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Attached documents are not in electronic format and
are not "source" documents.

January 4, 2008

Ms. Reneé Jenkins
Secretary, Public Utilities Commission of Ohio
180 East Broad Street, 13th Floor
Columbus, Ohio 43215-3793

RE: Case No. 07-478-GA-UNC

Dear Ms. Jenkins:

I am filing a Joint Motion to Strike the December 28, 2007 Amended Stipulation and Recommendation and Those Portions of the December 31, 2007 Initial Briefs Which Referred to It and Memorandum in Support ("Joint Motion"). This Joint Motion is being filed on behalf of Utility Service Partners, Inc. and ABC Gas Repair, Inc., both interveners in this case. Copies of the Joint Motion are being served upon all counsel of record and the Attorney Examiner by electronic mail and by U.S. first class mail.

Thank you for your cooperation.

Sincerely yours,

/s/

Stephen M. Howard
Attorneys for Utility Service Partners, Inc.

SMH/jab
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**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of)
Columbia Gas of Ohio, Inc. for Approval)
of Tariffs to Recover Through An)
Automatic Adjustment Clause Costs)
Associated with the Establishment of an)
Infrastructure Replacement Program)
and for Approval of Certain Accounting)
Treatment)**

Case No. 07-478-GA-UNC

**JOINT MOTION TO STRIKE DECEMBER 28, 2007 AMENDED STIPULATION AND
RECOMMENDATION AND THOSE PORTIONS OF THE DECEMBER 31, 2007
INITIAL BRIEFS WHICH REFERRED TO IT**

Pursuant to Rule 4901-1-12 of the Ohio Administrative Code, Utility Service Partners, Inc. (“USP”) and ABC Gas Repair, Inc. (“ABC”) jointly move to strike the December 28, 2007 Amended Stipulation and Recommendation (“Amended Stipulation”) and those portions of the December 31, 2007 Columbia Gas of Ohio, Inc. (“Columbia”) and Staff initial briefs which refer to it. The basis for this motion is that the Amended Stipulation is not part of the evidentiary record in this case, was not introduced as an exhibit at the hearing, has no testimony supporting it, had no opportunity for cross-examination of it or witnesses supporting it, did not have a Certificate of Service attached to it, and was not provided as part of Columbia’s obligation to seasonably update Utility Service Partner’s discovery requests. Details in support of the Motion to Strike are found in the accompanying Memorandum in Support.

WHEREFORE, Utility Service Partners, Inc. and ABC Gas Repair, Inc. jointly move to strike the Amended Stipulation and all references to it in the December 31, 2007 Columbia and Staff briefs.

Respectfully submitted,

/s/

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/s/ as per telephonic authorization 1/4/08

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*Attorneys for
ABC Gas Repair, Inc.*

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of)
Columbia Gas of Ohio, Inc. for Approval)
of Tariffs to Recover Through An)
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Treatment)**

Case No. 07-478-GA-UNC

MEMORANDUM IN SUPPORT

On October 26, 2007, a document entitled "Stipulation and Recommendation" was filed in the above case by Columbia. This document was subsequently marked as Columbia Exhibit 11 at the December 3, 2003 hearing and was introduced and admitted into evidence. Tr. IV, 204 and 217. Three Columbia witnesses (Ramsey, Martin and Brown) and two Staff witnesses (Hodgden and Steele/Henry) filed testimony in support of the October 26, 2007 Stipulation and Recommendation. Utility Service Partners witness Riley filed testimony in opposition to the October 26, 2007 Stipulation and Recommendation. Each of these witnesses was subject to cross-examination.

At the time of the December 3, 2007 hearing, only Columbia and the Staff had signed the October 26, 2007 Stipulation and Recommendation. The October 26, 2007 Stipulation and Recommendation was admitted into evidence as Columbia Exhibit 11 on December 3, 2007. Tr. IV, 217. The hearing was submitted on the record.

