

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.)	

DIRECT TESTIMONY OF DAVID L. PEMBERTON, SR.
ON BEHALF OF
SUBURBAN NATURAL GAS COMPANY

1 **Direct Testimony of**

2 **David L. Pemberton, Sr.**

3 **I. WITNESS BACKGROUND**

4 **Q1. Please state your name and business address.**

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

7 **Q2. By whom are you employed?**

8 A. Suburban Natural Gas Company. I am Chairman of the Board, a director, and Chief
9 Executive Officer of the company. I have held these positions since December 2000.

10 **Q3. Did you hold any positions with that company before December 2000?**

11 A. Yes.

12 **Q4. What were those positions and for how long did you serve?**

13 A. Before becoming Chairman and CEO, I was the company's President and a director, as
14 well as its General Counsel. I held those positions from February, 1989 until December,
15 2000.

16 **Q5. Did you serve the company in any other capacity before February 1989?**

17 A. Yes. From 1974 until February, 1989, I was the company's independent regulatory
18 attorney. In that capacity, I advised the company's management about its duties and
19 responsibilities as a public utility under Ohio law and represented the company in rate
20 and service matters before the various municipalities it served and before the Public
21 Utilities Commission of Ohio.

22 **Q6. Would you briefly state your qualifications and experience as an attorney?**

1 A. Yes. I graduated from The Ohio State University College of Law in June of 1966 and
2 was admitted to practice before the Supreme Court of Ohio and the various courts and
3 agencies of this state in October of 1966. I joined the law firm of George, Greek, King,
4 McMahon & McConnaughey as an associate thereafter, having served for two years as a
5 clerk, and concentrated my practice in transportation and public utilities law representing
6 regulated transportation clients before the PUCO and the Interstate Commerce
7 Commission, as well as regulated telephone companies. After several years, I was
8 transferred to the acquisitions and mergers section of that firm and spent several more
9 years representing a New York Stock Exchange-listed telephone holding company and
10 Mutual Broadcasting Corporation before leaving the firm to form a smaller firm. In
11 addition to appearing before various federal and state regulatory agencies, including the
12 Federal Communications Commission and the Securities & Exchange Commission, I was
13 responsible for closing more than 40 acquisitions and qualified and testified as an expert
14 witness in this area.

15 Upon leaving George, Greek, King, McMahon & McConnaughey, the
16 predecessor firm to Thompson, Hine & Flory's and Squire, Sanders' Columbus offices, I
17 continued to practice before the PUCO until May of 1971 when I was appointed
18 Secretary to the Public Utilities Commission of Ohio by Governor John Gilligan and
19 served as chief of staff until I resigned in 1972 to return to private practice before the
20 PUCO concentrating in representing regulated natural gas distribution companies and
21 served for a time as counsel to the Ohio Gas Association.

22 During my active practice as an attorney, I remained a member in good standing
23 with the Ohio State and Columbus Bar Associations, as well as other specialized bar

1 associations, the Supreme Court of Ohio, and the United States Supreme Court.

2 Throughout my legal career, I received and maintained an Av rating from my peers and
3 was selected by Marquis Publishing Co. for inclusion in its First Edition of *Who's Who In*
4 *American Law*.

5 **Q7. What are your duties as Suburban's Chairman of the Board and Chief Executive**
6 **Officer?**

7 A. As Chairman of the Board, I preside over all director and shareholder meetings and
8 perform such other duties as are set forth in the company's Code of Regulations. As
9 Chief Executive Officer, it is my responsibility to develop and oversee the
10 implementation of the company's strategic plan, including providing the financial and
11 other resources necessary to assure its continued growth and profitability. This involves
12 maintaining adequate lines of credit and commercial loans required to operate the
13 company and maintain adequate capacity to serve its existing and projected customer
14 base. It also involves regularly meeting with the company's President and Chief
15 Operating Officer who reports directly to me.

16 II. SUBURBAN AND COLUMBIA HISTORY

17 **Q8. Are you familiar with Suburban's relations with Columbia Gas of Ohio, Inc. and with**
18 **the Columbia Gas system?**

19 A. Yes.

20 **Q9. How?**

21 A. I was Suburban's counsel In PUCO Case No. 86-1747-GA-CSS as well as PUCO Case
22 No. 87-1528-GA-ATA. In PUCO Case Nos. 93-1569-GA-SLF, 94-938-GA-ATR, and
23 94-939-GA-ATA, I was Suburban's President and General Counsel.

1 **Q10. Before 1986, do you have personal knowledge of Suburban's relations with Columbia**
2 **Gas of Ohio, Inc. and with the Columbia Gas system?**

3 A. Yes. As I said, I was Suburban's regulatory attorney.

4 **Q11. How would you describe those relationships?**

5 A. Very cordial.

6 **Q12. What changed?**

7 A. The State of Ohio's regulatory policy for public utilities changed from encouraging
8 cooperation to encouraging competition. Suburban and Columbia became competitors.

9 **Q13. How did that affect Suburban and Columbia's relationship?**

10 A. As competitors, they could no longer rely on mutual support in areas in which both
11 maintained facilities and served customers. Due to its smaller size and limited resources,
12 this put Suburban at a disadvantage.

13 **Q14. Would you describe where and how that competition occurred?**

14 A. Yes. Suburban owned and operated two high-pressure supply lines extending west on the
15 north and south sides of Bowling Green from a Columbia Transmission Corporation
16 interstate transmission line to unincorporated areas and villages west of Bowling Green.

17 **Q15. When were those lines constructed by Suburban?**

18 A. In the late 1950s.

19 **Q16. When did Suburban begin serving customers in the Bowling Green area from those**
20 **lines?**

21 A. Almost immediately.

22 **Q17. Were any of those customers located in the municipal limits of Bowling Green?**

23 A. Not initially. As the municipal limits of Bowling Green expanded,

1 however, some of our customers were incorporated into the municipality.

2 **Q18. Who served Bowling Green?**

3 A. Columbia or its predecessor, The Ohio Fuel Gas Company.

4 **Q19. Did Columbia object to Suburban's continued service to those customers situated**
5 **within Bowling Green as its corporate limits expanded?**

6 A. No.

7 **Q20. When and how did Suburban and Columbia begin to compete in the**
8 **unincorporated areas surrounding Bowling Green?**

9 A. In 1985, Suburban began extending its service to commercial customers located on U.S.
10 Highway 25 north of Bowling Green.

11 **Q21. Were any of these customers located within the municipal limits of Bowling Green?**

12 A. No. Nor were these customers served by Columbia.

13 **Q22. What type of customers were they?**

14 A. Small businesses, churches, an automobile dealership, and the like.

15 **Q23. Had any of them been offered natural gas service by Columbia?**

16 A. Not before Suburban began offering service to them.

17 **Q24. Did Suburban begin serving customers on the south side of Bowling Green?**

18 A. Yes.

19 **Q25. Where and why?**

20 A. Along U.S. Highway 25 where Suburban was already serving commercial and residential
21 customers. As that area developed, Suburban was asked to provide service.

