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.	)	

COLUMBIA GAS OF OHIO'S
MOTION TO DISMISS

Now comes the Respondent, Columbia Gas of Ohio, Inc. ("Columbia"), and files this Motion to Dismiss the Verified Complaint filed in this matter by Suburban Natural Gas Company ("Suburban").

This complaint case is an attempt to convince the Public Utilities Commission of Ohio ("Commission") to grant Suburban what it admits the Ohio General Assembly has chosen not to provide it: a certified territory in Delaware County where it does not need to compete for load. The specific claims that Suburban asserts against Columbia's EfficiencyCrafted® Homes Program are a rehash of claims that Suburban asserted (and then abandoned) in an earlier complaint case. Worse, Suburban is now advancing legal propositions that it previously admitted find no support in Ohio law. And the claims that Suburban asserts regarding Columbia's application of its main line extension tariff are based on nothing but suspicion and distrust, but no facts, as Suburban has now admitted in response to Columbia's initial discovery requests.

For the reasons more fully discussed in the attached Memorandum in Support, Suburban's claims fail to state reasonable grounds for complaint as required by R.C. § 4905.26. Columbia respectfully requests that the Commission dismiss Suburban's Complaint.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

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1. Introduction

The crux of the Complaint in this case is the false proposition that the Commission may insulate natural gas utilities from direct competition in the sale and distribution of natural gas and has already done so for Suburban in Delaware County. Suburban argues that a November 9, 1995, Second Amended Joint Petition, Application, and Stipulation and Recommendation ("1995 Stipulation")[1] and the Commission's Finding and Order approving the Stipulation[2] gave Suburban an exclusive (albeit undefined) service territory, and that Columbia has encroached upon that territory by offering energy efficiency incentives to new home builders in an area that is allegedly off-limits. Suburban further asserts that the Commission's opinions and orders approving the establishment, continuation, and expansion of Columbia's Demand-Side Management (DSM) Program, particularly the most recent opinion and order in Case No. 16-1309-GA-UNC ("DSM Order"), prohibit Columbia from offering incentives to new home builders outside Columbia's equally undefined service territory. What Suburban is really asking the Commission to do, however, is to read territorial restrictions into a decades-old stipulation and multiple Commission orders that contain no such restrictions, to prevent home builders in Delaware County from taking advantage of a Columbia program that provides benefits both to specific homeowners and Columbia customers generally, because Suburban has been unable to match such incentives through its own DSM program.

Suburban's allegations in the Complaint amount to nothing more than a unilateral extrapolation of its purported intent for signing the 1995 Stipulation and a creative, but ultimately wishful, reading of the Commissions' DSM Order. None of the Commission orders on which Suburban attempts to rely restricted the geographic area within which Columbia may offer DSM Program incentives. Nor could they have. The relief Suburban seeks is unauthorized by Ohio statute and repugnant to state and federal antitrust laws. For all of these reasons, as further explained below, the Commission should dismiss Counts 1-3 and, in part, Count 5 of Suburban's Complaint (the "EfficiencyCrafted® Homes Claims").

The Commission should also dismiss Count 4 and the remainder of Count 5 (the "Main Line Extension Tariff Claims"). Count 4 asserts, "[o]n information and belief," that Columbia "is offering to" or has agreed to "waive deposits or other charges required under [its] Main Extension Tariff" for "builders or oth-

[1] *See* Complaint, Exhibit A.

[2] *See 1993 Self-Complaint Case*, Finding and Order (Jan. 18, 1996).

ers."[3] But the Complaint offers no specific factual allegations (such as the builders in question or the charges waived) to support Suburban's broad allegation. And in discovery, Suburban admits that it currently has no information to support the allegation in its Complaint. Suburban actually admits that it needs discovery from Columbia to support its claim.[4] Because Suburban's claim is unsupported by any facts, Suburban has failed to state reasonable grounds for the Complaint and the Commission should dismiss Suburban's Main Line Extension Tariff claims as well.

2. Background

2.1. Suburban's repeated, and unsuccessful, complaints about competition from Columbia in Delaware County

Suburban's Complaint in this action is based primarily on the parties' 1995 Stipulation. Yet the 1993 and 1994 proceedings that led to that stipulation were not Suburban's only attacks on Columbia's efforts to serve new load in Delaware County. Suburban also attempted to gain the Commission's protection against competition from Columbia two more times – once in 2007, and again in 2013. And although Suburban ultimately withdrew both of those complaints, it made admissions in both cases that directly contradict the claims it is raising here.

2.1.1. Columbia's 1993 Self-Complaint Case, and Columbia and Suburban's 1994 Customer Transfer and Tariff Modification Proceedings

On September 17, 1993, Columbia filed a Self-Complaint with the Commission, pursuant to R.C. § 4905.26, in order to resolve a controversy between Columbia and Suburban.[5] The Self-Complaint requested a declaration of the proper interpretation of a clause in Columbia's tariff relating to its offering of incentives to prospective customers, to resolve a dispute between Suburban and Columbia over both companies' efforts to serve a new subdivision in Delaware County called Oak Creek. In particular, Columbia asked the Commission to rule

[3] Complaint ¶ 45.

[4] Suburban Responses and Objections to Columbia's First Set of Discovery Requests, Response to Interrogatory No. 18 (attached as Exhibit 1).

[5] *In the Matter of the Self-Complaint of Columbia Gas of Ohio Concerning its Existing Tariff Provisions*, Case No. 93-1569-GA-SLF (*"1993 Self-Complaint Case"*), Complaint (Sept. 17, 1993) (attached as Exhibit 2).

that Columbia's tariff allowed it "to provide marketing incentives, including direct or indirect payments for customer service lines, house piping, and appliances, whether or not Columbia [was] competing with another regulated gas company, in areas * * * where such assistance is essential to induce prospective customers to utilize natural gas, rather than electricity."[6] In the alternative, the Self-Complaint requested that the relevant portions of its tariff be deleted.[7]

Shortly thereafter, the Commission, by Entry dated December 6, 1993, granted Suburban's motion to intervene in the Self-Complaint proceeding, but reminded the parties that Columbia's Self-Complaint *only* requested an interpretation and application of Columbia's tariff as related to the provision of marketing incentives to builders and developers of the Oak Creek subdivision.[8] Then, on May 23, 1994, Columbia and Suburban filed a joint petition for approval from the Commission for an agreement to transfer certain facilities and customers, as well as certain tariff modifications.[9] That joint petition was twice amended, and Columbia and Suburban ultimately settled those cases through a Stipulation dated November 9, 1995, which proposed transfers of facilities and customers and the removal of the subject tariff restrictions.[10] The Commission adopted the 1995 Stipulation, with additional amendments regarding rates, by Finding and Order issued January 18, 1996.[11]

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[6] *Id.* ¶ 7.

[7] *Id.* at ¶ 8.

[8] *See 1993 Self-Complaint Case*, Entry, 1993 Ohio PUC LEXIS 1097, at ¶ 8 (Dec. 6, 1993) ("A number of the arguments raised by the parties in the pleadings filed to date address issues previously reviewed by the Commission in *In re Complaint of The Suburban Fuel Gas, Inc. v. Columbia Gas of Ohio, Inc.*, Case No. 86-1747-GA-CSS and *In re Application of Columbia Gas of Ohio, Inc. to Amend its Rules and Regulations Governing the Distribution and Sale of Gas,* Case No. 87-1528-GA-ATA.")

