

**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.	)	

**COMPLAINANT’S MOTION TO COMPEL DISCOVERY**

Suburban Natural Gas Company (Suburban) brings this motion under Rule 4901-1-23, O.A.C., to request issuance of an order compelling Columbia Gas of Ohio, Inc. (Columbia) to respond to five Interrogatories and nine Requests for Production of Documents. An affidavit of counsel describing the efforts to resolve the parties’ disagreement is attached (Whitt Aff.), along with the discovery requests and responses at issue. Suburban requests that Columbia be ordered to supplement its interrogatory responses and produce responsive documents within 10 calendar days of the ruling on this motion.

**MEMORANDUM IN SUPPORT**

The crux of Suburban’s Complaint is that Columbia is extending financial incentives to home builders in areas served by Suburban and duplicating Suburban’s facilities to serve these builders’ developments. As explained at length in the response to Columbia’s motion to dismiss, Columbia’s actions violate the 1995 Stipulation, Columbia’s Main Extension Tariff, and Commission orders approving Columbia’s DSM program. Suburban served 10 interrogatories and 11 requests for production of documents pertinent to these claims. Columbia refuses to answer all but two of these discovery requests.

Suburban’s discovery is very straightforward. It is directed to basic factual questions, Columbia’s defenses and denials, the identity of Columbia personnel who may have knowledge of discoverable matters, and Columbia’s communications, both internal and external, concerning Suburban. Columbia refuses to answer this discovery because it does not like how the requests generally define “Builder Incentives.” This objection is classic form over substance. The discovery requests make clear exactly what “Builder Incentives” are at issue. If Columbia does not like the general definition, fine—it can (and did) object. But it must answer subject to objection. Differences of opinion over the purpose of the builder incentive programs at issue do not excuse Columbia’s outright refusal to answer. Columbia should be compelled to respond to Suburban’s discovery.

### **ARGUMENT**

All parties “shall be granted ample rights of discovery.” R.C. 4903.082. Under Rule 4901-1-16(B), O.A.C., “any party to a commission proceeding may obtain discovery of *any matter*, not privileged, which is *relevant to the subject matter of the proceeding*.” (Emphasis added)<sup>1</sup>; *see also Wilkos v. Ohio Edison Co.*, Case No. 16-183-EL-CSS, Entry (July 19, 2016) (granting motion to compel “very basic” discovery relevant to the proceeding). “Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Ohio Evid. R. 401; *see also Cutter Exploration, Inc. v. The East Ohio Gas Co. d/b/a Dominion East Ohio*, Case No. 09-1982-GA-CSS, Entry (Sept. 20, 2010) (granting motion to compel where requested discovery “may lead to information that is relevant

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<sup>1</sup> The scope of discovery in Commission proceedings is generally the same as in Ohio civil court. *See* Ohio R. Civ. P. 26(B)(1) (“Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . .”).

to the issues raised.”). All of Suburban’s discovery requests seek relevant, discoverable information.

**A. Information about the builder incentives Columbia provides under its new home construction programs is relevant and discoverable (Interrogatory Nos. 2-4).**

Interrogatory Nos. 2, 3, and 4 ask for details about the builder incentives provided by Columbia under the programs approved in Case Nos. 08-833-GA-UNC, 11-5028-GA-UNC, and 16-1309-GA-UNC.<sup>2</sup> For each program, Columbia was asked to identify the number of incentives offered, the number accepted, the recipients, and the dollar value. Columbia also was asked to identify documents and communications related to the incentives provided under these programs.

Columbia refuses to answer these interrogatories on two grounds: that the requests are “overbroad” because they seek information about areas Suburban does not serve, and that Suburban’s definition of “Builder Incentives” misstates the purpose of these incentives. Both objections are baseless.

The discovery requests are not overbroad. As the Commission knows from the 2016 DSM proceeding,<sup>3</sup> Columbia’s builder incentive program is a black box. All that is known is that Columbia has spent over \$18.5 million since 2010, and plans to dole out another \$20 million over the next five years.<sup>4</sup> Columbia keeps figures about how much it gives each builder close to the vest; this is “trade secret” information, according to Columbia.<sup>5</sup> And virtually nothing is

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<sup>2</sup> Whitt Aff., Exhibit A.

<sup>3</sup> *Application for Approval of Demand Side Management Programs*, Case No. 16-1309-GA-UNC.

<sup>4</sup> Case No. 16-1309-GA-UNC, Application, Appendix B, Table 3 (June 10, 2016); *Annual Application for Adjustment to Rider IRP and Rider DSM Rates*, Case No. 17-2374-GA-RDR, Notice of Intent, PFN Exhibit 7D, Schedule DSM-2 (Nov. 28, 2017) (2017 DSM update).

<sup>5</sup> Case No. 16-1309-GA-UNC, Columbia Motion for Protective Order (Sept. 9, 2016).

known about where these allegedly state-of-the-art, hyper-efficient homes of the future are being built (assuming these homes actually *are* more efficient, which Columbia has never verified).<sup>6</sup> As alleged in the Complaint, Suburban has first-hand knowledge of Columbia’s use of builder incentives as a means to sweeten the pot for potential new customers.<sup>7</sup> If discovery reveals that Columbia directs builder incentives disproportionately to areas where it faces competition—not just in Delaware County, but anywhere in Ohio—then this information would be highly probative of Suburban’s claims. Accordingly, Suburban is entitled to explore how Columbia uses incentives in areas where Columbia is subject to competition, as well as in areas where it is not.