22 **Q26. How did Columbia react to Suburban's service offerings in 1985?**

1 A. Very aggressively. The word came down from Columbus to Columbia's Bowling Green
2 managers that they were to go to any length to meet and beat Suburban's competition in
3 and around Bowling Green.

4 **Q27. Did that include offering free service lines?**

5 A. Yes.

6 **Q28. Did that include offering free regulators?**

7 A. Yes.

8 **Q29. Did that include offering appliance allowances?**

9 A. Yes.

10 **Q30. Did that include offering free line extensions?**

11 A. Yes.

12 **Q31. Did that include offering lower and special rates?**

13 A. Yes.

14 **Q32. Were these offerings in violation of Columbia's PUCO tariffs?**

15 A. Yes.

16 **Q33. Did Columbia's managers know and acknowledge this?**

17 A. Yes.

18 **Q34. Did the PUCO find this to be true in PUCO Case No. 86-1747-GA-CSS?**

19 A. Yes, all except the rate concessions.

20 **Q35. Did the PUCO also find that these sales practices violated the various state statutes**
21 **cited and relied upon by Suburban in that case?**

22 A. Yes.

23 **Q36. How did Columbia characterize these sales practices?**

1 A. As marketing incentives.

2 **Q37. Did Columbia's unlawful sales practices succeed?**

3 A. Yes. Suburban was unable to gain a single customer.

4 **Q38. Did Columbia's management try to justify its behavior in that case?**

5 A. Yes. Columbia's Vice President for Rates and Depreciation testified that "competition is
6 competition" and attempted to characterize Suburban's competition as "predatory."

7 **Q39. How did he define that term?**

8 A. A competitor's behavior is predatory when it enters another's service area, duplicates
9 facilities, and begins offering competitive services.

10 **Q40. How did he characterize the term "service area"?**

11 A. An area traditionally served by a company.

12 **Q41. Isn't this the very same behavior engaged in by Columbia in this case?**

13 A. Yes.

14 **Q42. Did this witness ultimately concede that the areas sought to be served by Suburban
15 in that case were areas traditionally served by both Suburban and Columbia and
16 that Suburban had been a competitive factor in the Bowling Green area for many
17 years?**

18 A. Yes.

19 **Q43. Did Suburban duplicate any of Columbia's facilities in attempting to provide service
20 in those areas?**

21 A. No.

22 **Q44. Did Suburban offer any of the "marketing incentives" offered by Columbia in that
23 case?**

1 A. No.

2 **Q45. How did PUCO Case No. 87-1528-GA-ATA arise?**

3 A. PUCO Case No. 87-1528-GA-ATA was an attempt by Columbia to remove the PUCO
4 tariff restrictions found to have been violated in PUCO Case No. 86-1747-GA-CSS.

5 **Q46. Why did Suburban intervene in that case?**

6 A. Suburban believed that the removal of these restrictions would be used to legitimize the
7 unlawful behavior found to have been pursued by Columbia in PUCO Case No. 86-1747-
8 GA-CSS. As previously noted, Suburban was unsuccessful in attracting a single
9 customer solicited in that case as a result of Columbia's unlawful behavior. Moreover,
10 upon entering the central Ohio market, Suburban was confronted with additional
11 questionable practices neither approved by the PUCO nor incorporated into Columbia's
12 tariff as required by Ohio law. These were encapsulated in Columbia's various so-called
13 builders' incentive programs which had been developed to compete with electric utilities
14 in areas served by Columbia. Suburban feared that they would be used as well to defeat
15 Suburban when competing for residential developments.

16 **Q47. How did Columbia characterize its purpose in filing PUCO Case No. 87-1528-GA-**
17 **ATA?**

18 A. It stated that it was concerned about using marketing incentives when competing with
19 electric companies as a result of the PUCO's findings in PUCO Case No. 86-1747-GA-
20 CSS and, in particular, the restriction against offering line extensions to prospective
21 customers.

22 **Q48. What were Suburban's concerns?**

1 A. Suburban was concerned that Columbia would continue to offer free line extensions when
2 competing with Suburban and/or to duplicate Suburban's facilities.

3 **Q49. Had this occurred in PUCO Case No. 86-1747-GA-CSS?**

4 A. Yes.

5 **Q50. What was the result of Suburban's intervention in PUCO Case No. 87-1528-GA-**
6 **ATA?**

7 A. Columbia agreed to incorporate into the specific tariff provisions involved in that case
8 restrictions against offering incentives to customers and builders when competing with
9 another regulated natural gas company unless the other regulated natural gas company
10 offered such incentives or unless offering them was essential to prevent a customer from
11 choosing an alternate source of energy. It should be noted that while Suburban did not
12 have any such programs, it agreed to incorporate the identical restrictions into its PUCO
13 tariff to assure Columbia a level playing field when competing with Suburban.

14 **Q51. Were Columbia's other incentive programs addressed in PUCO Case No. 87-1528-**
15 **GA-ATA?**

16 A. No. They were not included in Columbia's tariff at the time and had not been used in
17 competition with Suburban.

18 **Q52. Were they eventually used in competition with Suburban?**

19 A. Yes. As southern Delaware County began to develop in the early nineties, Suburban
20 began to have success in obtaining commitments to serve residential developments—at
21 first several small ones but eventually larger ones. In anticipation of serving
22 developments north of Lazelle Road, Suburban had constructed a high-pressure supply
23 line on Powell Road from its main supply line east to I-71. A major developer in this

1 area had acquired a large tract of land near the intersection of Powell and south Old State
2 Roads, and Suburban had committed to serve this development to be known as Oak
3 Creek. Ultimately, the land was acquired by Dominion Homes, whose President
4 informed Suburban's agent that it would not be serving the development because
5 Columbia had met with him and informed him that its co-op advertising program with
6 Borrar Corporation, Dominion Homes' parent company, was conditioned on Columbia
7 serving all of the Borrar Corporation's developments, including Oak Creek, and that all
8 of Borrar's residential developments in central Ohio would lose Columbia's advertising
9 incentives if Columbia did not serve Oak Creek.

10 **Q53. How many developments did this affect?**

11 A. Sixteen.

12 **Q54. Did Columbia have facilities to serve in this area?**

13 A. No.

14 **Q55. How did it access the Oak Creek development?**

15 A. It brought a line from Lazelle Road up Sancus Boulevard across south Polaris Parkway
16 and up Old State Road, a distance of approximately three miles, to enter the property,
17 duplicating Suburban's facilities in Polaris, and crossing Suburban's Powell Road supply
18 line in doing so.

19 **Q56. Did Suburban complain to Columbia?**

20 A. Yes, but to no avail.

21 **Q57. Do you have any written documentation of this use of Columbia's builders'**
22 **incentives against Suburban?**

1 A. Yes. Exhibits 3.1 and 3.2 attached to my testimony are memoranda prepared in the
2 ordinary course of business regarding Columbia's duplication of facilities and use of
3 builders' incentives in obtaining the right to serve the Oak Creek development.