[9] *In re Joint Application of Columbia and Suburban for Approval of an Agreement to Transfer Certain Facilities and Customers*, Case Nos. 93-1569-GA-SLF, 94-938-GA-ATR, and 94-939-GA-ATA, Joint Petition, Application, and Stipulation and Recommendation (May 23, 1994).

[10] *See 1993 Self-Complaint Case*, Second Amended Joint Petition, Application, and Stipulation and Recommendation (Nov. 9, 1995) (attached to Complaint as Exhibit A).

[11] *1993 Self-Complaint Case*, Finding and Order (Jan. 18, 1996).

2.1.2. Suburban's 2007 "Motion to Reopen" (Case No. 93-1569-GA-SLF)

In December 2007, Suburban moved to reopen the 1993 and 1994 proceedings.[12] Suburban alleged, among other things, that Columbia had violated the 1995 Stipulation by offering to serve the newest phase of an existing development, the earlier phase of which Suburban was serving. Suburban further alleged that Columbia's "proposed line extension * * * duplicated Suburban's facilities" and that Columbia's service of that new phase would "contravene[ ] the terms and intent of the [1995] stipulation."[13] In essence, Suburban made the same allegations in 2007 that it is making now in Count 1 of its Complaint. Suburban likewise asked the Commission to direct Columbia to cease and desist from engaging in the competitive practices at issue.[14] Yet, Suburban subsequently withdrew its Motion to Reopen without prejudice on June 25, 2008, with Columbia's concurrence, and the Commission granted the motion.[15]

2.1.3. Suburban's Dismissed 2013 Complaint Case (Case No. 13-1216-GA-CSS)

A few years later, in yet another attempt to block competition by Columbia, Suburban filed a Motion to Reopen, again requesting that the Commission direct Columbia "to cease and desist from violating the Stipulation and the Commission's Finding and Order adopting it."[16] The complained-of conduct that time was Columbia's installation of a tap or taps on its Northern Loop high-pressure natural gas pipeline to directly serve customers, in supposed violation of ¶ A10 of the 1995 Stipulation. In August 2014 – after 17 months of litigation and less than two weeks before hearing – Suburban moved to dismiss its complaint, and the Commission granted the motion.[17]

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[12] *In the Matter of the Self-Complaint of Columbia Gas of Ohio, Inc. Concerning Certain of Its Existing Tariff Provisions*, Case Nos. 93-1569-GA-SLF *et al.*, Motion to Reopen ("*2007 Suburban Complaint*") (Dec. 11, 2007).

[13] *Id.* at 10.

[14] *See id.* at 1.

[15] *2007 Suburban Complaint*, Entry (July 16, 2008).

[16] *In the Matter of Suburban Natural Gas Company ("2013 Suburban Complaint Case")*, Case No. 13-1216-GA-UNC, Motion to Reopen and for Enforcement of Finding and Order, at 1 (May 17, 2013).

[17] *See 2013 Suburban Complaint Case*, Entry (Aug. 27, 2014).

2.2. Suburban's unsuccessful effort to create a program to match Columbia's EfficiencyCrafted® Homes Program

In the cases discussed above, Suburban did not ask the Commission to place limits on Columbia's offering of energy efficiency incentives to builders in Delaware County. But Suburban has recognized that Columbia offers such incentives in areas in which Suburban would like to compete for customers. Suburban has also attempted to mitigate the competitive benefits that Suburban believed Columbia's DSM program provided, though not in the manner it is now attempting.

In 2008, Columbia proposed, and the Commission approved, Columbia's DSM Rider and DSM programs for 2009-2011.[18] Columbia's original DSM portfolio included a Residential New Construction program, the purpose of which was "to encourage builders to build homes that are 50% more efficient than the 2004 Supplement to the 2003 IECC [International Energy Conservation Codes] * * *."[19] When Columbia filed an application to continue its DSM programs, with an expanded portfolio, from 2012 through 2016,[20] the 2012-2016 portfolio included what Columbia then called the Energy Efficient New Homes program, which "offer[ed] incentives to home builders to continue to build homes that exceed code minimum levels * * *."[21] Columbia, Staff, OCC, and other parties filed a stipulation in support of continuing the DSM portfolio, and the Commission approved that stipulation in December 2011.[22]

That same month, Suburban filed a self-complaint at the Commission declaring that not having a DSM program like Columbia's – particularly, not being able to "provid[e] services that assist and encourage builders to construct energy-efficient buildings" – left it "at a material competitive disadvantage in competing

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[18] *In re Application of Columbia Gas of Ohio, Inc. for Approval of a Demand Side Management Program for Residential and Commercial Customers*, Case No. 08-833-GA-UNC ("*2008 Columbia DSM Case*"), Finding and Order (July 23, 2008).

[19] *2008 Columbia DSM Case*, Application to Establish Demand Side Management Programs for Residential and Commercial Customers, at 24 (July 1, 2008).

[20] *In re Application of Columbia Gas of Ohio, Inc. for Approval of Demand Side Management Programs for its Residential and Commercial Customers* ("*2011 Columbia DSM Case*"), Case No. 11-5028-GA-UNC, Application to Continue and Expand Demand Side Management Programs (Sept. 9, 2011).

[21] *Id.* at 6.

[22] *2011 Columbia DSM Case,* Finding and Order (Dec. 14, 2011).

for new load."[23] To remedy that perceived disadvantage, Suburban proposed to modify its tariff to allow it to offer to "meet" (*i.e.*, match) an offer from a competitor "to provide demand side management assistance" for "residential construction."[24] Suburban's then-President and Chief Operating Officer, David L. Pemberton, Jr., submitted testimony asserting that potential customers "for whom demand-side management services are important" would likely not even contact Suburban, because Columbia had a DSM program and Suburban had none.[25] And, in post-hearing briefing, Suburban asserted that it had encountered "circumstances where it has not extended facilities or made other investments to compete for new load because" it felt "Suburban would not be competitive to serve * * * new [residential] builds without a DSM."[26]

In August 2012, the Commission denied Suburban's self-complaint.[27] The Commission concluded, among other things, that Suburban's circumstances did not match the typical circumstances in which the Commission allowed utilities to modify their rates through a self-complaint;[28] that Suburban had presented "no specific evidence * * * to demonstrate any economic disadvantage by not having a DSM tariff" or "that Suburban had experienced the loss of a single customer, at any time," because "another natural gas company offer[ed] DSM programs to residential builders to the detriment of Suburban";[29] and that Suburban had not demonstrated that "any alleged inequity between Columbia and Suburban was solely related to Suburban's lack of a DSM program, and not differences in the companies' rates, rate structures, size, or even whether it had a Choice program, or a whole host of differences between Columbia and Suburban."[30] Suburban did not seek rehearing of the Commission's Opinion and Order. Nor did it file an application for approval of a proper DSM portfolio.

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[23] *In the Matter of the Self-Complaint of Suburban Natural Gas Co. Concerning its Existing Tariff Provisions*, Case No. 11-5846-GA-SLF ("*2011 Suburban Self-Complaint Case*"), Self-Complaint ¶¶ 4-6 (Dec. 1, 2011).

[24] *Id.* at ¶ 8.

[25] *2011 Suburban Self-Complaint Case*, Pemberton Testimony, at 4 (May 25, 2012).

[26] *2011 Suburban Self-Complaint Case*, Post-Hearing Brief at 3 (July 9, 2012).