Playing cute with Suburban’s definition of “Builder Incentives” does not relieve Columbia of its discovery obligations. Suburban’s first set of discovery defines “Builder Incentive” to mean “any cash payment, rebate, discount, or other consideration offered or extended to any person or entity as an incentive to receive gas distribution service from Columbia.”<sup>8</sup> Columbia points to the clause, “as an incentive to receive gas distribution service from Columbia,” as grounds not to answer.<sup>9</sup> According to Columbia, the purpose of its incentives is to encourage energy efficient construction, not to get new customers; therefore, Columbia does not provide builder incentives “as Suburban has defined that term.”<sup>10</sup> But Columbia ignores the actual interrogatories. Each interrogatory asks about the specific Builder Incentives offered under the specific program name described in specific Commission proceedings. Whether Columbia agrees with the general definition of “Builder Incentive” or not,

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<sup>6</sup> Case No. 16-1309-GA-UMC, Hearing Tr. at 315 (Sept. 30, 2016).

<sup>7</sup> Complaint ¶¶ 19-20.

<sup>8</sup> Whitt Aff., Exhibit A.

<sup>9</sup> *Id.*; *see also* Whitt Aff., Exhibit C.

<sup>10</sup> Whitt Aff., Exhibit A.

there can be no doubt that Interrogatory Nos. 2, 3 and 4 convey exactly which incentives Suburban is talking about.

Interrogatory Nos. 2, 3 and 4 identify specific incentive programs, and ask for information about each program. The information is relevant and discoverable, regardless of *either* party's characterization of the purpose of the programs. Interrogatory Nos. 2, 3, and 4 must be answered.

**B. The identity of individuals who administer Columbia's new home construction programs is relevant and discoverable information. (Interrogatory Nos. 6 and 7).**

Interrogatory Nos. 6 and 7 ask Columbia to identify the persons responsible for administering its builder incentive programs. Columbia refuses to provide this information—not because it doesn't have builder incentive programs or because no one is in charge, but again because it does not have builder incentive programs as Suburban has defined them.

Again, Columbia's responses are pure gamesmanship. It is hard to imagine interrogatories more straightforward than these, and Columbia's refusal to provide Suburban with even this very basic information is simply not credible. Indeed, if Suburban carpet-bombed Columbia with deposition notices to figure out who was in charge of its incentive programs, Columbia would not doubt argue that the notices were improper because they were not directed to individuals with sufficient knowledge of the programs. Interrogatory Nos. 6 and 7 must be answered.

**C. Documents relating to incentives provided by Columbia are relevant and discoverable (Request for Production Nos. 2--10).**

Request for Production Nos. 2 through 10 ask Columbia to produce various types of business records that address or reflect the "Builder Incentives." Request No. 2 asks for reports, presentations, or other data compilations. Request No. 3 asks for advertising, marketing, and

other promotional material. Request No. 4 asks for internal and external communications. Request No. 5 asks for communications about Suburban. Request No. 6 asks for documents on the design, objective, structure, or purpose of any builder incentives and the associated programs. Request No. 7 asks for any audits, inspections, certifications or review of the construction methods of the recipients of such incentives. Request No. 8 asks for the qualifications and other eligibility criteria for such incentives. Request No. 9 asks for any materials provided by an expert or consultant regarding such incentives. And Request No. 10 asks for documents or materials provided to or received from Commission Staff on such incentives.

Columbia doesn't say that these records do not exist or are not in its possession. Instead, Columbia recycles the same baseless objections over and over again: the requests are "overbroad." The requests misstate the "purpose" of the incentives. The definition of "Builder Incentives" is "vague and ambiguous." The requested documents are "not relevant to the subject matter of the proceeding." Wash. Rinse. Repeat.

It is disingenuous for Columbia to pretend that it doesn't understand Suburban's requests, given the history that these parties share on this very issue. If its pleadings can narrate the saga of this dispute over the years in such detail, Columbia can grasp the information that Suburban seeks in its requests. And it is not permissible for Columbia to withhold relevant, discoverable information, if that information in fact exists in its possession, based on weak, repetitive objections that amount to overwrought quibbling. Suburban's requests seek business records that concern the incentive programs at issue. They seek information that is "reasonably calculated to lead to the discovery of admissible evidence." O.A.C. 4901-1-16(B). Columbia does not have a credible basis to evade its discovery obligations for these requests. Request for Production Nos. 2-4 and 6-10 must be answered.

## **CONCLUSION**

Suburban has requested basic information relevant to its allegations about Columbia's misuse of financial incentives under its new home construction programs. With the exception of a list of zip codes and a handful of line extension agreements, Columbia has refused to produce any of the requested information and documents. Suburban requests that the Attorney Examiner order Columbia to supplement the specific interrogatory responses at issue here and produce responsive documents within 10 calendar days of the ruling on this motion.

Dated: January 23, 2018

Respectfully submitted,

/s/ Mark A. Whitt

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(All attorneys consent to service by email)

ATTORNEYS FOR SUBURBAN  
NATURAL GAS COMPANY

### **CERTIFICATE OF SERVICE**

This document was filed via the Commission's e-filing system on January 23, 2018. Parties who have subscribed to electronic service will receive notice of this filing from the Commission. Service is also being made this day to the following persons by email:

Mark Stemm [mstemm@porterwright.com](mailto:mstemm@porterwright.com)

Eric Gallon [EGallon@porterwright.com](mailto:EGallon@porterwright.com)

Joseph Clark [josephclark@niscource.com](mailto:josephclark@niscource.com)

Steve Seiple [sseiple@niscource.com](mailto:sseiple@niscource.com)

*/s/Mark A. Whitt* \_\_\_\_\_



**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

	)	
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SUBURBAN NATURAL GAS COMPANY	)	
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Complainant,	)	
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v.	)	Case No. 17-2168-GA-CSS
	)	
COLUMBIA GAS OF OHIO, INC.,	)	
	)	
Respondent.	)	
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**AFFIDAVIT OF COUNSEL**

In accordance with Rule 4901-1-23(C), Mark A. Whitt, counsel for Suburban Natural Gas Company (Suburban), states:

1. My name is Mark A. Whitt. I am one of the attorneys for Suburban in the above-captioned proceeding.
2. On November 28, 2017, I served Suburban's First Set of Interrogatories and Requests for Production of Documents (First Set of Discovery) to counsel for Columbia Gas of Ohio, Inc. (Columbia).
3. Columbia served responses to the First Set of Discovery of December 18, 2017. Exhibit A is a true and accurate copy of the requests and responses.<sup>1</sup>
4. On January 4, 2018, I sent a letter to Columbia's counsel identifying and explaining the deficiencies in the discovery responses. I requested that Columbia provide supplemental

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<sup>1</sup> Columbia's Response to Interrogatory No. 8 was served on December 19, 2017, and a revised response on December 20, 2017. This Response, however, is not the subject of Suburban's Motion to Compel, and has not been included as part of Exhibit A.