4 **Q58. Were there other incidents of Columbia's use of builders' incentives against**
5 **Suburban at the time?**

6 A. Yes. Shortly after we were advised that Suburban would not be serving the Oak Creek
7 development, we were advised by another developer that Suburban would not be serving
8 a proposed development known as the Villages of Alum Creek which we had committed
9 to serving in 1992. The developer had been approached by Columbia's marketing
10 representative and offered \$300 per lot as a builder's incentive to obtain the right to serve
11 this development. The developer stated that if Suburban would match Columbia's offer,
12 he could convince his partner to stay with Suburban.

13 **Q59. Did Suburban agree to match Columbia's offer?**

14 A. No.

15 **Q60. Why not?**

16 A. Suburban is a small company without the financial resources or the customer base to
17 offer such incentives.

18 **Q61. Has Suburban ever offered to "match" Columbia's builders' incentives?**

19 A. No.

20 **Q62. What did Suburban do in response to the Villages of Alum Creek situation?**

21 A. I contacted Columbia's General Counsel, Andy Sonderman, and demanded a meeting.

22 **Q63. What was the result of that meeting?**

1 A. Andy pled ignorance that Columbia had used or proposed to use these incentives in
2 competition with Suburban and had met with Columbia's field personnel to avoid future
3 violations. Those discussions convinced him that some broader settlement between our
4 companies would be preferable to a piecemeal approach since applying the legal
5 language of the restrictions incorporated into our tariffs in that case was difficult in the
6 field, particularly where competition with alternate fuels might be involved. We agreed
7 to attempt to work on an omnibus settlement to resolve all of the competitive issues
8 between our companies.

9 **Q64. What did the parties consider to be those issues at that time?**

10 A. First and foremost, we were both concerned about the wasteful duplication of facilities
11 and the planning difficulties presented by unbridled or predatory competition with the
12 attendant budget and capacity issues. Suburban was also concerned about its ability to
13 compete with the builders' incentive programs offered, in particular, to residential
14 developers. As previously stated, Suburban did not have the size or the resources to
15 compete on that basis and had no alternative but to continue to challenge the legality of
16 such programs before the PUCO and the courts, if necessary. At the same time,
17 Columbia was primarily concerned, as the record in PUCO Case No. 87-1528-GA-ATA
18 shows, with competition from electric companies. These were the issues the parties
19 decided to address in PUCO Case Nos. 93-1569-GA-SLF, et al.

20 **Q65. That proceeding was initiated by a self-complaint filed by Columbia to clarify its**
21 **tariff. Why was this vehicle chosen?**

22 A. This was the first time the parties had decided to try to amicably settle the competitive
23 issues between them, and Andy suggested a self-complaint would avoid the caustic

1 allegations of a complaint filed by Suburban under Section 4905.26 of the Revised Code
2 as to the unlawfulness of the builders' incentive programs. A self-complaint would avoid
3 this, coupled with Columbia's agreement not to oppose Suburban's intervention and
4 participation. It was also thought that this approach would provide more procedural
5 flexibility to resolve the issues, including PUCO staff participation.

6 **Q66. Did this approach work?**

7 A. Yes. As the record in that proceeding indicates, there were numerous conferences and
8 discussions, with not only the PUCO Staff but the Commissioners, permitting open and
9 candid exchanges of views and ideas. Southern Delaware County was beginning to
10 explode with residential developments, and both parties were eager to resolve the
11 underlying issues before events outpaced their ability to disengage and resume their
12 respective competitive practices—Columbia to continue to meet electric competition with
13 its incentive programs and Suburban to be free to compete without having to deal with
14 those programs.

15 **Q67. Did this approach result in the Second Amended Petition and Stipulation, which has**
16 **been referred to in this case as the "1995 Stipulation"?**

17 A. Yes.

18 **Q68. Does the 1995 Stipulation contain language explicitly addressing the elimination of**
19 **incentives?**

20 A. No. The manner in which we structured the settlement achieved this result without the need
21 for specific language. It was the very purpose of the settlement.

22 **Q69. What do you mean?**

1 A. The Stipulation memorializes “the Parties’ resolution of their competitive dispute and
2 rationalization of their distribution systems.” One of Suburban’s underlying claims in the
3 case was that Columbia’s builder incentives were an unlawful and anticompetitive
4 discount from tariffed rates. The “Settled Claims” defined in the Stipulation expressly
5 include claims about Columbia’s then-existing builder incentive programs and “any
6 program substantially similar to such programs.” In releasing this claim, Suburban did
7 not agree that Columbia could resume builder incentives. If it had, the revised tariff
8 appended to the stipulation would have authorized the incentives. The revised tariff says
9 no such thing.

10 **Q70. Did you request any specified assurances in the Stipulation to ensure the incentive**
11 **programs would not be resurrected against Suburban?**

12 A. Yes. In addition to the general language in the Commission’s order and the Stipulation,
13 Columbia agreed to an amendment to Suburban’s covenant not to sue to eliminate its
14 application to the area identified as Suburban’s service area in the prior version of the
15 Stipulation and to expand that area to extend its boundaries on the west to U.S. Highway
16 23 and on the east to I-71 north and east of Alum Creek Reservoir.

17 **Q71. Have you prepared a set of maps to depict the areas of southern Delaware County**
18 **within which the various petitions and stipulations in PUCO Case Nos. 93-1569-GA-**
19 **SLF, et al. were to apply insofar as Suburban services are concerned?**

20 A. Yes. Exhibit 3.3 depicts Suburban’s southern Delaware County distribution system as it
21 existed in 1994 and actually had existed since it was constructed in 1988 and 1989.
22 Exhibit 3.4 depicts the expanded area within which Suburban reserved the right to sue
23 should Columbia reintroduce builders’ incentive programs in resolving the Second

1 Amended Stipulation in PUCO Case Nos. 93-1569-GA-SLF, et al. Exhibit 3.5 depicts
2 violations of the settlement reached in that case engaged in by Columbia in the area
3 reserved to Suburban in Exhibit 3.5 in 2007 and in this case.

4 **Q72. Would you more specifically describe the violation depicted in Exhibit 3.5 which**
5 **occurred in 2007?**

6 A. Yes. In August of that year, we learned that Columbia was proposing to serve a portion
7 of a residential subdivision which Suburban was already serving abutting the east side of
8 Braumiller Road. To serve that portion of the subdivision, known as Braumiller Estates,
9 Columbia proposed to run a pipeline from Royal Dornoch Golf Course south on
10 Braumiller Road to the entrance of the subdivision, parallel to Suburban's existing lines,
11 and cross over to serve the portion that had previously been committed to Suburban. In
12 the process, Columbia proposed to duplicate pipelines which Suburban had constructed in
13 1988 and which served residences on both sides of Braumiller Road. Moreover, the
14 subdivision involved was wholly and clearly within the area within which Columbia
15 agreed not to engage in such activities in Case Nos. 93-1569-GA-SLF, et al.