[27] *2011 Suburban Self-Complaint Case*, Opinion and Order (Aug. 15, 2012).

[28] *See id.* at 6-7.

[29] *Id.* at 7.

[30] *Id.* at 8.

Four years later, Columbia filed another application to continue its DSM programs, from 2017 through 2022.[31] The 2017-2022 portfolio continued the Energy Efficient New Homes Program, now called the EfficiencyCrafted® Homes program, which continued to "offer[ ] incentives to home builders to build homes that exceed state energy code minimum levels" by 30%.[32] The Application noted that the EfficiencyCrafted® Homes program had received multiple awards, including the 2016 Energy Star Certified Homes Market Leader Award and a Partner of the Year award from the Environmental Protection Agency for Sustained Excellence in Energy Efficiency Program Delivery.[33] Again, Columbia, Staff, and other parties filed a stipulation in support of the application, and the Commission approved it, with modifications, a little over one year ago.[34]

In approving the DSM portfolio, the Commission found that "Columbia's EfficiencyCrafted Homes program is an effective method to encourage the construction of energy efficient homes in Columbia's service territory. Homes can exist for decades, if not longer, and installing energy efficient and conservation measures during construction can provide long-term savings for the resident."[35] It also noted that, between 2012 and 2015, "over 70 home builders participated in the program to construct 7,565 homes * * *."[36]

Suburban did not intervene in that action, and no party questioned Columbia's ability to offer home builder incentives in subdivisions not presently served by Columbia. Ten months later, however, Suburban filed the present case, seeking protection from the very same competitive harm it alleged (and failed to prove) in its self-complaint case.

3. Law and Argument

When the Commission granted Suburban's motion to withdraw its 2013 complaint against Columbia, the Commission noted Suburban's pattern of filing

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[31] *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of Demand Side Management Program for its Residential and Commercial Customers*, Case Nos. 16-1309-GA-UNC et al. ("*2016 Columbia DSM Case*"), Application (June 10, 2016).

[32] *Id.* at 4, 9, 11.

[33] *Id.*, Appendix D, at 29.

[34] *2016 Columbia DSM Case*, Opinion and Order ("DSM Order") (Dec. 21, 2016).

[35] *Id.* at ¶ 115.

[36] *Id.*

and dismissing complaint cases against Columbia – noting, particularly, the 2007 complaint and motion to reopen – and stressed that if Suburban "opts, in the future, to file a third complaint against Columbia that raises the same allegations and/or a motion to reopen the proceedings in [the 1993 case], the Commission intends to expeditiously move that future matter to a final conclusion."[37] Suburban's new Complaint is quite plainly that "third complaint against Columbia," and Columbia respectfully asks the Commission to "expeditiously move [it] to a final conclusion" by dismissing the Complaint for failure to state reasonable grounds for complaint.

R.C. § 4905.26 provides that reasonable grounds must exist before the Commission can order a hearing on the complaint of another party. For a complaint to state reasonable grounds, it must allege facts that would lead to a finding that the public utility has engaged or will engage in unjust, unreasonable, or unlawful behavior.[38]

Here, Counts 1 through 3 and 5 do not set forth reasonable grounds for complaint pursuant to R.C. § 4905.26 because the allegations that Columbia's conduct violated the 1995 Stipulation and 1996 Order or the DSM Order are unsupported by the actual text of those documents. The facts that Suburban alleges in those Counts would not lead to a finding that Columbia engaged in unjust, unreasonable, or unlawful behavior because it is not unlawful for Columbia to offer new home energy efficiency incentives to customers that Suburban would like to serve. Suburban simply wants the Commission to protect it from competition in Delaware County, to the detriment of potential customers who would benefit from Columbia's new home energy-efficiency incentives. And Count 4 does not allege facts that would lead to a finding that Columbia violated its Main Extension Tariff. Instead, Suburban offers only the kinds of broad, unspecific allegations that the Commission has found unworthy of the Commission's full complaint process. Finally, Count 5 relies on the same flawed allegations as Counts 1 through 4, and fails for the same reasons those counts fail. For all of these reasons, the Commission should dismiss Suburban's complaint.

[37] *2013 Suburban Complaint Case*, Entry, at ¶ 6 (Aug. 27, 2014).

[38] *In the Matter of the Complaint of John M. Beres v. Ameritech Ohio*, Case No. 00-509-TP-CSS, Entry, at ¶ 5 (Apr. 20, 2000).

3.1. Natural gas companies do not have exclusive territories under Ohio law.

In Counts 1 through 3, Suburban is attempting to create service territory divisions between itself and Columbia, while at the same time admitting the lack of any statutory language authorizing such fiefdoms. Suburban acknowledges that "natural gas companies do not have service 'territories' in the same sense as electric or water utilities * * *."[39] Yet, at the same time, Suburban insists that "Columbia is operating well outside its 'service territory'" and "encroach[ing] upon Suburban's territory[.]"[40] Suburban insists that Columbia may not offer DSM incentives in "Suburban's operating area," and may only offer such incentives "'in' or 'within' Columbia's service territory."[41]

Suburban was right the first time. As the Commission has held, "there are no certified gas service territories in Ohio, and any gas company may serve any customer in any part of the state."[42] Additionally, there are no siting or non-duplication requirements for natural gas distribution lines. Instead, Ohio law "positively encourage[s]" free competition in the field of natural gas distribution.[43]

In earlier cases, Suburban admitted that natural gas companies "do not have exclusive service areas and often compete for new load."[44] In its 2011 DSM self-complaint case, Suburban explicitly conceded that "Suburban must compete with Columbia in [an] environment" where Columbia "has a DSM program" that provides "million[s] in rebates to residential customers[,]" because "local distribution companies do not have exclusive territories and must compete for load."[45] But in this case, Suburban attempts to reverse course, arguing that Columbia's offering of builder incentives in areas near existing Suburban customers is *prohib-*

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[39] Suburban Motion for Interim Emergency Relief at 4 (Oct. 20, 2017).

[40] *Id.* at 5, 6.

[41] Verified Complaint ¶¶ 29, 32.

[42] *In re Application of Columbia Gas of Ohio, Inc. to Amend its Rules and Regulations Governing the Distribution and Sale of Gas*, Case No. 87-1528-GA-ATA, 1987 Ohio PUC LEXIS 184, at *26 (Dec. 8, 1987).

[43] *In re Complaint of Suburban Natural Gas Company v. Kalida Natural Gas Company, Inc*., Case Nos. 92-1876-GA-CSS and 93-279-GA-ABN, 1993 Ohio PUC LEXIS 736, Entry, at *12 (Aug. 26, 1993). *See also* R.C. 4929.02

[44] *2011 Suburban Self-Complaint Case*, Self-Complaint ¶ 6 (Dec. 1, 2011).

[45] *2011 Suburban Self-Complaint Case*, Post-Hearing Brief at 2-3 (July 9, 2012).

ited by the 1995 Stipulation and the Commission's orders approving Columbia's DSM programs.[46] As shown below, that argument is supported by neither the text of the 1995 Stipulation nor the text of the DSM orders.

3.2. The 1995 Stipulation and 1996 Order did not establish geographic limits on Columbia's service territory.

Count 1 of Suburban's Complaint asserts that Columbia is acting "directly contrary to the 1995 Stipulation and the Finding and Order approving same" by "extending its mains and proposed distribution lines into Suburban's operating area and offering financial incentives to builders * * * ."[47] Rightfully, Suburban does not plead that Columbia violated the express terms of the 1995 Stipulation or Order – presumably, because neither actually includes general service territory restrictions.