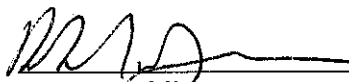
responses to Interrogatory Nos. 2, 3 and 4 and Request for Production Nos. 2-10 by January 12, 2018. A true and accurate copy of my letter is attached as Exhibit B.

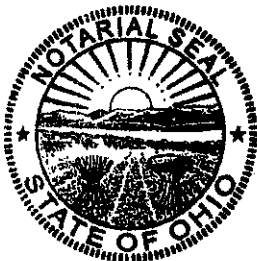
5. Exhibit C is a true and accurate copy of the letter that Columbia's counsel sent on January 12, 2018 in response to my January 4, 2018 letter. The letter states that Columbia "stands on" its previous responses and objections to the above-mentioned discovery requests. The letter also states that Columbia is "prepared to defend" its previous responses and objections, if Suburban "decides to escalate this matter with a motion to compel."
6. Based on Columbia's January 12, 2018 correspondence, I believe that, prior to filing this motion to compel, Suburban has exhausted all other reasonable means of resolving the parties' disagreement over the deficiencies in Columbia's discovery responses.

  
Mark A. Whitt

State of Ohio           )  
                                  ) ss:  
Franklin County       )

Sworn to and subscribed in my presence by Mark A. Whitt this 23<sup>rd</sup> day of January, 2018.

  
Notary Public



Rebekah Glover  
Attorney At Law  
Notary Public, State of Ohio  
My commission has no expiration date  
Sec. 147.03 R.C.

PUCO Case No. 17-2168-GA-CSS  
Complainant Interrogatories Set 1 No. 1  
Respondent: Melissa L. Thompson  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL  
GAS COMPANY'S FIRST SET OF INTERROGATORIES  
DATED NOVEMBER 28, 2017**

**Interrogatory No. 1.** Identify each U.S. postal zip code served by Columbia in the State of Ohio.

**RESPONSE:**

Columbia objects to this Interrogatory because it is overbroad. Suburban serves only six counties in Ohio: Delaware, Hancock, Henry, Lucas, Marion, and Wood. Suburban's allegations in this proceeding relate only to Columbia and Suburban's operations in Delaware County. *See* Complaint ¶¶ 5, 15. Yet Suburban seeks information relating to "each U.S. postal zip code served by Columbia."

Subject to and notwithstanding this objection, Columbia responds: please see Suburban Set 1, Int. 1 Attachment A.

**Suburban Set 1, Int. 1 Attachment A**

Columbia Gas of Ohio, Inc.  
Active Service Zip Codes  
As of November, 2017

Zip  
Code

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PUCO Case No. 17-2168-GA-CSS  
Complainant Interrogatories Set 1 No. 2  
Respondent: Melissa L. Thompson  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL  
GAS COMPANY'S FIRST SET OF INTERROGATORIES  
DATED NOVEMBER 28, 2017**

**Interrogatory No. 2.** Regarding Builder Incentives under the Residential New Construction program described in Columbia's application in Case No. 08-883-GA-UNC, for each of the calendar years 2009 through 2011, Identify by each U.S. postal zip code served by Columbia:

- a. The total number of Builder Incentives offered by Columbia;
- b. The total number of Builder Incentives accepted by any Person;
- c. Each recipient of a Builder Incentive;
- d. The number and dollar value of Builder Incentives received by each Person identified in subparagraph c. above; and
- e. All Documents and Communications referring, reflecting or relating to the subject matter of this Interrogatory (including subparts).

**RESPONSE:**

Columbia objects to this Interrogatory because there is no case at the Public Utilities Commission of Ohio with case number 08-883-GA-UNC; Columbia submitted the application describing its Residential New Construction program in Case No. 08-833-GA-UNC.

Columbia further objects to this Interrogatory because it is overbroad. Suburban serves only six counties in Ohio: Delaware, Hancock, Henry, Lucas, Marion, and Wood. Suburban's allegations in this proceeding relate only to Columbia and Suburban's operations in Delaware County. *See* Complaint ¶¶ 5, 15. Yet Suburban seeks information relating to "each U.S. postal zip code served by Columbia."

Subject to and without waiving these objections, Columbia responds that its Residential New Construction program did not offer “Builder Incentives,” as Suburban has defined that term. Suburban defines “Builder Incentives” to mean payments or other consideration given “as an incentive to receive gas distribution service from Columbia.” (Definitions ¶ 1.) That was not the purpose of the Residential New Construction program’s incentives. Instead, as explained in Columbia’s Application in Case No. 08-833-GA-UNC, “[t]he objective of the Residential New Construction Program [was] to encourage builders to build homes that are 50% more efficient than the 2004 Supplement to the 2003 IECC [International Energy Conservation Codes] \* \* \*.”