16 **Q73. What action or actions did Suburban take in response?**

17 A. I sent a letter to Columbia's then President, Jack Partridge, to advise him of this situation
18 and requested his intervention. Upon investigation with the developer, I learned that the
19 portion of the development to be served by Columbia was awarded by mistake; but the
20 developer had entered into a contract with Columbia and was reluctant to reverse this
21 decision. I sent a further letter to Mr. Partridge advising him of this and offered to
22 assume any obligations Columbia might have incurred in reliance on this contract. His
23 response indicated that he was misinformed, asserting that the facilities Columbia

1 proposed to use had been transferred to Columbia by Suburban and that the subdivision
2 involved was not within the area reserved to Suburban by the Second Amended
3 Stipulation, both of which assertions were in error. While insisting that Columbia
4 intended to strictly abide by the Stipulation, Columbia nevertheless proceeded to take the
5 actions described.

6 **Q74. Do you have copies of that correspondence?**

7 A. Yes. The collection of correspondence is attached to my testimony as Exhibit 3.6.

8 **Q75. What was Suburban's response?**

9 A. Suburban filed a motion to reopen and enforce the Second Amended Stipulation and the
10 Commission's order in Case Nos. 93-1569-GA-SLF, et al. with the PUCO. The
11 developer involved made a personal appeal that Suburban dismiss the case. We honored
12 this request.

13 **Q76. Were there any other violations of the 1995 Stipulation between the 2007 incident and**
14 **the incident involved in this case involving duplications of Suburban's distribution**
15 **system or the use of marketing incentives in the area depicted in Exhibit 3.5?**

16 A. No.

17 **Q77. So, from the execution of the 1995 Stipulation and its approval by the PUCO up to**
18 **the violations which occurred in this case, a period of 22 years, there was only one**
19 **violation by Columbia of the agreement reached in Case Nos. 93-1569-GA-SLF, et**
20 **al. according to your understanding of that agreement as it relates to duplication of**
21 **facilities and marketing incentives, is that correct?**

22 A. That's correct.

1 **Q78. Returning your attention to Exhibit 3.5, what other violations of the 1995**
2 **Stipulation are depicted?**

3 A. The yellow line extending from Braumiller Road to Cheshire Road and east on Cheshire
4 Road depicts a totally wasteful duplication of a Suburban pipeline which, again, has
5 existed since 1988 and already serves all of the residential subdivisions for more than a
6 mile on Cheshire Road.

7 **Q79. How did Suburban learn of this violation?**

8 A. As Mr. Roll explains, the developer's local representative of the subdivision to be served
9 by Columbia's pipeline informed Suburban's Vice President of System Development
10 that, despite a long-standing commitment to Suburban pursuant to which Suburban has
11 already served 10 subsections of this development, he was instructed that Columbia,
12 instead, would serve the remaining subsections of the development.

13 **Q80. Are you aware of any other offer of similar incentives made by Columbia?**

14 A. Yes. As Mr. Roll also explains, Columbia's representative made the same offer to a
15 major developer in this area to take away several major developments committed to
16 Suburban; and other developers have advised Suburban that they have agreed or may
17 agree to switch to Columbia, one of whom has asked if Suburban had changed its policy
18 of not offering or paying such incentives.

19 **Q81. Why do you believe Columbia has suddenly decided to abandon the 1995**
20 **Stipulation with regard to duplicating Suburban's facilities and offering builders'**
21 **incentives in competing with Suburban in southern Delaware County?**

22 A. Since the 1995 Stipulation was negotiated, there have been significant changes in
23 Columbia's management. In the meantime, Suburban has successfully competed with

1 Columbia in the area within which Columbia agreed not to duplicate facilities or offer
2 builders' incentives. It would appear that Columbia has decided that it cannot compete
3 with Suburban on a level playing field and so it has decided to reintroduce these
4 predatory practices into Suburban's service area.

5 **Q82. Is or was the Glenross subdivision within Columbia's service area?**

6 A. No.

7 **Q83. Upon what do you base your answer?**

8 A. Initially, if there is anything at all that qualifies as a natural gas company's "service
9 area," it is the area served by Suburban on and adjacent to Cheshire Road. Suburban has
10 constructed and maintained service lines and facilities in this area since 1988 and has
11 served customers there for nearly 30 years. As shown by Exhibits 3.4 and 3.5, Columbia,
12 itself, has by its course of conduct and agreements and proposed agreements with
13 Suburban during this period acknowledged this fact. Secondly, this area meets
14 Columbia's own definition of this term as used by its witness, Mr. Thomas Devers, in
15 PUCO Case No. 86-1747-GA-CSS of which this Commission can and should take
16 administrative notice. Mr. Devers sponsored Columbia's exhibit in that case setting forth
17 Columbia's competitive policies when competing with other natural gas distribution
18 companies and, specifically, smaller natural gas companies such as Suburban. Basically,
19 he characterized a company's service area as an area traditionally served by a company.
20 More recently, Columbia's own field engineer acknowledged that this area is considered
21 Suburban's service area. Prior to the construction of the pipeline involved in this case,
22 Columbia neither owned nor maintained any facilities on Cheshire Road other than the
23 line west of Braumiller Road transferred by Suburban under the 1995 Stipulation.

1 **Q84. Did Mr. Devers also testify as to what conduct Columbia would consider predatory**
2 **or engaging in destructive competition?**

3 A. Yes. He testified that Columbia would consider a competitor's duplicating Columbia's
4 existing lines and "raiding" its customers and markets in such an area destructive
5 competition.

6 **Q85. Isn't that what Suburban is alleging Columbia is doing in this case?**

7 A. Yes.

8 **Q86. Is there any other basis for your belief that offering its DSM program in competition**
9 **with Suburban is unlawful?**

10 A. Yes. In PUCO Case No. 86-1474-GA-CSS, Columbia attempted to justify similar
11 incentive programs on the basis that their cost was absorbed solely and completely by
12 Columbia's shareholders and had no adverse effect on customers who did not receive the
13 benefits of those programs. I understand that the costs of Columbia's DSM program is
14 recovered from its customers through a rider and that Columbia' shareholders even enjoy
15 a return on these "investments."

16 **III.RELIEF REQUESTED**

17 **Q87. What will be the consequences to Suburban should the Commission deny Suburban**
18 **the relief requested in this case?**

19 A. Suburban has invested tens of millions in the area depicted in Exhibit 3.5 in reliance on
20 the Stipulation approved in PUCO Case Nos. 93-1569-GA-SLF, et al. and has finalized
21 an additional \$8.5 million loan to extend its existing supply line to meet both near-term
22 and long-term capacity requirements in that area which has been approved by the
23 Commission. If the Commission denies Suburban the relief requested in this case, this

1 line extension could become stranded investment jeopardizing Suburban's very existence
2 due to Suburban's inability to compete with Columbia's unlawful builders' incentives.
3 As evidence as to Columbia's intentions in this regard, the Commission should note that
4 the Columbia pipeline involved in this case is an eight-inch, high density pipeline
5 designed not merely to serve the development in question but to cannibalize the entire
6 area depicted in Exhibit 3.5.

7 **Q88. Columbia has alleged that what Suburban is seeking in this case is a "thinly veiled**
8 **attempt to cobble together a de-facto exclusive service territory" within which**
9 **Columbia is prohibited from competing with Suburban. Is that true?**

10 A. Absolutely not. It is not competition that Suburban is attempting to avoid in this case but
11 unfair and unlawful competition. Suburban has added over 10,000 customers to its
12 system in Delaware County since the 1995 Stipulation was approved, in competition with
13 Columbia, and is prepared to continue to compete with Columbia on a level playing field.