This fact is not, and has never been, subject to dispute. In its 2007 Motion to Reopen, Suburban explained that its original May 1994 stipulation with Columbia *did* actually "contain[ ] covenants not to compete in specified areas * * * and restrictive covenants regulating competition within broader areas of Delaware County[,]" but those provisions were excluded from the 1995 Stipulation that the Commission ultimately approved.[48] (Suburban asserted that "one of the Commissioners strongly objected to the precedential impact of approving essentially exclusive service areas for competing natural gas companies in an era when the Commission was actively promoting deregulation and competition within the Ohio public utility industry as a whole."[49])

Rather than relying on the text of the 1995 Stipulation, Count 1 hinges entirely on the purported "purpose and intent" of the 1995 Stipulation, allegedly, "to eliminate the wasteful duplication and destructive competitive practices now being reintroduced into Suburban's operating area."[50] However, this allegation cannot justify a hearing. Suburban's unilateral view of the supposed purpose and intent of the 1995 Stipulation is not relevant because it is not supported by the text of the agreement. A stipulation speaks for itself, and the intentions or mo-

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[46] Suburban Motion for Interim Emergency Relief at 4 (Oct. 20, 2017).

[47] Complaint 29.

[48] *2007 Suburban Complaint*, Motion to Reopen at 8 (Dec. 11, 2007).

[49] *Id.*

[50] *See* Complaint ¶ 29 ("Columbia is violating the purpose and intent of the 1995 Stipulation").

tives of any particular signatory party do not affect the Commission's determination whether a stipulation is reasonable.[51]

The 1995 Stipulation says nothing about eliminating duplication of facilities or preventing lawful competition. Indeed, in its 2013 complaint case against Columbia, Suburban conceded that "the Stipulation creates no * * * exclusive territories and Suburban has not argued, and is not arguing, that it does. * * * Columbia may install mains, service lines, and any other infrastructure necessary to compete with Suburban in southern Delaware and northern Franklin Counties."[52] And in the Glenross subdivision in Delaware County that is the subject of the current dispute, that competition has led the homebuilders to choose service from Columbia.[53] The Commission should reject Suburban's attempt to block those builders' choice of Columbia as their natural gas company, predicated solely on Suburban's revised assessment of its intentions in signing the 1995 Stipulation two decades ago.

3.3. Neither the Commission's Orders approving Columbia's DSM Program nor Columbia's approved Tariff constrain Columbia's ability to offer energy efficiency incentives to homebuilders.

Counts 2 and 3 must also be dismissed. Count 2 asserts that Columbia's three DSM Program applications, and the Commission opinions and orders approving those applications, limited Columbia to implementing its DSM Programs "'in' or 'within' Columbia's service territory."[54] Suburban then asserts that Columbia is violating the Commission's orders by offering incentives in an area outside "Columbia's service territory" – i.e., in the Glenross subdivision.[55] And

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[51] *See In re Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR *et al.*, Fifth Entry on Rehearing, ¶ 90 (Apr. 5, 2017) (holding, "the intentions of any particular signatory party do not change the settlement agreement set forth * * * in the stipulation, which speaks for itself"); *see also In re Dayton Power & Light Co.*, Case No. 02-2779-EL-ATA *et al.*, Opinion and Order, at 12 (Sept. 2, 2003).

[52] *2013 Suburban Complaint Case*, Suburban Memo Contra Columbia Motion to Dismiss, at 4-5 (June 25, 2013).

[53] *See* Exhibit 1, Suburban Responses and Objections to Columbia's First Set of Discovery Requests, Response to Interrogatory No. 8.

[54] Complaint ¶¶ 32-33.

[55] *Id.* ¶¶ 34-36.

Count 3 simply asserts that Columbia has or will violate its DSM Rider by attempting to recover the cost of offering those incentives.[56]

Both of these claims presuppose Columbia has a "service territory." But, as discussed above, natural gas companies do not have legally constricted service territories.[57] And the DSM Order does not set forth or otherwise reference a specified territory—other than the State of Ohio—within which Columbia may offer energy efficiency incentives to new home builders and prospective customers.

The Commission did say that Columbia's EfficiencyCrafted® Homes program "is an effective method to encourage the construction of energy efficient homes in Columbia's service territory" and that "[t]he key factor is that the home is located within Columbia's service territory and the customer is served by Columbia."[58] But that holding was in response to an argument from the Office of the Ohio Consumers' Counsel ("OCC") that the program inappropriately allowed Columbia to give incentives to builders that were not Columbia customers "or * * * located in Columbia's service territory or in the state of Ohio."[59] Columbia responded, and the Commission agreed, that the *builder's* location (*i.e.*, the location of the company's headquarters) was irrelevant; what was relevant was that the homes built (and then served by) Columbia would be more energy efficient, thereby saving Columbia customers' money and reducing aggregate natural gas usage.[60]

No party in the *2016 Columbia DSM Case* argued that Columbia should be prohibited from offering energy efficiency incentives to home builders in areas capable of being served by other natural gas companies. There is no basis for reading such a limitation into the DSM Order. Nor is the existence of such a limitation consistent with Suburban's own past interpretation of the Commission's DSM orders. Again, Suburban's 2011 DSM self-complaint was predicated on the

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[56] *See id.* ¶¶ 38-42.

[57] While Columbia does not have a defined "service territory," Delaware County is certainly "in" and "within" the area that Columbia serves customers. Columbia serves approximately 44,864 customers in the City of Delaware and in Delaware County. Columbia also generally serves customers in central Ohio municipalities, towns, and rural areas that adjoin areas served by Suburban. *See* Columbia Gas of Ohio, Inc.'s Memorandum Contra Suburban Natural Gas Company's Motion for Interim Emergency Relief at 8 (October 27, 2017).

[58] DSM Order ¶ 115.

[59] *Id.* ¶ 87.

[60] *Id.* ¶¶ 88, 115.

proposition that Suburban and Columbia "must compete for load," and that Suburban needed "to have a DSM in its tariff" to "effectively compete with Columbia" for "customers looking to locate in an area in which Suburban and Columbia compete * * *."[61]

Because there is no basis for the claim that offering energy efficiency incentives to customers Suburban desires violates the DSM Order, there is also no basis for Suburban's claim that Columbia is or will not be entitled to recover the associated costs incurred under Rider DSM. Counts 2 and 3 are factually and legally unsupported and should be dismissed.

3.4. The relief Suburban seeks in Counts 1 through 3 would violate state and federal antitrust laws.

Additionally, the Commission should reject Suburban's arguments because the relief Suburban seeks – relief from having to compete with Columbia for customers in Delaware County – would be illegal. Both federal and Ohio law prohibit acts that unreasonably restrain trade or commerce. The federal Sherman Act provides: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal."[62] The Ohio Valentine Act provides, in relevant part, that a "trust" includes "acts by two or more persons * * * [t]o create or carry out restrictions in trade or commerce," and all such trusts are "unlawful and void."[63] Pursuant to R.C. § 1331.06, "[a] contract or agreement in violation of sections 1331.01 to 1331.14, inclusive, of the Revised Code, is void." These federal and state prohibitions against contracts or agreements that unreasonably restrain trade or commerce are applicable to public utilities; state approval of restrictive private conduct confers no immunity.[64]

The relief sought by Suburban would be unlawful because it entails asking the Commission to demand private conduct forbidden by the Sherman and

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[61] *2011 Suburban Self-Complaint Case*, Post-Hearing Brief at 3 (July 9, 2012).