On December 20, 2007, a letter was filed by counsel for the Ohio Partners for Affordable Energy indicating that "the Ohio Partners for Affordable Energy has agreed to the Stipulation as a signatory party in the aforementioned case."

On Friday, December 28, 2007 at approximately 5:14 p.m., a document entitled “Amended Stipulation and Recommendation” was filed at the Commission on behalf of Columbia, the Ohio Partners for Affordable Energy, the Staff, and the Ohio Consumer’s Counsel. The Amended Stipulation is different than the document which was filed on October 26, 2007 (Columbia Exhibit 11). No Certificate of Service was attached to the December 28, 2007 filing. Counsel for USP received an electronic copy of the Amended Stipulation on or about 8:37 a.m. on Monday, December 31, 2007. No testimony was filed in support of the December 28, 2007 Amended Stipulation and Recommendation.

Utility Service Partners and ABC Gas Repair, Inc. move to strike the December 28, 2007 Amended Stipulation and Recommendation and any reference to it contained in the December 31, 2007 briefs of Columbia and the Staff.

This matter was submitted on the record at the close of the hearing on December 3, 2007. Tr. IV, 322. The Commission must base its decision on the record before it. *Ideal Transportation Co. v. Public Util. Comm.*, (1974) 42 Ohio St.2d 195, 71 Ohio Op. 2d 183, 328 N.E.2d 861. The Amended Stipulation is not part of the evidentiary record and thus cannot be considered by the Commission in making its decision.¹

In addition, the Amended Stipulation was neither marked as an exhibit, nor introduced into evidence, nor accompanied by any testimony in support. No opportunity for cross-

¹ In its September 12, 2007 Entry on Rehearing at Finding (13), the Commission stated: “. . . However, we find that USP raises valid concerns regard record support for our authorization.” Upon reconsideration, we find that on the basis of only the staff Report in the COI, we should have limited our authorization to replacement of risers that are prone to “failure and associate service lines where an associate service line is determined by Columbia to have a hazardous leak. We note that hazardous leaks in such associated lines are likely to be uncommon. We will subsequently consider whether an expansion of this authority is appropriate. USP’s first ground for rehearing will be granted.”

examination of the Amended Stipulation was provided.² Unless a stipulation was signed by all parties in a case and the attorney examiner consents to not having any witness support the stipulation, the practice before the Commission has always been to require at least a single witness to testify in support of a Stipulation and Recommendation and be subject to cross-examination. Indeed, at the conclusion of the October 31, 2007 hearing, the attorney examiner set forth a schedule for parties to file testimony in support of the Stipulation and Recommendation and in opposition to the Stipulation and Recommendation. A hearing was held on December 3, 2007, for the express purpose of permitting cross-examination of rebuttal and surrebuttal witnesses and also of witnesses offering testimony in support of and in opposition to the October 26, 2007 Stipulation and Recommendation (Columbia Ex. 11). No similar practice has been followed here. The Amended Stipulation has no evidentiary support and is simply not part of the evidentiary record.

There are additional reasons why the Amended Stipulation should be stricken. There was no Certificate of Service attached to the December 28, 2007 document. Rule 4901-1-05(A) of the Ohio Administrative Code requires all pleadings and papers filed with the Commission subsequent to the original filing to contain a Certificate of Service. Another reason for striking the December 28, 2007 Amended Stipulation and Recommendation is that Columbia did not provide this document to Utility Service Partners as part of its obligation to seasonably supplement its discovery. On September 24, 2007, Utility Service Partners served its first set of

² In *Vectren Energy Delivery of Ohio, Inc. v. Pub. Util. Comm.*, 113 Ohio St.3d 180, 2007-Ohio-1386, the Ohio Supreme Court considered claims from another Ohio natural gas company that proceedings before the Commission were somehow tainted or that it was not afforded due process. The Court found that Vectren's claims were without merit. It found that the proceeding centered around an audit report of which Vectren had ample notice. The Court also found that Vectren had a full hearing before the Commission. It was permitted to present evidence through the calling of its own witnesses, the cross-examination of other party's witnesses, and the filing of exhibits. The Court also stated that Vectren was also able to argue its position through the filing of post hearing briefs. Based on these reasons, the Court rejected Vectren's claims. See 113 Ohio St.3d 180, at 192. Unfortunately, those elements of due process that the Court found present in the *Vectren* case are not available to USP and ABC with respect to the Amended Stipulation.