14 **Q89. Does this complete your direct testimony?**

15 A. Yes.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Testimony was served by electronic mail this
16th day of March, 2018, to the following:

mstemm@porterwright.com
egallon@porterwright.com
dflahive@porterwright.com
sseiple@nisource.com
josephclark@nisource.com

/s/ Mark A. Whitt
One of the Attorneys for Suburban Natural Gas
Company

M E M O

TO: David L. Pemberton, Sr.
FROM: David L. Pemberton, Jr.
DATE: May 5, 1993
SUBJECT: Oak Creek Housing Development (Columbia)

=====

Today I had the opportunity to speak with a very reliable source in the development of Northern Franklin County and Southern Delaware County. In our conversation, it was relayed to me that Columbia Gas of Ohio has planned to extend its natural gas line north from Lazelle Road up Sancus Blvd. to Polaris Parkway. At that point Columbia Gas of Ohio intends to move westward on Polaris Parkway to Old State Road, at which point they intend to lay distribution lines north to Old State Road and Powell Road.

The intent of this extension by Columbia is a blatant crossing of Suburban's distribution facilities to serve the Oak Creek Housing Development. The Oak Creek Development borders Powell Road and Old State Road, in Orange Township in Southern Delaware County. Suburban has already been requested by Zandee & Associates, (the engineering firm on the project) to forward plans for serving the Oak Creek Housing Development. In fact, Suburban is already designated in the engineering plans as the natural gas local distribution company. This initial contact concerning Oak Creek occurred more than a year ago, and Suburban has been the designated supplier via the plans submitted to Zandee and Associates.

After hearing this information at approximately 3:30 pm today, I immediately inquired with Suburban's operations management as to the status of our serving the development. I was assured that my original conviction that we had been given the development on the housing project for Oak Creek was correct, and that in fact we had a number of meetings with Zandee and Associates, regarding Suburban's implementation of natural gas service to Oak Creek. (We have copies of our plans to service this development that were sent to Zandee and Associates upon their request.)

At that point, I contacted Bob Needham at Zandee and Associates, one of our contacts. I inquired as to the validity of the scenario that I have just outlined. He verified that he too had heard of an interest on Columbia of Ohio's behalf to service the development. Once again they are blatantly crossing our line. (Needless to say this has not been our marketing policy towards Columbia of Ohio over recent years. In fact, we have opted out of situations in which Columbia of Ohio is clearly the natural gas provider geographically.)

May I relate that as your Sales & Marketing Director, it is very difficult to compete with the scenario that I am about to relate to you. In speaking with Bob Needham at Zandee and Associates, I asked him with whom I would need to talk to regarding the Columbia of Ohio contact on this development. He informed me that Randy Robert of the Borrer Corporation was the contact that he had whom had relayed the information regarding Columbia's possible line extension to Oak Creek. This conversation with Bob Needham of Zandee and Associates took place at approximately 4:15 pm today.

X At that point, I called Randy Robert from The Borrer Corporation. He was in a meeting and unavailable. At 5:00 pm I called Randy Robert again and he was available. Mr. Robert readily stated that The Borrer Corporation was neutral as to the natural gas provider to the Oak Creek Housing Development. He also stated that he was aware that Suburban Natural Gas had a six inch high pressure line available on Powell Road that had been designated via Zandee and Associates to serve the Oak Creek Housing Development.

Randy Robert further stated that approximately six to eight weeks ago Columbia Gas of Ohio approached The Borrer Corporation regarding service of natural gas to the Oak Creek Housing Development. Randy went on to say that the call by the Columbia of Ohio Representative was made on Lori Steiner.

X Randy Robert relayed that Columbia of Ohio told Lori Steiner, Director of Marketing, for The Borrer Corporation, that the advertisement that Columbia of Ohio was doing for The Borrer Corporation, for a number of developments in Central Ohio, would be hindered or impeded if Columbia did not service the Oak Creek Housing Development. Apparently the advertisement of other Borrer Developments would be directly impacted if Columbia Gas of Ohio did not service the Oak Creek Housing Development.

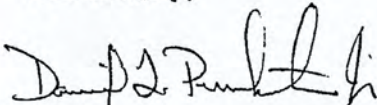
X At that point, I asked Randy Robert what percentage or portion of his advertising budget for the Oak Creek Development was to be paid by Columbia Gas of Ohio. He responded that it was his belief that the arrangement had been 50% Borrer Corporation and 50% Columbia Gas of Ohio. However, he asked that I confirm these figures with Lori Steiner.

I will be calling Lori Steiner tomorrow to inquire as to more specifics on Columbia's terms and conditions. I will keep you informed as to further developments relating to this matter.

If I may comment at this time; if Columbia Gas of Ohio continues to cross over and raid developments already committed to Suburban Natural Gas Company's local distribution investment, in this manner, Suburban's entire investment could be undermined and negatively impacted. I have a grave concern relating to Suburban's extensive financial investment in Delaware County under these circumstances. I am also concerned about our exposure to existing customers in The Polaris Centers of Commerce. This would include current service to Cigna Corporation, Cranel, Inc., N.P. Limited (Polaris HQ), Civil Engineering Associates, Newcombe Corporation; as well as a commitment from the day care center along Polaris and The Olentangy Builders and Development Co. located along Vega Place. There is no assurance that Columbia Gas of Ohio would not pirate our existing load in Polaris as well as future load, for discounted rates.

I see this action regarding Columbia Gas of Ohio as predatory and feel it warrants your immediate attention.

Cordially,

A handwritten signature in dark ink, appearing to read "David L. Pemberton, Jr.", with a stylized flourish at the end.

David L. Pemberton, Jr.
Director-Sales & Marketing

DLPjr/cam

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SUBURBAN NATURAL GAS COMPANY

575 SUNBURY ROAD
DELAWARE, OHIO 43015
(614) 369-2345

M E M O R A N D U M

TO: Suburban Natural Gas Company v. Columbia Gas of Ohio---
Oak Creek Development File

FROM: David L. Pemberton, President

DATE: May 11, 1993

Supplementing the attached memorandum from Dave, Jr. to me relating to the Oak Creek development, I contacted Wally Barnes of Columbia Gas of Ohio's (COH) legal department on Wednesday, May 5, at approximately 4:30 p.m. I had originally called for Andy Sonderman, COH's general counsel, but was advised that Mr. Sonderman was out of town. Mr. Barnes is COH's antitrust lawyer.