PUCO Case No. 17-2168-GA-CSS  
Complainant Interrogatories Set 1 No. 3  
Respondent: Melissa L. Thompson  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL  
GAS COMPANY'S FIRST SET OF INTERROGATORIES  
DATED NOVEMBER 28, 2017**

**Interrogatory No. 3.** Regarding Builder Incentives under the Energy Efficient New Homes program described in Columbia's application in Case No. 11-5028-GA-UNC, for each of the calendar years 2012 through 2016, Identify by each U.S. postal zip code served by Columbia:

- a. The total number of Builder Incentives offered by Columbia;
- b. The total number of Builder Incentives accepted by any Person;
- c. Each recipient of a Builder Incentive;
- d. The number and dollar value of Builder Incentives received by each Person identified in subparagraph c. above; and
- e. All Documents and Communications referring, reflecting or relating to the subject matter of this Interrogatory (including subparts).

**RESPONSE:**

Columbia objects to this Interrogatory because it is overbroad. Suburban serves only six counties in Ohio: Delaware, Hancock, Henry, Lucas, Marion, and Wood. Suburban's allegations in this proceeding relate only to Columbia and Suburban's operations in Delaware County. *See* Complaint ¶¶ 5, 15. Yet Suburban seeks information relating to "each U.S. postal zip code served by Columbia."

Subject to and without waiving that objection, Columbia responds that its Energy Efficient New Homes program did not offer "Builder Incentives," as Suburban has defined that term. Suburban defines "Builder Incentives" to mean payments or other consideration given "as an incentive to receive gas distribution service from Columbia." (Definitions ¶ 1.) That was not the purpose of the Energy

Efficient New Homes program's incentives. Instead, as explained in Columbia's Application in Case No. 11-5028-GA-UNC, "Columbia's Energy Efficient New Homes program \* \* \* offer[ed] incentives to home builders to continue to build homes that exceed code minimum levels \* \* \*."

PUCO Case No. 17-2168-GA-CSS  
Complainant Interrogatories Set 1 No. 4  
Respondent: Melissa L. Thompson  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL  
GAS COMPANY'S FIRST SET OF INTERROGATORIES  
DATED NOVEMBER 28, 2017**

**Interrogatory No. 4.** Regarding Builder Incentives under the EfficiencyCrafted Homes program described in Columbia's application in Case No. 16-1309-GA-UNC, for calendar year 2017, Identify by each U.S. postal zip code served by Columbia:

- a. The total number of Builder Incentives offered by Columbia;
- b. The total number of Builder Incentives accepted by any Person;
- c. Each recipient of a Builder Incentive;
- d. The number and dollar value of Builder Incentives received by each Person identified in subparagraph c. above; and
- e. All Documents and Communications referring, reflecting or relating to the subject matter of this Interrogatory (including subparts).

**RESPONSE:**

Columbia objects to this Interrogatory because it is overbroad. Suburban serves only six counties in Ohio: Delaware, Hancock, Henry, Lucas, Marion, and Wood. Suburban's allegations in this proceeding relate only to Columbia and Suburban's operations in Delaware County. *See* Complaint ¶¶ 5, 15. Yet Suburban seeks information relating to "each U.S. postal zip code served by Columbia."

Subject to and without waiving this objection, Columbia responds that its EfficiencyCrafted® Homes program does not offer "Builder Incentives," as Suburban has defined that term. Suburban defines "Builder Incentives" to mean payments or other consideration given "as an incentive to receive gas distribution service from Columbia." (Definitions ¶ 1.) That is not the purpose of the EfficiencyCrafted® Homes program's incentives. Instead, as explained in Columbia's Application in Case No. 16-1309-GA-UNC, the "EfficiencyCrafted® Homes program \* \* \*

offers incentives to home builders to build homes that exceed state energy code minimum levels.”

PUCO Case No. 17-2168-GA-CSS  
Complainant Interrogatories Set 1 No. 5  
Respondent: Melissa L. Thompson  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL  
GAS COMPANY'S FIRST SET OF INTERROGATORIES  
DATED NOVEMBER 28, 2017**

**Interrogatory No. 5.** Identify, by each U.S. postal zip code served by Columbia, the total dollar value of Builder Incentives granted by Columbia for each of the calendar years 2009 through 2017.

**RESPONSE:**

Columbia objects to this Interrogatory because it is geographically overbroad. Suburban serves only six counties in Ohio: Delaware, Hancock, Henry, Lucas, Marion, and Wood. Suburban's allegations in this proceeding relate only to Columbia and Suburban's operations in Delaware County. *See* Complaint ¶¶ 5, 15. Yet Suburban seeks information relating to "each U.S. postal zip code served by Columbia."

Columbia further objects that the term "Builder Incentive," as defined to mean "any cash payment, rebate, discount, or other consideration offered or extended to any person or entity as an incentive to receive gas distribution service from Columbia" (Definitions ¶ 1), is vague and ambiguous.

Columbia further objects that this Interrogatory is overbroad and seeks information that is not relevant to the subject matter of the proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Columbia's EfficiencyCrafted® Homes program, and its predecessor programs, do not offer "Builder Incentives," as Suburban has defined that term. Suburban defines "Builder Incentives" to mean payments or other consideration given "as an incentive to receive gas distribution service from Columbia." (Definitions ¶ 1.) That is not the purpose of the EfficiencyCrafted® Homes program's, and its predecessors', incentives. Instead, as explained in Columbia's Application in its most recent energy efficiency case, Case No. 16-1309-GA-UNC, the

“EfficiencyCrafted® Homes program \* \* \* offers incentives to home builders to build homes that exceed state energy code minimum levels.”



PUCO Case No. 17-2168-GA-CSS  
Complainant Interrogatories Set 1 No. 6  
Respondent: Melissa L. Thompson  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL  
GAS COMPANY'S FIRST SET OF INTERROGATORIES  
DATED NOVEMBER 28, 2017**

**Interrogatory No. 6.** Identify the individual(s) responsible for administering the Builder Incentive programs described in Interrogatory Nos. 2, 3, and 4 above.