discovery on Columbia. See Attachment 1. In its Request for Production of Documents No. 1, Utility Service Partners asked Columbia to “provide a copy of any document or report provided to the Staff in Case No. 05-463 and 07-478.” The term “document” was broadly defined in the Definitions and Instructions portion of this discovery request. USP had requested that Columbia seasonably supplement its responses pursuant to Rule 4901-1-16(D) of the Ohio Administrative Code.

If Columbia, in fact, sent a version of the Amended Stipulation to the Staff, then it had an obligation to seasonably supplement its discovery responses to USP and to provide a copy to Utility Service Partners. If Columbia did not send a copy of the Amended Stipulation to the Staff, then the Commission must question whether there was “serious bargaining” among knowledgeable, capable parties in this case. In either event, neither of the moving parties received the Amended Stipulation prior to the morning of December 31, 2007.

The Commission should also question the timing of the filing. The last day of hearing was December 3, 2007. The Amended Stipulation was filed approximately 5:14 p.m. on Friday, December 28, 2007 and was served on parties of record on Monday morning, December 31, 2007, the day the initial briefs were due. Over three weeks elapsed between the December 3, 2007 hearing and the filing of the Amended Stipulation.

In summary, the Amended Stipulation is not part of the evidentiary record. It is not supported by any testimony. There was no opportunity for any cross-examination. It was not introduced nor admitted into evidence. No Certificate of Service was attached. No seasonable update to a discovery request was provided. The timing of this filing raises additional questions.

WHEREFORE, Utility Service Partners and ABC Gas Repair, Inc. move to strike the December 28, 2007 Amended Stipulation and Recommendation and all references to the document in the Columbia and Staff December 31, 2007 briefs.

Respectfully submitted,

/s/

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/s/ as per telephonic authorization 1/4/08

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*Attorneys for
ABC Gas Repair, Inc.*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing *Joint Motion To Strike December 28, 2007 Amended Stipulation And Recommendation And Those Portions Of The December 31, 2007 Initial Briefs Which Referred To It* was served upon the following persons by electronic mail and by first class U.S. mail, postage prepaid this 4th day of January, 2008:

/s/

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ATTACHMENT 1

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of
Columbia Gas of Ohio, Inc. for
Approval of Tariffs to Recover
Through An Automatic Adjustment
Clause Costs Associated with the
Establishment of an Infrastructure
Replacement Program and for
Approval of Certain Accounting
Treatment**

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Case No. 07-478-GA-UNC

**UTILITY SERVICE PARTNERS, INC.
FIRST SET OF INTERROGATORIES
AND REQUEST FOR PRODUCTION OF DOCUMENTS
PROPOUNDED TO COLUMBIA GAS OF OHIO, INC.**

Now comes Utility Service Partners, Inc. (USP) which submits the following First Set of Interrogatories and Request of Production of Documents to Columbia Gas of Ohio, Inc. pursuant to Rules 4901-1-19 and 4901-1-20 of the Ohio Administrative Code. These discovery requests are to be answered within twenty days of the date appearing on the Certificate of Service and pursuant to Rule 4901-1-16(D) of the Ohio Administrative Code should be seasonably supplemented.

Definitions and Instructions

1. With respect to each discovery request, all information is to be divulged that is within the knowledge, possession or control of the parties to whom it is addressed, including their agents, employees, attorneys, and/or investigators.
2. Where an interrogatory calls for an answer in more than one part, each part should be separated in the answer so that the answer is clearly understandable.
3. All answers must be separately and fully stated in writing under oath.