[62] 15 U.S.C. § 1.

[63] R.C. § 1331.01(C)(1)(a) and (C)(4).

[64] *See Cantor v. Detroit Edison Co.*, 428 U.S. 579, 592-93 (1976).

Valentine Acts. In paragraph 13 of its 1996 Order,[65] the Commission disclaimed any immunity[66] relating to its approval of the 1995 Stipulation:

> Our approval of this stipulation does not constitute state action for purposes of the antitrust laws. It is not our intent to insulate the parties to the stipulation from the provisions of any state or federal law which prohibit the restraint of trade.[67]

As Suburban frames it, the 1995 Stipulation embodied an agreement between Suburban and Columbia not to compete in certain ways, even though the 1995 Stipulation contains no express language to that effect. Even if Suburban had a factual basis for that assertion, which it does not, the Commission could not give credence to Suburban's argument as a matter of law because any such agreement between direct competitors would constitute a *per se* antitrust violation. Agreements between competitors to divide or allocate markets are *per se* unlawful and void.[68] Additionally, the Commission does not have the authority to confer a monopoly on Suburban in any natural gas distribution market. The Ohio General Assembly limited the Certified Territories Act to "electric suppliers."[69]

When a practice "is not protected by legislative sanction, either directly or by being committed to a commission empowered to deal with it, the antitrust laws [serve as] a minimal means of protecting the public interest."[70] Here, the Ohio General Assembly did not authorize the creation of certified territories for natural gas companies, either directly or by this Commission. Although the Commission's function is not to administer antitrust laws,[71] it also cannot contra-

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[65] *1993 Self-Complaint Case*, Finding and Order, at 6 (Jan. 18, 1996).

[66] Where a restraint upon trade or monopolization is the result of valid governmental action, as opposed to private action, no violation of the Sherman Act can be made out. *Parker v. Brown*, 317 U.S. 341 (1943). However, paragraph 13 of the Order moots the need for analysis and argument about whether *Parker* state action immunity would apply to the Commission's conduct, if it did grant the relief Suburban seeks. *See 1993 Self-Complaint Case*, Finding and Order, at 6 (Jan. 18, 1996).

[67] *Id.*

[68] *United States v. Topco Associates, Inc.*, 405 U.S. 596, 608 (1972); *Eichenberger v. Graham*,10th Dist. No. 12AP-216, 2013-Ohio-1203, ¶ 14 (recognizing that R.C. 1331.01(B) makes agreements to divide markets an unlawful anticompetitive practice); *see also Johnson v. Microsoft Corp*., 106 Ohio St.3d 278, 2005-Ohio-4985, 834 N.E.2d 791, ¶ 8 (confirming that the Valentine Act is to be construed in accordance with federal antitrust laws).

[69] R.C. §§ 4933.81 to 4933.90.

[70] *Pennsylvania Water & Power Co. v. Fed. Power Comm.*, 193 F.2d 230, 235 (D.C. Cir. 1951).

[71] *In re Complaint of the Suburban Fuel Gas, Inc., v. Columbia Gas of Ohio, Inc*., Case No. 86-1747-GA-CSS, Entry, 1987 Ohio PUC LEXIS 485, at *15 (Jan. 6, 1987).

vene them while refereeing a contest between competitors. The Commission should dismiss the complaint so as not to be seen as approving or participating in the creation of an unlawful agreement.

3.5. Suburban's Main Extension Tariff claims fail to allege specific facts stating reasonable grounds for complaint.

Count 4 of Suburban's Verified Complaint contains only one quasi-factual allegation: "On information and belief, Columbia is offering to, or has, agreed with builders or others to waive deposits or other charges required under the Main Extension Tariff" (Third Revised Sheet No. 9 and Fourth Revised Sheet No. 10 in Columbia's approved tariff).[72] But this "allegation" asserts no actual facts. It does not specify whether Columbia has actually waived required charges or merely offered to do so. It does not identify the "builders or others" to which the claim relates. And it does not identify the "deposits or other charges" that it claims are "required under the Main Extension Tariff."

In fact, Columbia's Main Extension Tariff does not require specific deposit amounts for a main line extension. If a customer seeks "a residential service extension of main in excess of one hundred (100) feet * * *," the Company may require a deposit, but only for the company's cost to extend the line "in excess of the footage which the Company will construct without cost to the applicant."[73] Similarly, "[w]here a main extension is necessary to provide service availability to plots of lots or real estate subdivisions[,]" Columbia may require a deposit for the line extension, but only if "such main extension is not deemed justified at the Company's expense[,]" either in whole or in part.[74] It is unclear whether these are the "deposits or other charges" to which Count 4 relates. But it is clear, from the approved tariff language, that Columbia need not always require a deposit to extend its distribution mains, depending on the circumstances

And Columbia's efforts to gain more information about this claim through discovery have been unsuccessful. When asked to specify the actions Columbia had allegedly taken that violated its Main Extension Tariff, or the "builders or others" for whom Columbia had allegedly waived required deposits, Suburban simply cited paragraphs 44-45 of its Complaint and admitted that it "cannot 'de-

[72] Verified Complaint ¶ 45.

[73] Columbia Tariff, P.U.C.O. 2, Third Revised Sheet No. 9, Section 12.

[74] *Id.*

scribe in detail [any] and all actions taken by Columbia' [in violation of the Main Extension Tariff] until the conclusion of discovery."[75] In other words, though Suburban concedes that it could not support the claim in Count 4 when it filed its Complaint and cannot do so now, it can only hope it will find support for that claim after it conducts discovery.

Suburban should not be allowed to proceed to discovery on this claim. The Commission recently reaffirmed that "[b]road, unspecific allegations are not sufficient to trigger a whole process of discovery and testimony."[76] Here, that is all Suburban offers. Because Count 4 relies on general and unsupported allegations of impropriety rather than specific factual allegations sufficient to prove a violation of Columbia's tariff, and given Suburban's pattern of bringing similarly meritless Complaints against Columbia, the Commission should dismiss Count 4 and the related provisions of Count 5.

4. Conclusion

Competition between Columbia and Suburban is in the best interest of both public utilities' customers. Building energy-efficient homes, too, is in the best interest of consumers. In its Complaint, however, Suburban asks the Commission to ignore customer interests and imply a "service territory" limitation in the 1995 Stipulation and Order, as well as in the DSM Order, though no such competitive restrictions exist and none would be lawful regardless. Therefore, Suburban has not provided any reasonable basis for Counts 1, 2, or 3, and all must be dismissed. Count 4 must also be dismissed, because it fails to allege specific facts demonstrating reasonable grounds for complaint. And because the Commission's approval of Columbia's DSM programs and Rider DSM constitutes an implicit finding that such programs are not unjust, unreasonable, or unduly discriminatory, Columbia's offering of incentives to new home builders and recoupment of those costs does not provide a reasonable basis for Count 5 of Suburban's Complaint. For all of these reasons, Columbia respectfully requests that the Commission dismiss Suburban's Complaint.

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[75] *See* Exhibit 1, Suburban Responses and Objections to Columbia's First Set of Discovery Requests, Responses to Interrogatories No. 18, 19, and 20.

