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May 30, 2018

Ms. Barcy F. McNeal
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

Re: *Suburban v. Columbia*, Case No. 17-2168-GA-CSS

Dear Ms. McNeal:

Suburban Natural Gas Company filed its Reply Brief in the above-captioned case on May 29, 2018. However, due to an administrative error, Exhibit A to the Brief was inadvertently omitted. Please file the attached Exhibit A in the above-referenced docket, and please feel free to contact me with any questions.

Respectfully submitted,

/s/ Rebekah J. Glover
Counsel for Suburban Natural Gas Company

Cc: Counsel for Columbia Gas of Ohio, Inc.

Exhibit A

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

Suburban Natural Gas Company,	)	
	)	
Complainant,	)	
	)	
v.	)	Case No. 17-2168-GA-CSS
	)	
Columbia Gas of Ohio, Inc.	)	
	)	
Respondent.	)	

Rebuttal Testimony Of
David L. Pemberton, Sr.,
On Behalf of Complainant

Q. Please state your name and business address.

A. My name is David L. Pemberton, Sr. My business address is 2626 Lewis Center Road, Lewis Center, Ohio 43035.

Q. Are you the same David L. Pemberton, Sr. who previously submitted testimony in this proceeding?

A. Yes.

Q. Are your qualifications to testify today the same as set forth in that testimony?

A. Yes.

Q. What is the purpose of your testimony?

A. To rebut testimony submitted by the respondent regarding the origin, purpose and intent of certain agreements between the complainant and

various landowners in Delaware County giving the complainant the right to lay pipe on their properties.

Q. Please proceed.

A. The agreements and testimony submitted by the respondent regarding the complainant's rights to lay pipe on the described properties are characterized as exclusive service agreements. Prior to the filing of this complaint, these agreements arose almost exclusively in connection with rights of way acquired by Sinclair Oil Company in the mid-1940's when the complainant's main supply line in Delaware County was constructed. Almost invariably, Sinclair Oil Company's land agents obtained what are known in our industry as blanket rights of way giving the grantee the right to lay pipe or pipes anywhere on or across the property subject to the right of way. This supply line and the attendant rights of way were ultimately sold to ARCO Pipe Line Company which leased the supply line to the complainant in 1988 and sold the line to the complainant in 1991, including the attendant rights of way.

As Delaware County began to develop, the complainant increasingly encountered requests from landowners and developers to narrow or modify the rights of way associated with its supply line. The initial request came to me from the land agent for a major development in Orange Township containing almost 1,000 lots. The land agent, in assembling the land, missed the complainant's supply line rights of way until after the development plan was submitted for zoning approval. The rights of way directly affected sixty lots which would have had to have been eliminated and the infrastructure re-routed at a time when Delaware County had placed a moratorium on the issuance of sewer permits. After consulting a development friend who advised that the direct economic impact of the complainant's rights of way on the development was several hundreds of thousands of dollars, Suburban decided to narrow the complainant's rights of way to accommodate the zoning plan in exchange for the right to serve the developer's lots in the development. This was in lieu of demanding compensation.

Q. Was the developer satisfied with this arrangement?

A. Yes. He became the complainant's biggest customer in Delaware County for residential developments and this became the complainant's policy in accommodating requests from landowners and developers to narrow or modify the rights of way associated with its supply line. In lieu of compensation, the complainant requested and was given the right to serve the developed property.

Q. Was the policy developed or designed to eliminate competition from the respondent?

A. No. In fact, shortly after this initial agreement, the complainant and the respondent reached an agreement, the 1995 Stipulation in Case No. 93-1569-GA-SLF-93, et al., whereby the respondent transferred all of its customers and facilities in the area served by the complainant to the complainant and the complainant did not experience any competition from the respondent in areas covered by these agreements until 2017, when the respondent constructed the duplicative line extension involved in this case.

Q. Could the respondent have served these properties had they not been subject to the exclusive service agreements?

A. No. The rights of way originally acquired by Sinclair Oil Company prevented the development of the properties without the cooperation of the complainant. Not only could another natural gas company not have laid lines on these properties, no other utility serving the properties could have done so until the complainant's rights of way were exhausted or modified. The exclusivity of the resulting natural gas service agreements merely preserved the exclusivity of the original blanket rights of way which were released as the projects were developed and were required to protect the complainant's investments in the properties.

Q. Were there other situations where the complainant and a landowner entered into an exclusive service agreement?

A. Yes. The respondent spent a great deal of time in discovery focusing on an 1,800 foot line extension made by the complainant to serve the Mt. Carmel medical center near Home Road east of U.S. Highway 23, apparently, in an attempt to justify its 7,000 foot line extension duplicating the complainant's facilities on Cheshire Road which is the subject of this case. The facts are that the complainant did not duplicate any of the respondent's facilities in making this line extension and was not competing with the respondent for this facility. The Mt. Carmel medical center was the first step in fulfilling the complainant's obligation to serve a 287 acre farm under a service agreement entered into with the Kerbler family to facilitate their farm's development. The respondent had not expressed any interest in serving this property. The exclusive service agreement was reasonably necessary to protect the investment required to service the property as a whole, including the initial 1,800 foot line extension, which would not have been developed without such an agreement. The landowner approached Suburban about serving the property.

Q. Has the complainant recently changed its policy with regard to using such agreements to meet competition from the respondent?

A. Yes. The complainant's response to the respondent's violation of the 1995 Stipulation in duplicating the complainant's facilities on Cheshire Road and offering marketing incentives in the complainant's service area was to purchase such rights from landowners in the anticipated paths of the respondent's extended Cheshire Road pipeline.

Q. As of the hearing in this case, how many rights had the complainant purchased?

A. Two.

Q. Had the respondent not resorted to the practices prevented by the parties' Stipulation and the Commission's order in Case No. 93-1569-GA-SLF-93, et al, would the complainant have begun purchasing such rights?

A. No. Nor would the complainant have been required to do so had the commission granted its request for emergency relief from the respondent's predatory practices last October. In the absence of such relief, the

complainant had no other alternative to protect its service area and prevent injury to its business and property from the respondent's unlawful behavior.

Q. Does that complete your rebuttal testimony in this case?

A. Yes.

Summary: Correspondence Regarding Exhibit A to its Reply Brief electronically filed by Ms. Rebekah J. Glover on behalf of Suburban Natural Gas Company