Briefly, I relayed to Mr. Barnes the "rumor" that we had heard regarding COH's intentions with regard to service to the Oak Creek development. I thoroughly reviewed with Mr. Barnes our investment in the facilities from which the Oak Creek development would be served and the extent of the commitment made by the project's original developer and the project engineers. I recalled to him that the facilities in question had been constructed two years ago, shortly after which I had been contacted by Roger Post, COH's prior chief counsel, and invited to lunch. At the luncheon, Mr. Post offered to purchase the line extension that had recently been completed, which offer I declined. I indicated to Mr. Barnes that I felt that COH's actions, if true, would raise serious antitrust questions. Mr. Barnes seemed to be taking notes and had only one inquiry--whether we had a written contract with the original developer. I advised him that we had no written contract but a very strong oral commitment upon which we had relied and upon which we had taken action and reminded him that written contracts are not usual under such circumstances. Mr. Barnes indicated that he would undertake an investigation of the matter and get back to me. I have yet to hear from Mr. Barnes.

On Thursday, May 6, I contacted our antitrust attorney, Mr. Charles Freed, and advised him of the current circumstances. I also advised him of my telephone conversation with Mr. Barnes. I also related to Mr. Freed the 1989 transfer of facilities from Columbia Gas Transmission Corporation to COH at bargain prices which we had belatedly contested at the FERC. I also related to him the above-referenced

Memorandum to Suburban v. Columbia Oak Creek Development File
Page 2
May 11, 1993

approach by Mr. Post. I also related to Mr. Freed the "tying arrangement" discussed in Dave, Jr.'s memo to me and indicated that we were uncertain as to whether the Oak Creek development was merely a "throw in" to COH's advertising arrangements with the Borrer Corporation or whether the advertising program was "tied to" or conditioned upon COH's serving Oak Creek. I concluded by asking Mr. Freed to stand by for further developments and be prepared to pursue any and all antitrust remedies available to us against COH if the situation continued to develop as indicated by the Borrer Corporation.

After talking to Mr. Freed, I contacted my partner, Norm Rood, and alerted him to the situation with COH. I asked Norm to contact COH's President, Ron Tilley, and request a meeting as soon as possible. The purpose of the meeting with Mr. Tilley was to determine whether he is aware of the actions taken vis-a-vis our company with respect to the Oak Creek development and/or to determine his attitude with respect to same. I indicated to Norm that since I had initiated contact with the legal department, it would be better that he contact Tilley.

On Saturday, May 8, I was playing golf with a good friend and client formerly engaged in the development business. I inquired as to whether he could arrange or knew someone who could arrange a meeting between me and Don Borrer of the Borrer Corporation and briefly described our dilemma. Mr. client responded that I would want to talk with Doug Borrer rather than Don Borrer and indicated that he had a long-term relationship with Doug. He suggested that I have Dave, Jr. call him on the matter on Monday, May 10.

On Monday, May 10, Dave, Jr. contacted the foregoing client and friend at approximately 9 a.m. from my home prior to our leaving for our Cygnet office. He reviewed in greater detail the situation confronting us at Oak Creek. My friend agreed to attempt to contact Doug Borrer and get back to us as soon as possible. We suggested that he attempt to arrange a face-to-face meeting if at all possible.

On Monday, May 10, I was advised by Norm Rood that Ron Tilley had agreed to meet with us on Wednesday, May 12, at his office in Columbus. He had been unable to talk directly to Mr. Tilley but advised Mr. Tilley's secretary, Kathy Burt, in detail, as to the nature and reason for the meeting and suggested that Mr. Tilley be adequately briefed before meeting with us on Wednesday.

This morning, May 11, I returned a telephone call to Dave, Jr. from my client and friend. He opened with his report by stating that Doug Borrer said "they're screwed". Mr. Borrer was referring to Suburban Natural Gas Company. As my client began to brief him

Memorandum to Suburban v. Columbia Oak Creek Development File
Page 3
May 11, 1993

regarding the situation, Mr. Borrer indicated that he knew all about Suburban and the commitments previously made with regard to the Oak Creek development. He indicated, however, that COH's officials had met directly with him and made it very clear that their advertising for any of the Borrer Corporation developments (which currently number 16 in Franklin County) was conditioned on COH's serving the Oak Creek development. Mr. Borrer indicated that even if Suburban were willing to make the same offer of advertising subsidies, he would not change his mind since he had too much on the table to jeopardize his relationship with COH and could not afford to "piss them off". My client apologized for not being able to be of more assistance and indicated that COH had been adamant in tying the advertising of all of Borrer's developments to service to Oak Creek.

After receiving the foregoing report, I contacted Bob Mone and brought him completely up to date on the situation, including all of the foregoing conversations.



Utility Technologies International
4700 Homer Ohio Lane
Groveport, OH 43125
www.uti-corp.com
P: 614-482-8080