[76] *In re Wingo v. Nationwide Energy Partners, LLC*, Case No. 16-2401-EL-CSS, Finding and Order, ¶ 23 (Nov. 21, 2017), quoting *In re Consumers' Counsel v. The Dayton Power & Light Co.*, Case No. 88-1085-EL-CSS, Entry (Sep. 27, 1988).

Respectfully submitted,

/s/ Mark S. Stemm

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document is being served via electronic mail on the 5th day of January, 2018, upon the parties listed below:

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/s/ Mark S. Stemm
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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.	)	

RESPONSES AND OBJECTIONS TO COLUMBIA GAS OF OHIO, INC.'S FIRST SET OF DISCOVERY REQUESTS TO SUBURBAN NATURAL GAS COMPANY

In accordance with Rules 4901-1-16, 4901-1-19, 4901-1-20 and 4901-1-22, Ohio Admin. Code, Suburban Natural Gas Company (Suburban) submits its responses to the First Set of Discovery Requests of Columbia Gas of Ohio, Inc. (Columbia).

GENERAL OBJECTIONS

Suburban's responses to Columbia's First Set of Discovery Requests are subject to the following General Objections:

1. Suburban objects to these discovery requests to the extent that they seek documents protected from discovery or disclosure by the attorney-client privilege, the work product doctrine, or any privilege applicable under statutory, constitutional or common law.

2. Suburban objects to these discovery requests to the extent that they are overbroad or unduly burdensome.

3. Suburban objects to these discovery requests to the extent that they seek information that is not relevant or not reasonably calculated to lead to the discovery of admissible evidence.

4. Suburban objects to these discovery requests to the extent that they purport to impose obligations different or in addition to what is required under the Commission's administrative rules governing discovery.

5. Suburban objects to these discovery requests to the extent that they purport to require a detailed, narrative response. *See Penn Central Transp. Co. v. Armco Steel Corp.*, 27 Ohio Misc. 76, 77 (Montgomery Cty. 1971).

6. Suburban objects to these discovery requests to the extent that they utilize undefined, incorrectly defined, improperly defined, vague, or ambiguous words or phrases.

These General Objections are incorporated into every response set forth below. Subject to and without waiving these objections, Suburban responds to the individual requests as follows:

RESPONSES TO INTERROGATORIES

INT-1: Please define and describe the geographic boundaries of the area(s) to which the Complaint pertains.

RESPONSE: Paragraphs 15-23, 29, and 32-34 of the Complaint describe the geographic areas where Columbia has engaged in the conduct giving rise to the Complaint. Each such area is within the geographic boundary of Delaware County, Ohio, and is further depicted in the exhibits to the Complaint.

INT-2: Please define and describe the geographic boundaries of the area(s) in Delaware County in which you believe Columbia is prohibited from offering incentives to home builders under the EfficiencyCrafted Homes program.

RESPONSE: Columbia is authorized to provide incentives "within" or "in" Columbia's service territory, as such territory existed at the time Columbia filed its application in Case No. 16-1309-GA-UNC. Such territory does not include the geographic area in southern Delaware County that is north of Lazelle Rd., east of Route 23, south of Route 36, and west of Interstate 71, as reflected in maps furnished to Columbia at the prehearing conference on November 13, 2017.

INT-3: Please define and describe the geographic boundaries of Columbia's service territory within Delaware County, Ohio.

RESPONSE: Columbia's "service territory" is defined by the geographic location of existing gas distribution mains as of the date Columbia filed its applications in the DSM programs referenced in the Complaint.

.

INT-4: Please define and describe the geographic boundaries of Suburban's service territory within Delaware County, Ohio.

RESPONSE: Suburban's "service territory" is any territory where it has installed gas distribution mains, and generally coincides with the geographic area described in response to INT-2 that is not within Columbia's service territory.

INT-5: Please identify language in either the 1995 Stipulation or the Commission's Finding and Order indicating the 1995 Stipulation's application or relevance to any future program of Columbia, including but not limited to EfficiencyCrafted Homes.

RESPONSE: Suburban objects to this request as calling for a narrative response on the parties' legal rights and obligations under the 1995 Stipulation and the Commission's Findings and Order in Case Nos. 93-1569, 94-938 and 94-939. Suburban also objects to this request as misleading and argumentative, in that it assumes Suburban's claims arise solely from the 1995 Stipulation. Subject to and without waiving these objections and the General Objections, Suburban responds as follows:

The sections of the 1995 Stipulation relevant to the claims in the Complaint are: the sale and transfer of gas facilities discussed and identified in A.1, A.2, A.3, A.4. A.5, A.6, A.7, A.8 and Exhibits 1-4; the installation of gas facilities discussed and identified in A.10; the modification of tariffs discussed and identified in B.1, B.2, B.3, B.4 and Exhibits 5-6; the mutual releases discussed and identified in C.1 and Exhibit 7; the 2d, 5th and 7th Whereas clauses; and all reasonable inferences from each of the foregoing. In addition, paragraphs 1, 4, 5, 6, 9 and 10 of the Commission's Findings and Order in Case Nos. 93-1569, 94-938 and 94-939 contain or concern facts and law relevant to Suburban's claims.

INT-6: Please identify, by paragraph number and/or exhibit number, the specific provisions of the 1995 Stipulation that you believe Columbia "has violated," per the allegation on page 2 of your Complaint.

RESPONSE: See response to INT-5.

INT-7: Please identify, by paragraph and/or exhibit number, the specific provisions of the 1995 Stipulation in which you believe "Columbia agreed to stop * * * offering financial incentives to developers and builders to unjustly gain an anti-competitive advantage over Suburban," per the allegation on pages 2-3 of your Complaint.

RESPONSE: See response to INT-5.

INT-8: Please describe in detail Suburban's existing plans to serve future development in the Glenross subdivision, including but not limited to:

a. determinations regarding pipeline construction,

b. estimates of anticipated additional natural gas load,

c. actions taken to secure requisite natural gas supply,

d. permits obtained,

e. submissions to State regulatory agencies, and

f. financial projections.

RESPONSE: Suburban objects to this request as calling for a narrative response of Suburban's corporate planning for serving future development in the Glenross subdivision. Suburban also objects to this request as being overbroad and unduly burdensome in the scope of the information requested. Suburban further objects to this request as seeking detailed proprietary business information that Suburban considers confidential. Subject to and without waiving these objections and the General Objections, Suburban states that a result of Columbia's actions, Suburban has been advised that it will not be serving the remaining sections of the Glrenross subdivision.

INT-9: Please identify all contracts, agreements or other commitments, whether oral or written, that Suburban has received from builders or developers relating to the future provision of natural gas service in the area(s) identified in response to Interrogatory No. 1.

RESPONSE: Suburban objects to this request as calling for a narrative response on Suburban's corporate planning for future main and service line installations. Suburban also objects to this request as being overbroad and unduly burdensome in the scope of the information requested. Suburban further objects to this request as seeking detailed proprietary business information that Suburban considers confidential. Subject to and without waiving these objections and the General Objections, see Response to INT-8.

INT-10: Please describe Suburban's "planned $8.5 million system improvement" referenced in paragraph 16 of the Complaint.

RESPONSE: See Application filed in Case No. 17-2321-GA-AIS.

RESPONSE: The allegations in paragraph 21 are based on discussions with builders, builders' marketing and sales literature, and by observing home construction in areas served by Suburban as well as by Columbia.