**RESPONSE:**

Columbia objects to, and cannot respond to, this Interrogatory. The programs described in Suburban's First Set of Interrogatories, Nos. 2, 3, and 4, were not "Builder Incentive" programs, as Suburban has defined that term. Suburban defines "Builder Incentives" to mean payments or other consideration given "as an incentive to receive gas distribution service from Columbia." (Definitions ¶ 1.) That was not the purpose of the programs described in Interrogatories 2, 3, or 4.

PUCO Case No. 17-2168-GA-CSS  
Complainant Interrogatories Set 1 No. 7  
Respondent: Melissa L. Thompson  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL  
GAS COMPANY'S FIRST SET OF INTERROGATORIES  
DATED NOVEMBER 28, 2017**

**Interrogatory No. 7.** Identify the individual(s) currently responsible for administering any Builder Incentive programs in Delaware County, Ohio.

**RESPONSE:**

Columbia objects that the term "Builder Incentive," as defined to mean "any cash payment, rebate, discount, or other consideration offered or extended to any person or entity as an incentive to receive gas distribution service from Columbia" (Definitions ¶ 1), is vague and ambiguous.

Columbia further objects that this Interrogatory is overbroad and seeks information that is not relevant to the subject matter of the proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Columbia's EfficiencyCrafted® Homes program, and its predecessor programs, do not offer "Builder Incentives," as Suburban has defined that term. Suburban defines "Builder Incentives" to mean payments or other consideration given "as an incentive to receive gas distribution service from Columbia." (Definitions ¶ 1.) That is not the purpose of the EfficiencyCrafted® Homes program's, and its predecessors', incentives. Instead, as explained in Columbia's Application in its most recent energy efficiency case, Case No. 16-1309-GA-UNC, the "EfficiencyCrafted® Homes program \* \* \* offers incentives to home builders to build homes that exceed state energy code minimum levels."

PUCO Case No. 17-2168-GA-CSS  
Complainant Interrogatories Set 1 No. 9  
Respondent: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL  
GAS COMPANY'S FIRST SET OF INTERROGATORIES  
DATED NOVEMBER 28, 2017**

**Interrogatory No. 9.** Identify each non-expert witness Columbia will sponsor to testify in this matter.

**RESPONSE:**

Columbia has not yet identified the non-expert witnesses it will sponsor to testify in this matter, if this matter proceeds to hearing.

PUCO Case No. 17-2168-GA-CSS  
Complainant Interrogatories Set 1 No. 10  
Respondent: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL  
GAS COMPANY'S FIRST SET OF INTERROGATORIES  
DATED NOVEMBER 28, 2017**

**Interrogatory No. 10.** Identify each expert witness Columbia will sponsor to testify in this matter.

**RESPONSE:**

Columbia has not yet identified the expert witnesses it will sponsor to testify in this matter, if this matter proceeds to hearing.

PUCO Case No. 17-2168-GA-CSS  
Complainant Request for Production of Documents Set 1 No. 1  
Respondents: Melissa L. Thompson and Zach McPherson

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL GAS COMPANY'S  
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS  
DATED NOVEMBER 28, 2017**

1. Documents identified in response to Complainant's First Set of Interrogatories.

**RESPONSE:**

See Columbia's Responses to Suburban's Set 1, Interrogatories.

PUCO Case No. 17-2168-GA-CSS  
Complainant Request for Production of Documents Set 1 No. 2  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL GAS COMPANY'S  
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS  
DATED NOVEMBER 28, 2017**

2. Reports, presentations, or other data compilations prepared by or on behalf of Columbia addressing Builder Incentives.

**RESPONSE:**

Columbia objects that the term "Builder Incentive," as defined to mean "any cash payment, rebate, discount, or other consideration offered or extended to any person or entity as an incentive to receive gas distribution service from Columbia" (Definitions ¶ 1), is vague and ambiguous.

Columbia further objects that this Request for Production is overbroad and seeks information that is not relevant to the subject matter of the proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Columbia's EfficiencyCrafted® Homes program, and its predecessor programs, do not offer "Builder Incentives," as Suburban has defined that term. Suburban defines "Builder Incentives" to mean payments or other consideration given "as an incentive to receive gas distribution service from Columbia." (Definitions ¶ 1.) That is not the purpose of the EfficiencyCrafted® Homes program's, and its predecessors', incentives. Instead, as explained in Columbia's Application in its most recent energy efficiency case, Case No. 16-1309-GA-UNC, the "EfficiencyCrafted® Homes program \* \* \* offers incentives to home builders to build homes that exceed state energy code minimum levels."

PUCO Case No. 17-2168-GA-CSS  
Complainant Request for Production of Documents Set 1 No. 3  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL GAS COMPANY'S  
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS  
DATED NOVEMBER 28, 2017**

3. Advertising, marketing, and other promotional material prepared by or on behalf of Columbia addressing Builder Incentives.

**RESPONSE:**

Columbia objects that the term "Builder Incentive," as defined to mean "any cash payment, rebate, discount, or other consideration offered or extended to any person or entity as an incentive to receive gas distribution service from Columbia" (Definitions ¶ 1), is vague and ambiguous.

Columbia further objects that this Request for Production is overbroad and seeks information that is not relevant to the subject matter of the proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Columbia's EfficiencyCrafted® Homes program, and its predecessor programs, do not offer "Builder Incentives," as Suburban has defined that term. Suburban defines "Builder Incentives" to mean payments or other consideration given "as an incentive to receive gas distribution service from Columbia." (Definitions ¶ 1.) That is not the purpose of the EfficiencyCrafted® Homes program's, and its predecessors', incentives. Instead, as explained in Columbia's Application in its most recent energy efficiency case, Case No. 16-1309-GA-UNC, the "EfficiencyCrafted® Homes program \* \* \* offers incentives to home builders to build homes that exceed state energy code minimum levels."