DESIGN:
KDG
DRAFT:
JSD
CHECK:
CPL

Suburban Natural Gas Company

Map 1

Service Line 1994

REVISED: 11/1/2017



0 0.5 1 2
Miles

Exhibit 3.3



Legend

— 1994 SNG System



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JSD
CHECK:
CPL

Suburban Natural Gas Company Map 3

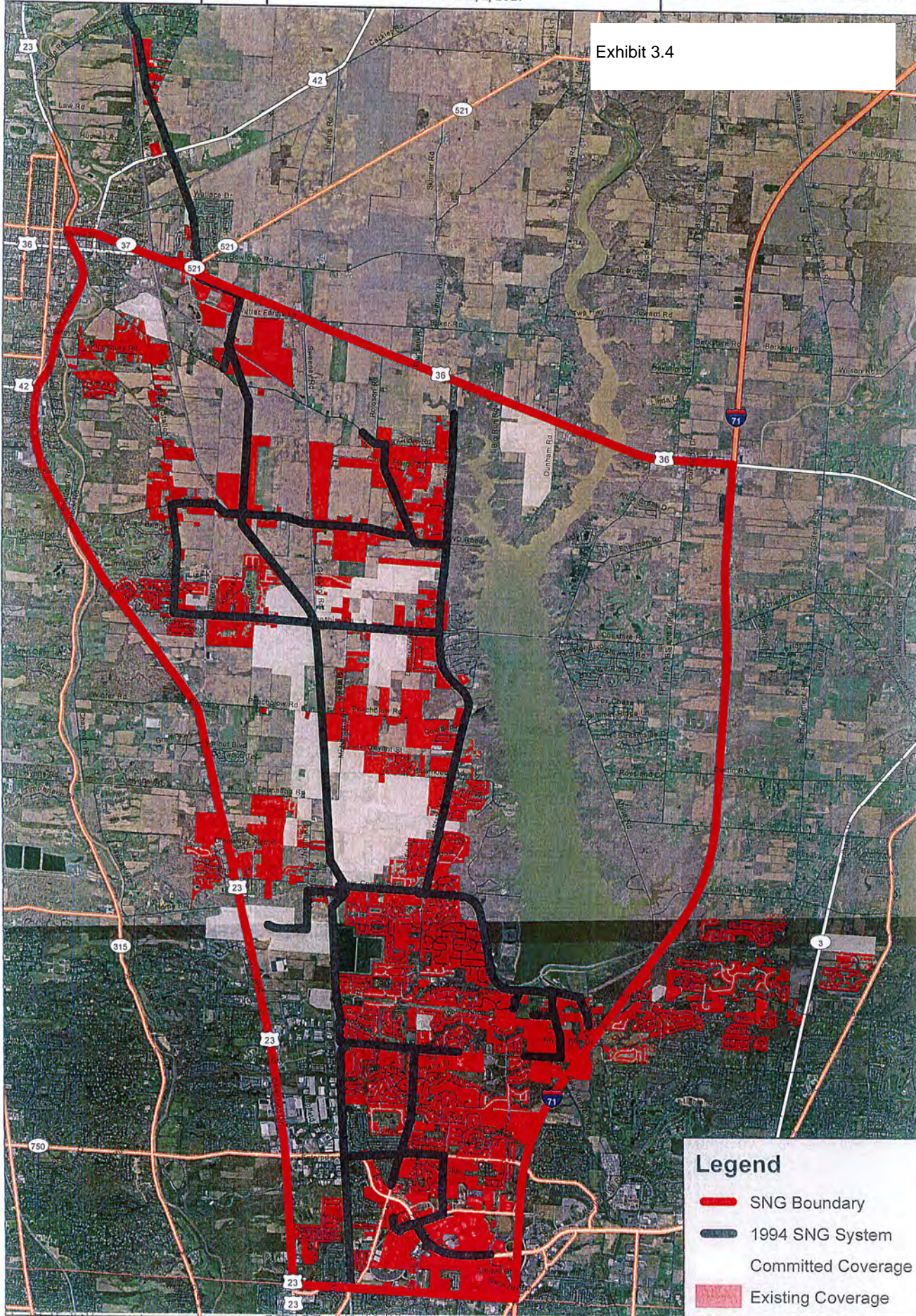
Service Line 1994

REVISED: 11/1/2017



0 0.5 1 2 Miles

Exhibit 3.4



Legend

- SNG Boundary
- 1994 SNG System
- Committed Coverage
- Existing Coverage



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CPL

Suburban Natural Gas Company Map 4

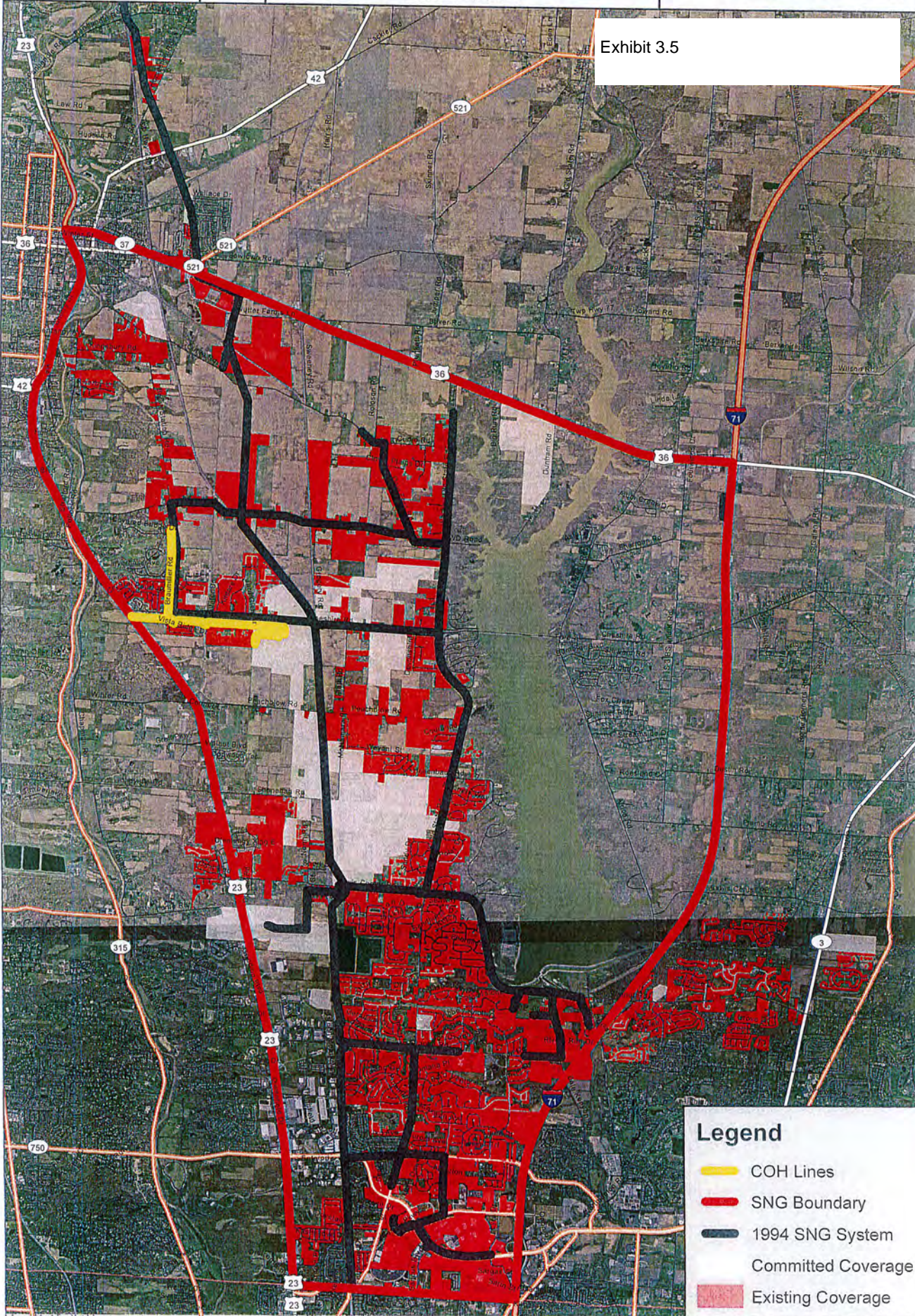
Service Line 1994

REVISED: 11/3/2017



0 0.5 1 2 Miles

Exhibit 3.5



Legend

- COH Lines
- SNG Boundary
- 1994 SNG System
- Committed Coverage
- Existing Coverage

SUBURBAN NATURAL GAS COMPANY
ESTABLISHED 1882



Exhibit 3.6

DAVID L. PEMBERTON, SR.
CHAIRMAN OF THE BOARD

2626 LEWIS CENTER ROAD
LEWIS CENTER, OHIO 43035-9206
(740) 548-2450

August 24, 2007

Mr. Jack Partridge
President and CEO
Columbia Gas of Ohio
P. O. Box 117
Columbus, OH 43216-0117

Dear Jack:

It has come to my attention that our company and yours may, once again, be on a course which could result in serious consequences for both. Since the matter involves competition between our companies, I considered it best to reduce my thoughts to writing to avoid any misunderstanding as to my concern, which is not competition per se but competition which violates the spirit and intent of the settlement arrived at more than a decade ago by our companies which we jointly submitted to the Public Utilities Commission of Ohio for its approval.

As you may recall, the settlement to which I refer was arrived at only after costly and extensive litigation concerning your company's competitive practices in southern Delaware County which included, among others, duplication of facilities. As to that issue, the settlement provided for the sale and exchange of facilities and customers with the purpose and intent of rationalizing our systems in a manner which served not only our respective companies but the public's interest in safe, economical, and efficient utility services; and it was with these objectives in mind that the Commission, after careful and protracted deliberations, ultimately approved the settlement. Until recently, the settlement appears to have worked well in meeting these objectives. Hopefully, it can continue to do so.