4. Pursuant to Rules 4901-1-16(D) and (E) of the Ohio Administrative Code, you are under a continuing duty to seasonably supplement all discovery responses with respect to any question directly addressed to the identity and location of persons having knowledge of discoverable matters, the identity of each person expected to be called as an expert witness at the hearing, and the subject matter on which the expert is expected to testify. Further, a party who knows or later learns that a response is incorrect is under a duty to seasonably correct the response.

5. For purposes of these discovery requests, the following terms shall have meanings set forth below:

- (a) As used herein, "document", "documentation" and/or "record" whether stated as the singular or the plural, means any course of binders, book, pamphlet, periodical, letter, correspondence, memoranda, e-mail, including but not limited to any memorandum or report of a meeting or telephone or other conversation, invoice, account, credit memo, debit memo, financial statement, general ledger, ledger, journal, work papers, account work papers, report, diary, telegram, record, contract, agreement, study, draft, telex, handwritten or other note, sketch, picture, photograph, plan, chart, paper, graph, index, tape, data processing card, data processing disc, data cells or sheet, check acceptance draft, e-mail, studies, analyses, contracts, estimates, summaries, statistical statements, analytic records, reports and/or summaries of investigations, opinions or reports of consultants, opinions or reports of consultants, opinions or reports of accountants, trade letters, comparisons, brochures, pamphlets, circulars, bulletins, notices, forecasts, electronic communication, printouts, all other data compilations from which information can be obtained (translated if necessary into useable form), any preliminary versions, drafts, or revisions of any of the foregoing, and/or any other written, recorded, transcribed, punched, taped, filmed, or graphic matter, however produced or reproduced and regardless of origin or location, in the possession, custody and/or control of the defendant and/or their agents, accountants, employees, representatives and/or attorneys. "Document" and "record" also mean all copies of documents

by whatever means made, if the copy bears any other markings or notations not found on the original.

- (b) The terms "relating to", "referring to", "referred to", "pertaining to", "pertained to" and "relates to" means referring to, reporting, embodying, establishing, evidencing, compromising, connected with, commenting on, responding to, showing, describing, analyzing, reflecting, presenting and/or constituting, and/or in any way involving.
- (c) The terms "and" "or" and "and/or" within the meaning of this document shall include each other and shall be both inclusive and disjunctive and shall be construed to require production of all documents as above described, in the broadest possible fashion and manner.
- (d) Columbia Gas of Ohio, Inc. shall mean and include but is not limited to each and every agent, employee, servant, insurer and/or attorney of Columbia Gas of Ohio, Inc.
- (e) The terms "party or Parties" shall mean any organization, person, corporation, entity, etc., which intervened in the above-captioned proceeding, excluding Columbia Gas of Ohio, Inc. or a Columbia Gas of Ohio affiliate.
- (f) To "identify" shall mean:
 - (1) With respect to a document, to state its date, its author, its type (for example, letter, memorandum, chart, photograph, sound reproduction, etc.), its subject matter, its present location, and the name of its present custodian. The document may be produced in lieu of supplying the foregoing information. For each document which contains information as privileged or otherwise excludable from discovery, there shall be included a statement as to the basis for such claim of privileged or other grounds for exclusion.
 - (2) With regard to a natural person, to state his or her full name, last known employer or business affiliation, title and last known home address.
 - (3) With regard to a person other than a natural person, state the title of that person, any trade name, or corporate name or partnership name used by that person, and the principle business of that person.

- (g) To "produce" or to "identify and produce", shall mean that Columbia Gas of Ohio, Inc. shall produce each document or otherwise requested intangible thing. For each tangible thing which Columbia contends is privileged or otherwise excludable from discovery, there shall be included a statement as to the basis for such claim of privilege or other grounds for exclusion.
- (h) "Staff" means the Public Utilities Commission of Ohio Staff and its employees or attorneys.
- (i) Design-A riser has the same definition of "Design-A" contained in the November 24, 2006 Staff Report. Design-A means risers that can be assembled in the field during the installation process. The risers are not supplied with plastic pipe.
- (j) "Risers" mean the vertical portion of the gas service line a portion of which is exposed to the atmosphere which connects the distribution system to the customer's meter.
- (k) "Gas service lines" means the line that runs from the distribution system to the customer's meter.
- (l) "IRP Plan" means the Infrastructure Replacement Program described in Columbia's April 25, 2007 Application in Case No. 07-478-GA-UNC.