PUCO Case No. 17-2168-GA-CSS  
Complainant Request for Production of Documents Set 1 No. 4  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL GAS COMPANY'S  
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS  
DATED NOVEMBER 28, 2017**

4. Columbia's internal and external Communications referencing Builder Incentives.

**RESPONSE:**

Columbia objects that the term "Builder Incentive," as defined to mean "any cash payment, rebate, discount, or other consideration offered or extended to any person or entity as an incentive to receive gas distribution service from Columbia" (Definitions ¶ 1), is vague and ambiguous.

Columbia further objects that this Request for Production is overbroad and seeks information that is not relevant to the subject matter of the proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Columbia's EfficiencyCrafted® Homes program, and its predecessor programs, do not offer "Builder Incentives," as Suburban has defined that term. Suburban defines "Builder Incentives" to mean payments or other consideration given "as an incentive to receive gas distribution service from Columbia." (Definitions ¶ 1.) That is not the purpose of the EfficiencyCrafted® Homes program's, and its predecessors', incentives. Instead, as explained in Columbia's Application in its most recent energy efficiency case, Case No. 16-1309-GA-UNC, the "EfficiencyCrafted® Homes program \* \* \* offers incentives to home builders to build homes that exceed state energy code minimum levels."



PUCO Case No. 17-2168-GA-CSS  
Complainant Request for Production of Documents Set 1 No. 5  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL GAS COMPANY'S  
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS  
DATED NOVEMBER 28, 2017**

5. Columbia's internal and external Communications referencing Suburban.

**RESPONSE:**

Columbia objects to this Request for Production because it is overbroad, because: it has no limits as to subject; it seeks information that is not relevant to the subject matter of the proceeding and not reasonably calculated to lead to the discovery of admissible evidence; and because providing responsive documents would be unduly burdensome. Columbia further objects that the requested universe of documents includes attorney-client privileged and work-product protected communications, including but not limited to communications related to Suburban's dismissed complaint against Columbia in Case No. 13-1216-GA-CSS.

PUCO Case No. 17-2168-GA-CSS  
Complainant Request for Production of Documents Set 1 No. 6  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL GAS COMPANY'S  
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS  
DATED NOVEMBER 28, 2017**

6. Documents reflecting the program design, objective, structure, or purpose of any Builder Incentive or Builder Incentive program.

**RESPONSE:**

Columbia objects that the term "Builder Incentive," as defined to mean "any cash payment, rebate, discount, or other consideration offered or extended to any person or entity as an incentive to receive gas distribution service from Columbia" (Definitions ¶ 1), is vague and ambiguous.

Columbia further objects that this Request for Production is overbroad and seeks information that is not relevant to the subject matter of the proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Columbia's EfficiencyCrafted® Homes program, and its predecessor programs, do not offer "Builder Incentives," as Suburban has defined that term. Suburban defines "Builder Incentives" to mean payments or other consideration given "as an incentive to receive gas distribution service from Columbia." (Definitions ¶ 1.) That is not the purpose of the EfficiencyCrafted® Homes program's, and its predecessors', incentives. Instead, as explained in Columbia's Application in its most recent energy efficiency case, Case No. 16-1309-GA-UNC, the "EfficiencyCrafted® Homes program \* \* \* offers incentives to home builders to build homes that exceed state energy code minimum levels."

PUCO Case No. 17-2168-GA-CSS  
Complainant Request for Production of Documents Set 1 No. 7  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL GAS COMPANY'S  
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS  
DATED NOVEMBER 28, 2017**

7. Audits, examinations, inspections, certifications, or other Documents reflecting Columbia's review of the construction methods of recipients of Builder Incentives.

**RESPONSE:**

Columbia objects to this Request for Production because it is ambiguous, in that it is unclear whether the adjective phrase "reflecting Columbia's review of the construction methods of recipients of Builder Incentives" modifies only the word "Documents" or also each of "[a]udits, examinations, inspections, [and] certifications[.]"

Columbia further objects that the term "Builder Incentive," as defined to mean "any cash payment, rebate, discount, or other consideration offered or extended to any person or entity as an incentive to receive gas distribution service from Columbia" (Definitions ¶ 1), is vague and ambiguous.

Columbia further objects that this Request for Production is overbroad and seeks information that is not relevant to the subject matter of the proceeding and not reasonably calculated to lead to the discovery of admissible evidence. The Request is not limited to any particular program. It is not limited to programs in which "Columbia's review of the construction methods of recipients" is linked to the recipients' receipt of any incentive. And it is not linked in any way to the allegations in Suburban's Complaint. Also, Columbia's EfficiencyCrafted® Homes program, and its predecessor programs, do not offer "Builder Incentives," as Suburban has defined that term. Suburban defines "Builder Incentives" to mean payments or other consideration given "as an incentive to receive gas distribution service from Columbia." (Definitions ¶ 1.) That is not the purpose of the EfficiencyCrafted® Homes program's, and its predecessors',

incentives. Instead, as explained in Columbia's Application in its most recent energy efficiency case, Case No. 16-1309-GA-UNC, the "EfficiencyCrafted® Homes program \* \* \* offers incentives to home builders to build homes that exceed state energy code minimum levels."

PUCO Case No. 17-2168-GA-CSS  
Complainant Request for Production of Documents Set 1 No. 8  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL GAS COMPANY'S  
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS  
DATED NOVEMBER 28, 2017**

8. Qualifications and other eligibility criteria for Builder Incentives.

**RESPONSE:**

Columbia objects that the term "Builder Incentive," as defined to mean "any cash payment, rebate, discount, or other consideration offered or extended to any person or entity as an incentive to receive gas distribution service from Columbia" (Definitions ¶ 1), is vague and ambiguous.