INT-17: Please identify the "builders who have or will accept financial incentives from Columbia [that] would otherwise remain customers of Suburban," as alleged in paragraph 25 of the Complaint.

RESPONSE: See Response to INT-14.

INT-18: Please describe in detail any and all actions taken by Columbia that Suburban alleges have violated Columbia's Main Extension Tariff and identify the specific tariff provision(s) implicated by each action.

RESPONSE: As alleged in Paragraphs 44 and 45, the tariff language in Columbia's Extension of Distribution Mains provision requires "deposits" for main extensions in certain circumstances. Suburban believes that Columbia has offered or agreed to waive or reduce these deposits, in addition to or in lieu of other builder incentives. Suburban cannot "describe in detail and all actions taken by Columbia" until the conclusion of discovery.

INT-19: Please state with specificity the basis for Suburban's allegation in paragraph 45 of the Complaint that "Columbia is offering to, or has, agreed with builders or others to waive deposits or other charges required under the Main Extension Tariff."

RESPONSE: See Response to INT-18.

INT-20: Please identify the "builders or others" for whom you allege, in paragraph 45 of the Complaint, "Columbia is offering to, or has, agreed * * * to waive deposits or other charges required under the Main Extension Tariff."

RESPONSE: See Response to INT-18.

INT-21: Please explain how Suburban has marketed its natural gas service to builders, developers and prospective customers in the area identified in response to Interrogatory No. 1.

RESPONSE: Suburban generally markets its services through word-of-mouth and personal relationships.

INT-22: Identify with specificity any provision in Columbia's tariffs that restricts the company's ability to offer builder incentives to prospective customers.

Date: December 21, 2017

As to objections,

/s/ *Mark A. Whitt*

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(All counsel consent to service by e-mail)

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document is being served via electronic mail on the 21st day of December, 2017 upon the following representatives of Columbia Gas of Ohio, Inc. listed below:

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/s/ Mark A. Whitt

Attorney for Complainant Suburban Natural Gas Company

EXHIBIT 2

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Self-Complaint of Columbia Gas of Ohio Concerning its Existing Tariff Provisions.	))))	Case No. 93-569-GA-SLF

COMPLAINT OF COLUMBIA GAS OF OHIO, INC.

Now comes Columbia Gas of Ohio, Inc. (hereinafter "Columbia" or "Complainant") and files this Complaint, pursuant to the provisions of R. C. 4905.26. In support thereof, Columbia hereby represents and says that:

1. Columbia is a natural gas company and public utility as those terms are defined by R. C. 4905.02 and 4905.02(A)(6), and is therefore subject to the jurisdiction of this Commission.

2. R. C. 4905.26 authorizes a public utility, such as Columbia, to file a complaint "as to any matter affecting its own product or service."

3. Columbia's existing tariffs, which were filed pursuant to the Commission's November 27, 1992 entry in Case Nos. 91-195-GA-AIR and 88-1830-GA-ATA, contain certain provisions which restrict the company's ability to offer marketing incentives to prospective customers. In particular, Section 23(b) of the Rules and Regulations Governing the Distribution and Sale of Gas (which appears on Third Revised Sheet No. 6) provides that:

> The Company shall not provide or pay, directly or indirectly, the cost of customer service lines when competing with another regulated natural gas company, unless such company

> offers to provide or pay for customer service lines, directly or indirectly, or unless such assistance is essential to induce a prospective customer to utilize natural gas rather than an alternate source of energy. (Emphasis supplied)

Sections 28 and 29 (which appear on Fifth Revised Sheet No. 7) contain similar restrictions with respect to payments for house piping and appliances.

4. The interpretation and application of these tariff provisions are "matter[s] affecting [Columbia's] own product or service" within the meaning of R. C. 4905.26.

5. Columbia is currently involved in a controversy with Suburban Natural Gas Company (hereinafter "Suburban"), another regulated natural gas utility, concerning the interpretation and application of these tariff provisions as they relate to the possible provision of natural gas service to the Oak Creek subdivision in Delaware County, Ohio. In essence, Suburban, which has virtually identical provisions in its own tariffs, claims that such provisions preclude Columbia from providing or paying for customer service lines, house piping, or appliances whenever Columbia is competing with another regulated natural gas company which does not offer such incentives, whether or not "such assistance is essential to induce a prospective customer to utilize natural gas rather than an alternate source of energy." In a letter dated August 18, 1993, Suburban has specifically threatened to "pursue all legal remedies available to our company" if Columbia were to provide such "inducements" in connection with service to the Oak Creek subdivision.

6. Under Ohio's territorial certification law (R. C. 4933.81 through 4933.90), electric service is available throughout the entire state. As a result, Ohio's gas utilities, such as Columbia, are always competing with electricity when seeking to serve new residential subdivisions, commercial developments, or industrial facilities, irrespective of their location. It is often necessary to provide marketing incentives to induce prospective customers to utilize natural gas rather than taking service from an electric utility. This is particularly true in the central Ohio area, which includes the Oak Creek subdivision, due to the broad-based incentive programs offered by the electric utility which serves that area and the lower "first-cost" of electric appliances and other equipment. It is almost always necessary to offer such incentives in the case of new residential developments. In fact, Columbia recently lost the opportunity to serve the Oak Creek Apartments, a new apartment complex in the vicinity of the Oak Creek subdivision, as a result of the marketing incentives offered by the electric utility serving that area. In addition, similar incentives offered by the same utility have induced Duffy Homes and Manor Homes, two major builder-developers in central Ohio, to install add-on heat pumps and electric water heaters in each of the homes they construct, thereby causing Columbia to lose all of the water heating loads and approximately 40% to 60% of the space heating loads for the homes constructed by those companies.

7. Columbia believes that the language contained in Sections 23(b), 28, and 29 of its tariffs unequivocally allows

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Columbia to provide marketing incentives, including direct or indirect payments for customer service lines, house piping, and appliances, whether or not Columbia is competing with another regulated gas company, in areas such as central Ohio where such assistance is essential to induce prospective customers to utilize natural gas, rather than electricity. Columbia respectfully requests that the Commission resolve the instant controversy between Columbia and Suburban by issuing an order holding that Columbia's existing tariff provisions do not prohibit it from providing such incentives in connection with possible service to the Oak Creek subdivision and to builders of residential dwellings in central Ohio in general.[1]

8. Alternatively, if the Commission concludes that Columbia's existing tariff provisions do not permit Columbia to provide such marketing incentives in those circumstances, Columbia seeks authority to modify its existing tariffs by removing the restrictive provisions discussed in Paragraph 3 of this Complaint. The proposed changes are shown on the tariff pages attached hereto

[1] Since the fundamental purpose of the tariffs is to govern the relationship between Columbia and its customers -- i.e., the persons who enter into contractual relationships with Columbia for gas service -- the tariff provisions in question could be interpreted to apply only to incentives provided directly to customers, and not those provided to builders or developers. For purposes of this Complaint, however, it is assumed that those provisions apply to builders and developers as well as customers. Since Columbia maintains that the tariffs permit it to offer marketing incentives in areas such as the portion of central Ohio which includes the Oak Creek subdivision, whether or not the tariffs are interpreted to apply to builders and developers, Columbia submits that the Commission need not reach that issue in this proceeding.