INTERROGATORIES

- 1) Under the IRP plan will Columbia own the service lines they repair or replace?

Response:

- 2) Under the IRP plan how will Columbia determine the value of the service lines they own for purposes of calculating used and useful assets for rate making purposes.

Response:

3) Please provide an estimate of the value of the service lines (in the aggregate excluding the change over of Design A risers) Columbia expects to post to its regulatory books each year if the IRP plan is implemented for service lines.

Response:

4) Under the IRP plan will Columbia be liable for any injuries and \ or property damage resulting from either the actual repairs or replacement conducted by Columbia, or injuries or property damage that arise from subsequent leaks or other problems arising from the repaired and \ or replaced service lines.

Response:

5) Does Columbia believe that the service lines it installs or the repair that it will make to the service lines will differ in design, material, or method of installation from what is commonly used in the industry today for the repair and replacement of service lines? If so explain how the service lines Columbia repairs or replaces will differ from what is being used in the industry today.

Response:

6) Please provide the number of gas service lines in the Columbia Gas of Ohio system today, and the percentage Columbia believes it will acquire under its IRP Plan each year.

Response:

7) Please provide the number of gas service lines Columbia has inspected for leaks each year for the past five years.

Response:

8) Please describe how Columbia Gas of Ohio inspects gas service lines for leaks and provide the number of employees assigned to that task. If contractors are used in lieu of employees or in addition to employees, please describe the nature of the services provided by the contractors including the number of inspectors deployed by the contractor(s) and the number of service lines inspected by the contractors.

Response:

9) Under the IRP Plan will the number of service lines being inspected increase? If so explain why and project the number of increased inspections attributable to the IRP plan.

Response:

10) Please state how many Design-A risers are on the Columbia Gas System and describe how that number was determined?

Response:

11) How many Design-A risers in the Columbia Service territory have been inspected since January 1, 2005 and how many were found to be actually leaking?

Response:

12) How many gas service lines in the Columbia service territory which did not have Design-A risers have been inspected since January 1, 2005 and how many were found to be leaking?

Response:

13) How many of the gas service lines in the Columbia service territory found to be leaking since January 1, 2005 were plastic service lines?

Response:

14) Please summarize the process Columbia used for investigating, maintaining, and repairing gas service line leaks under its procedure prior to July 11, 2007.

Response:

15) Please summarize how the process for investigating, maintaining, and repairing gas service line leaks under the IPR Plan will be conducted.

Response:

16) Under the IRP if a leak is detected in the buried house line (a "house line" being defined as the pipe between the foundation of the home and external meter) will the house line be fixed under the IRP Plan?

Response:

17) How many buried house lines are there on the Columbia system?

Response:

18) Under the IRP Plan is the property owner or Columbia responsible to repair ancillary line leaks (gas lights, gas grills, pool or spa lines, detached garages, buildings, etc.)?

Response:

19) List and describe all natural gas leaks in the Columbia service area which resulted in injuries or property damage from a fire, explosion or asphyxiation caused by a leak in the riser or service line since 1997?

Response:

20) Has Columbia **sent** its regulatory customers a notice (by separate mailing or bill insert) an advertisement offering an in house gas leak warranty service?

Response:

21) How many service lines per year (excluding repair of the Design A riser) does Columbia anticipate will need repair every year under the IRP plan as filed?

Response:

22) Will Columbia as part of the IRP plan assure customers that their service line leak will be repaired and service restored within a specified time period. If so, what will be the maximum amount of time a customer will have to wait between shut off due to discovery of a service line leak and restoration of service? Please explain how that time estimate was arrived at?

