being duly sworn according to law, depose and state that the answers to the foregoing Interrogatories are true and accurate to the best of my knowledge and belief.

Further Affiant sayeth naught.

  
Affiant

Sworn and subscribed to me this 4<sup>TH</sup> day of February, 2014.

  
Notary

STEPHEN B. SEIPLE, Attorney-At-Law  
NOTARY PUBLIC-STATE OF OHIO  
My commission has no expiration date.  
Section 147.05 R. C.



**This foregoing document was electronically filed with the Public Utilities**

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**in**

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

Summary: Motion Suburban Natural Gas Company's Motion to Strike Prepared Testimony of Michael D. Anderson on Behalf of Columbus Gas of Ohio, Inc. and Motion in Limine to Exclude Argument and Evidence Regarding the Anderson Testimony's Stated Purpose electronically filed by Brandi L. Kayser on behalf of Suburban Natural Gas Company