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as Attachment A and made a part hereof. Columbia makes this request for the following reasons:

(a) The upcoming implementation of the Federal Energy Regulatory Commission's Order No. 636, which mandates the "unbundling" of interstate pipeline services, will further increase competition in the natural gas industry, as well as competition between gas and electric companies. This will be especially true in states such as Ohio, which have no territorial certification for gas utilities, and hence, no restrictions on where local gas distribution companies can obtain interstate pipeline taps and provide retail natural gas service. As the Commission said only recently in another proceeding, "[n]ot only does the statutory scheme setting forth the regulation of gas and natural gas companies permit reasonable competition, the rules of this Commission and the Federal Energy Regulatory Commission positively encourage it." Suburban Natural Gas Co. v. Kalida Natural Gas Co., PUCO Case Nos. 92-1876-GA-CSS and 93-279-GA-ABN (August 26, 1993). In view of such governmental policies which actively encourage competition in the gas industry, Columbia submits that restrictions such as those found in Sections 23(b), 28, and 29 of its

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Rules and Regulations Governing the Distribution and Sale of Gas are no longer appropriate.

(b) If the above-cited tariff provisions are to be interpreted in the manner suggested by Suburban, such provisions are patently anticompetitive, and therefore contrary to the public interest.

9. In view of the foregoing considerations, Columbia submits that if the tariff provisions discussed in Paragraph 3 of this Complaint are to be interpreted in the manner suggested by Suburban, those provisions are unjust and unreasonable, and that Columbia's tariffs should therefore be modified, pursuant to R. C. 4905.37, to eliminate such provisions. Columbia further submits that these proposed tariff changes would not result in an increase in any rate, joint rate, toll, classification, charge, or rental.

WHEREFORE, Columbia respectfully asks that the Commission:

(1) Issue an order which resolves the current controversy between Columbia and Suburban by holding that Columbia's existing tariff provisions do not prohibit it from providing marketing incentives, including direct or indirect payments for customer service lines, house piping, and appliances, whether or not Columbia is competing with another regulated gas company, in the area of central Ohio which includes the Oak Creek subdivision; or

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(2) Permit Columbia to file the proposed tariff changes shown on Attachment A, attached hereto and made a part hereof, and allow such changes to take effect immediately.

Respectfully submitted,

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ATTACHMENT A

P.U.C.O. No. 1

Fourth Revised Sheet No. 6
Cancels
Third Revised Sheet No. 6

COLUMBIA GAS OF OHIO, INC.

RULES AND REGULATIONS GOVERNING THE DISTRIBUTION AND SALE OF GAS

Any remittance received by mail at any office of the Company bearing U.S. Postal Office cancellation date corresponding with or previous to the last date of the net payment period will be accepted by the Company as within the net payment period.

21. **Removal By, and Change in Financial Status of Customer.** At the option of the Company, the Company shall have the right to shut off the gas and to remove its property from the customer's premises and the Company shall have the further right, independent of or concurrent with the right to shut off, to demand immediate payment for all gas theretofore delivered to the customer and not paid for, which amount shall become due and payable immediately upon such demand, when the customer vacates the premises, becomes bankrupt or a receiver, trustee, guardian, or conservator is appointed for the assets of the customer, or the customer makes assignment for the benefit of creditors.

22. **Bill Format and Billing Procedure.** The Company's policy on bill format and billing procedure shall comply with Rule 4901:1-18-10 of the Ohio Administrative Code, Orders of the Public Utilities Commission, and Section 4905.30 of the Ohio Revised Code, as amended from time to time.

SECTION III - PHYSICAL PROPERTY

23. **Service Lines.** The general term "service pipe" or "service line" is commonly used to designate the complete line or connection between the Company main up to and including the meter connection. It consists of two distinct parts, (a) the service line connection, and (b) the customer service line.

(a) **Service Line Connection.** The service line connection consists of the connection at the main, necessary pipe and appurtenances to extend to the property line or the curb cock location, curb cock and curb box. This connection shall be made by the Company, or its representative, without cost to the customer and it remains the property of the Company.

(b) **Customer Service Line.** The customer service line consists of the pipe from the outlet of the curb cock to and including the meter connection. The customer shall own and maintain the customer service line. The Company shall have the right to prescribe the size, location and termination points of the customer's service line. The Company shall have no obligation to install, maintain or repair said customer service line. The Company shall not provide or pay, directly or indirectly, the cost of customer service lines when competing with another regulated natural gas company, unless such company offers to provide or pay for customer service lines, directly or indirectly, or unless such assistance is essential to induce a prospective customer to utilize natural gas rather than an alternate source of energy. (D)

24. **Pressure Regulators.** Where service is provided from intermediate or medium pressure distribution lines, the Company shall furnish the necessary regulator or regulators, which regulator or regulators shall remain the property of the Company.

Filed pursuant to PUCO Entry dated In Case Nos.

ISSUED: EFFECTIVE: With gas used on and after

Issued By
A. P. Bowman, Vice President

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COLUMBIA GAS OF OHIO, INC.

RULES AND REGULATIONS GOVERNING THE DISTRIBUTION AND SALE OF GAS

Where service is provided from a high pressure transmission line, the customer shall, at his expense, provide, install and maintain a suitable regulator or regulators for reducing the pressure. The regulator or regulators shall be installed in the manner required by the Company.

The customer shall install and maintain, at his expense, substantial housing acceptable to the Company in size and design for the regulator or regulators and the meter in order to protect them from the weather and molestation.

If it becomes necessary to construct, operate, and maintain a heater on the inlet side of the high pressure regulator to maintain satisfactory operation of the regulator or regulators, the gas used in such heater shall be at the expense of the customer and shall be taken from the outlet side of meter serving the customer.

25. **Meter Furnished.** The Company will furnish each customer with a meter of such size and type as the Company may determine will adequately serve the customer's requirements and such meter shall be and remain the property of the Company and the Company shall have the right to replace it as the Company may deem it necessary.

26. **Meter Location.** The Company shall determine the location of the meter. When changes in a building or arrangements therein render the meter inaccessible or exposed to hazards, the Company may require the customer, at the customer's expense, to relocate the meter setting together with any portion of the customer's service line necessary to accomplish such relocation.

27. **Only Company Can Connect Meter.** The owner or customer shall not permit anyone who is not authorized agent of the Company to connect or disconnect the Company's meters, regulators, or gauges, or in any way alter or interfere with the Company's meters, regulators or gauges.

28. **House Piping.** The customer shall own and maintain the house piping from the outlet of the meter to gas burning appliances. The Company shall have no obligation to install, maintain or repair said piping. The Company shall not provide or pay, directly or indirectly, for house piping when competing with another regulated natural gas company, unless such company offers to provide or pay for house piping, directly or indirectly, or unless such assistance is essential to induce a prospective customer to utilize natural gas rather than an alternate source of energy. (D)

29. **Appliances.** The customer shall own and maintain all gas-burning appliances. The Company shall have no obligation to install, maintain, or repair appliances. The Company shall not provide or pay, directly or indirectly, for appliances when competing with another regulated natural gas company, unless such company offers to provide or pay for appliances, directly or indirectly, or unless such assistance is essential to induce a prospective customer to utilize natural gas rather than an alternate source of energy. (D)

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 Steve Watson DATE PROCESSED 9-20-93

Summary: Motion to Dismiss electronically filed by Mr. Eric B. Gallon on behalf of Columbia Gas of Ohio, Inc.