Response:

23) Are there agreements in place with specific contractors to perform the repairs to gas service lines? If so, please name the contractors?

Response:

24) What is the estimated average time needed to replace (change over) a Design A riser?

Response:

25) On average, how much ground must be disturbed to replace a Design A riser?

Response:

26) On average, how much ground must be disturbed to replace a service line?

Response:

27) Please describe how Columbia arrived at a reimbursement cost of \$500 maximum for a Design A riser change over and \$1,000 for a service line repair.

Response:

28) What does Columbia believe will be the average cost of changing out a Design A riser and explain how that projection was arrived at.

Response:

29) How many man hours does Columbia believe are needed to change out a Design A riser with an approved riser, and how as this estimated arrived at?

Response:

30) Please explain why Columbia selected three years to change out all the Design A risers?

Response:

31) What percentage of the riser replacement is expected to be completed by Columbia personnel (full time employees of Columbia Gas of Ohio or a Nisource affiliate of Columbia Gas of Ohio) and what percentage of the change overs will be done by contractors?

Response:

32) What percentage of gas service line repair/replacement is expected to be completed by Columbia personnel (full time employees of Columbia Gas of Ohio or a Nisource affiliate of Columbia Gas of Ohio)?

Response:

33) If Columbia is aware of a leak of a gas service line or riser, what is the **current** procedure it employs to minimize the risk of leaking gas?

Response:

a. Would the answer differ if Columbia owned the service line? If so how?

Response:

34) How many Columbia employees (employees of Columbia Gas of Ohio or a Nisource affiliate of Columbia Gas of Ohio) will Columbia devote to inspecting, repairing, replacing and maintaining gas service lines that are not attached to Design-A risers?

Response:

35) Please provide the name of the riser that Columbia selected as a replacement for the Design A risers, and

- a. Explain why the selected riser was chosen over other options.

Response:

- b. What warranties or guarantees will Columbia provide the property owner against design and product defects or faulty installation of the Design A replacement riser?

Response:

36) Assuming Columbia were to use independent contractors, how much would Columbia incur in the way of expenses regarding:

- a. Inspection, repair, replacement, and maintenance of Design-A risers by independent contractors?

Response:

- b. Inspection, repair, replacement, and maintenance of gas service lines connected to Design-A risers?

Response:

- c. Inspection, repair, replacement, and maintenance of all other gas service lines that are not connected to Design-A risers?

Response:

37) If Columbia used independent contractors to inspect, repair, replace, and maintain Design-A risers, customer service lines attached to Design-A risers, and all other customer service lines, what would Columbia charge customers in the way of administrative charges for such services performed by independent contractors?

Response:

38) What is the protocol that Columbia or an independent contractor must follow in order that the inspection, repair, replacement, and maintenance of a Design-A riser, a gas service line connected to a Design-A riser, or all other gas service lines be satisfactory to the property owner/customer?

Response:

REQUEST FOR PRODUCTION OF DOCUMENTS

- 1) Please provide a copy of any document or report provided to the Staff in Case No. 05-463 and 07-478.
- 2) Please provide a copy of the insert or letter on in house pipeline warranty service described in interrogatory 20.
- 3) Please provide any document or report used to prepare the response or support the response to any of Interrogatories 1-38.

Respectfully submitted,

/s/

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Attorneys for
Utility Service Partners, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Utility Service Partners, Inc. First Set of Interrogatories and Request for Production of Documents Propounded to Columbia Gas Of Ohio, Inc. were served upon the following persons by U.S. first class mail, and, where indicated, by electronic mail this 24th day of September, 2007.

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Stephen M. Howard

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in

Case No(s). 07-0478-GA-UNC

Summary: Motion Utility Service Partners, Inc. and ABC Gas Repair, Inc. Joint Motion to Strike Dec 28, 2007 Amended Stipulation and Recommendation electronically filed by Stephen M Howard on behalf of Utility Service Partners, Inc.