Columbia further objects that this Request for Production is overbroad and seeks information that is not relevant to the subject matter of the proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Columbia's EfficiencyCrafted® Homes program, and its predecessor programs, do not offer "Builder Incentives," as Suburban has defined that term. Suburban defines "Builder Incentives" to mean payments or other consideration given "as an incentive to receive gas distribution service from Columbia." (Definitions ¶ 1.) That is not the purpose of the EfficiencyCrafted® Homes program's, and its predecessors', incentives. Instead, as explained in Columbia's Application in its most recent energy efficiency case, Case No. 16-1309-GA-UNC, the "EfficiencyCrafted® Homes program \* \* \* offers incentives to home builders to build homes that exceed state energy code minimum levels."

PUCO Case No. 17-2168-GA-CSS  
Complainant Request for Production of Documents Set 1 No. 9  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL GAS COMPANY'S  
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS  
DATED NOVEMBER 28, 2017**

9. Materials furnished to, or received from, Columbia and any expert or consultant regarding Builder Incentives.

**RESPONSE:**

Columbia objects that the term "Builder Incentive," as defined to mean "any cash payment, rebate, discount, or other consideration offered or extended to any person or entity as an incentive to receive gas distribution service from Columbia" (Definitions ¶ 1), is vague and ambiguous.

Columbia further objects that this Request for Production is overbroad and seeks information that is not relevant to the subject matter of the proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Columbia's EfficiencyCrafted® Homes program, and its predecessor programs, do not offer "Builder Incentives," as Suburban has defined that term. Suburban defines "Builder Incentives" to mean payments or other consideration given "as an incentive to receive gas distribution service from Columbia." (Definitions ¶ 1.) That is not the purpose of the EfficiencyCrafted® Homes program's, and its predecessors', incentives. Instead, as explained in Columbia's Application in its most recent energy efficiency case, Case No. 16-1309-GA-UNC, the "EfficiencyCrafted® Homes program \* \* \* offers incentives to home builders to build homes that exceed state energy code minimum levels."

Columbia also objects to this Request to the extent it seeks communications with testifying or non-testifying experts regarding matters before the Public Utilities Commission of Ohio, any other administrative agency, or any court, to the extent that such communications would be protected by the work-product doctrine and/or any other discovery privilege.

PUCO Case No. 17-2168-GA-CSS  
Complainant Request for Production of Documents Set 1 No. 10  
As to Objections: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL GAS COMPANY'S  
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS  
DATED NOVEMBER 28, 2017**

10. Documents or materials provided to, or received from, the Staff of the Public Utilities Commission of Ohio addressing Builder Incentives.

**RESPONSE:**

Columbia objects that the term "Builder Incentive," as defined to mean "any cash payment, rebate, discount, or other consideration offered or extended to any person or entity as an incentive to receive gas distribution service from Columbia" (Definitions ¶ 1), is vague and ambiguous.

Columbia further objects that this Request for Production is overbroad and seeks information that is not relevant to the subject matter of the proceeding and not reasonably calculated to lead to the discovery of admissible evidence. Columbia's EfficiencyCrafted® Homes program, and its predecessor programs, do not offer "Builder Incentives," as Suburban has defined that term. Suburban defines "Builder Incentives" to mean payments or other consideration given "as an incentive to receive gas distribution service from Columbia." (Definitions ¶ 1.) That is not the purpose of the EfficiencyCrafted® Homes program's, and its predecessors', incentives. Instead, as explained in Columbia's Application in its most recent energy efficiency case, Case No. 16-1309-GA-UNC, the "EfficiencyCrafted® Homes program \* \* \* offers incentives to home builders to build homes that exceed state energy code minimum levels."

PUCO Case No. 17-2168-GA-CSS  
Complainant Request for Production of Documents Set 1 No. 11  
Respondent: Mark S. Stemm

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO SUBURBAN NATURAL GAS COMPANY'S  
FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS  
DATED NOVEMBER 28, 2017**

11. Exhibits Columbia will sponsor or introduce at hearing.

**RESPONSE:**

Columbia objects to this Request to the extent it seeks a preview of Columbia's hearing strategy, which is protected by the work-product doctrine. Subject to and without waiving this objection, Columbia responds: Columbia has not yet identified the exhibits its witnesses will sponsor, if this matter proceeds to hearing. Columbia will file and serve its direct testimony, and any supporting exhibits, by the deadline set by the Commission for filing testimony.



MARK A. WHITT  
Direct: 614.224.3911  
whitt@whitt-sturtevant.com

January 4, 2018

**VIA EMAIL**

Mark Stemm, Esq.  
Porter Wright Morris & Arthur LLP  
41 South High St  
Columbus, OH 43215  
[mstemm@porterwright.com](mailto:mstemm@porterwright.com)

Re: Case No. 17-2168-GA-CSS  
Columbia's Responses to First Set of Discovery

Dear Mark,

I have your client's responses to Suburban's first set of discovery. Many of the responses are evasive or incomplete. I am writing to ask that Columbia provide supplemental responses by January 12, 2018. If Columbia does not supplement its responses, our only remaining option is to file a motion to compel. We hope that this will not be necessary.

**Interrogatories**

Interrogatory Nos. 2, 3 and 4 asked for details about "Builder Incentives" provided by Columbia under the programs described in Case Nos. 08-833-GA-UNC, 11-5028-GA-UNC, and 16-1309-GA-UNC. For each program, Columbia was asked to identify the number of incentives offered, the number accepted, the recipients of the incentives, and the dollar value of the incentives. Columbia's objection to these interrogatories as "overbroad" is unfounded, and the answers provided "subject to and without waiving this objection" are unresponsive.

I will first address Columbia's objection. The objection notes that Suburban serves customers in six counties, but the interrogatories ask for information pertaining to all areas served by Columbia. Left unsaid is why this renders the interrogatories "overbroad." Suburban is entitled to explore how Columbia uses incentives in areas where Columbia is subject to competition, as well as in areas where it is not. If the evidence reveals that Columbia offers incentives disproportionately in areas where it is subject to competition, this would be a highly probative fact. Thus, Columbia's activities throughout Ohio are both relevant and reasonably calculated to lead to the discovery of admissible evidence. Interrogatory Nos. 2, 3, and 4 are not "overbroad."

Subject to its objection to Interrogatory Nos. 2, 3, and 4, Columbia responds that it “did not offer ‘Builder Incentives,’ as Suburban has defined that term.” These answers are evasive and incomplete. The interrogatories do not ask Columbia to agree with Suburban’s general definition of “Builder Incentive.” The interrogatories identify *specific* incentive programs, and ask for information about each program. The information requested is relevant and discoverable, *regardless* of either party’s characterization of the purpose of Columbia’s programs.

Columbia’s objections to Interrogatory Nos. 6 and 7 are unfounded for the same reason. These interrogatories ask for the identity of the individuals responsible for administering each program described in Interrogatory Nos. 2, 3, and 4, as well as any program specific to Delaware County. Columbia is free to disagree with Suburban’s general definition of “Builder Incentive,” but it is not entitled to withhold the identity of the individuals who administered Columbia’s specific programs.

### **Requests for Production**

Columbia relied on the same definitional dispute to stiff Suburban on document production, claiming that the general definition of “Builder Incentive” somehow renders Request for Production Nos. 2-4 and 6-10 “vague and ambiguous.” These document requests are neither. Columbia—not Suburban—used the term “incentive” in describing its programs to the Commission. Suburban has asked for, and is entitled to, documents relating to these self-described “incentive” programs—regardless of any disagreement about who or what is being incentivized.

Request for Production No. 5 asks for internal and external communications about Suburban. Columbia raises conclusory, unsupported objections about undue burden and overbreadth, as well as privilege. That the “requested universe of documents *includes* attorney-client privileged and work-product protected communications” (emphasis added) does not excuse Columbia from identifying and producing non-privileged material. The relevant time period alleged in the Complaint encompasses a period that extends to at least 1993, so any responsive documents from that time to the present must be produced.

I look forward to receipt of Columbia’s supplemental responses by January 12. Please let me know if you have any questions or would like to discuss.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Mark A. Whitt".

Mark S. Stemm  
stemms  
mstemm@porterwright.com

Porter Wright  
Morris & Arthur LLP  
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WASHINGTON, DC

January 12, 2018

**VIA: E-Mail**

Mark A. Whitt  
Whitt Sturtevant LLP  
The KeyBank Building  
88 East Broad Street, Suite 1590  
Columbus, OH 43215

**RE: Case No. 17-2168-GA-CSS  
Suburban's Discovery Requests**

Dear Mark:

I am writing on behalf of Columbia Gas of Ohio, Inc. ("Columbia") in response to your correspondence dated January 4, 2018, seeking supplemental discovery responses. I will address your points in the order you presented them.

Columbia stands on its objection to Suburban's Interrogatory Nos. 2, 3, and 4 as overbroad. As you explain your client's contention, Suburban is seeking discovery about Columbia's offering of "incentives" in counties Suburban does not serve because Suburban wants to explore whether Columbia "disproportionately" offers incentives in areas where it needs to compete for load. This is irrelevant to Suburban's claims as pled. If Columbia's offering of EfficiencyCrafted® Homes incentives in southern Delaware County violates the 1995 Stipulation or the DSM orders, then it does not matter how much Columbia offers such incentives in (for example) Lucas County. And if Columbia's offering of EfficiencyCrafted® Homes incentives in southern Delaware County does not violate the 1995 Stipulation or the DSM orders, then Counts 1 through 3 of Suburban's complaint are baseless.

Columbia also stands on its answers to Suburban's Interrogatory Nos. 2-4 and 6-7 as they related to Suburban's definition of "Builder Incentives." Columbia responded to the interrogatories Suburban crafted. I agree with you that Suburban's requests do not ask Columbia to agree or disagree with Suburban's definitions. Rather, Columbia accepted Suburban's definition of "Builder Incentives" as Suburban directed Columbia to do and responded accordingly. Therefore, I disagree that Columbia's answers are "evasive and incomplete." Columbia answered the requests as drafted.

The same is true regarding Suburban's Requests for Production 2-4 and 6-10. Suburban's definition of "Builder Incentives" does not capture any documents relating to the EfficiencyCrafted® Homes program. Columbia objects to searching for documents that potentially could be responsive based on Suburban's definition, because they would not be relevant to this case, nor would that production be reasonably calculated to lead to the discovery of admissible evidence in this case.

Finally, Columbia stands on its objection to searching for every "internal and external communication[ ] about Suburban...to at least 1993," as you describe in Request for Production 5 and your letter. This request epitomizes an

Mark A. Whitt  
January 12, 2018  
Page 2


improper discovery fishing expedition. Moreover, identifying every officer, director, employee, and agent of Columbia that might have sent or received an e-mail, memorandum, or letter referencing Suburban over the past 25 years, and then gathering, reviewing, and producing those documents, would clearly be unduly burdensome.

Consequently, if Suburban decides to escalate this matter with a motion to compel, Columbia is prepared to defend.

As for Suburban's responses to Columbia's first set of interrogatories, we ask that your client comply with O.A.C. 4901-1-19(A) by identifying the persons responsible for each answer.

Feel free to contact me should you wish to discuss.

Very truly yours,



Mark S. Stemm  
MSS/tlb

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Summary: Motion to Compel Discovery electronically filed by Ms. Rebekah J. Glover on behalf of Suburban Natural Gas Company