This past week, Suburban received an OUPS notice advising that Miller Pipeline Company intended to construct a pipeline and related facilities through a subdivision served by Suburban to serve a continuation of this residential development. The subdivision and the proposed duplicative gas line extension are located east of Braumiller Road slightly north of Cheshire Road, coincidentally, within the area specifically excluded from Suburban's Release And Covenant Not To Sue attached to the settlement agreement with respect to the Settled Claims. Upon inquiry, Suburban's field personnel were advised that the proposed facilities were to be owned and operated by your company.

Mr. Jack Partridge
Page 2
August 24, 2007

Without going into the legality of the proposed facilities, we believe that they violate the spirit and intent of the above-referenced settlement agreement and the protections intended to be afforded our company thereunder. We are also concerned that they portend a return to the overly aggressive behavior which prompted the Commission's intervention in approving that agreement over 10 years ago, over which it specifically retained continuing jurisdiction. This concern is heightened by the fact that Suburban's multi-million dollar commitment to a new 12-inch pipeline constructed specifically to serve this area will be seriously impaired should our concern be validated, to the detriment of both Suburban and its customers—a pipeline, by the way, which was necessitated by supply limitations imposed by your company.

We hope that we are wrong in our concern. We would appreciate any assurances you can give us with regard to this matter. Perhaps, a conference with the Commission's staff would be beneficial.

Very truly yours,



David L. Pemberton

DLP:mew

cc: Mr. David L. Pemberton, Jr.

Blind cc: John W. Bentine, Esquire

SUBURBAN NATURAL GAS COMPANY

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DAVID L. PEMBERTON, SR.
CHAIRMAN OF THE BOARD

2626 LEWIS CENTER ROAD
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August 30, 2007

VIA FACSIMILE 614 460-6455
Mr. Jack Partridge
President and CEO
Columbia Gas of Ohio
P. O. Box 117
Columbus, OH 43216-0117

Dear Jack:

Supplementing my letter of August 24, 2007, our investigation of the matter addressed indicates that the proposed duplication of facilities arose as the result of a misunderstanding at the operations level. The facts, as I understand them, are as follows.

A letter of commitment to serve the whole development was sought and obtained by the original developer from Suburban, and our plans for "piping" the project were submitted with the zoning application. Subsequently, the property was sold to the current developer whose operating personnel inadvertently included the second phase of this development in discussions with your people about piping several other projects committed to your company. We and the executive management of the current developer were unaware of this until Suburban raised the question after receiving Miller's OUPS transmission, prompting my letter to you.

Discussions with the current developer's CEO confirm his desire to honor the original commitment to Suburban. However, he is concerned about the contractual relation recently entered into with Columbia. He would also prefer avoiding the proposed duplication and location of your facilities in that part of the development already served by Suburban, as would Delaware County officials. However, he would also prefer avoiding becoming embroiled in a disagreement between our companies.

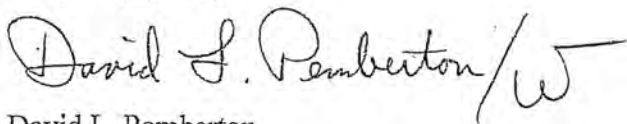
Based on the foregoing and for the reasons set forth in my August 24, 2007 letter, it would be appreciated if Columbia would release the current developer from its commitment to use Columbia for gas service to this development. Not only would this relieve Suburban of the concerns expressed in my August 24, 2007 letter, it would relieve both the developer's CEO and the Delaware County officials with whom we have spoken of their concerns about the proposed location of Columbia's facilities in the existing residential community in extending service to the new portion of the development. To assist you in this decision, Suburban is prepared to assume Columbia's contractual obligations to both Miller Pipeline Company, with whom we have

Mr. Jack Partridge
Page 2
August 30, 2007

recently worked, and to the current developer. My son and Dave Monte could work out the details.

Thank you for your prompt reaction to my August 24, 2007 letter and to the foregoing request.

Very truly yours,



David L. Pemberton

DLP:mew

cc: Mr. David L. Pemberton, Jr.

Blind cc: John W. Bentine, Esquire

Sub

Exhibit 3.6

of Ohio

A NiSource Company

200 Civic Center Drive
Columbus, OH 43215
(614) 460.5952
Fax: (614) 460.6455
jpartridge@nlsOURCE.com

John W. Partridge, Jr.
President

August 30, 2007

Suburban Natural Gas Company
David L. Pemberton, Sr.
Chairman of the Board
274 E. Front Street,
P.O. Box 130
Cygnet, OH 43413-0130

RE: Your Correspondence Dated August 24, 2007 and August 30, 2007

Dear Daye:

I am writing in response to your letters dated August 24 and August 30, 2007 in which you raise several issues regarding the project known as the "Estates at Braumiller". This project is located east of Braumiller Road, north of Cheshire Road, several hundred yards south of the Royal Dornoch Development on Braumiller Road which is served by Columbia Gas of Ohio, Inc. ("Columbia Gas"). As you know, Columbia Gas ceased construction on this project temporarily in response to your August 24, 2007 letter in order to thoroughly evaluate the facts of the situation. During the last few days, I have enlisted the assistance of many people at Columbia Gas to investigate this matter.

Based on our investigation, we have determined that Columbia Gas has a contractual relationship with Rockford Homes, the current developer, which was entered into in the normal and ordinary course of business and which Columbia Gas must honor. Columbia Gas dealt directly with Rockford Homes after it requested Columbia Gas to provide the project with natural gas service, and Columbia Gas was never informed that this project was in any way related to, or under contract with Suburban. In fact, the lot plan given to Columbia Gas listed "Columbia Gas" as the gas distribution company. As you know, as a public utility Columbia Gas has an obligation to respond to reasonable requests for natural gas distribution service, and Columbia Gas is simply fulfilling that obligation.

Columbia Gas personnel have also met with the City of Delaware personnel regarding the proposed construction. The City has approved Columbia's installation of facilities on the same side of the road as those of Suburban. Columbia Gas intends to install its facilities in accordance with all applicable codes and regulations, so safety is not an issue.

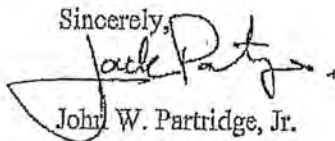
To be clear, Columbia Gas has been strictly adhering to the provisions of its November 6, 1995 Agreement with Suburban. All of the customers to be transferred to Suburban under that agreement have been transferred and Columbia Gas clarified its tariffs as required by the agreement. Interestingly, of the pipeline facilities exchanged pursuant to

COH0149

the 1995 agreement, the only facilities located anywhere near the Estates at Braumiller project are customers and facilities which Suburban transferred to Columbia Gas. The Estates at Braumiller project is to be fed from a gas main which Columbia Gas installed in 1996 and 1998 on Braumiller Road. When Columbia Gas constructed that line, Suburban had no facilities in that area and Columbia Gas constructed the gas main on Braumiller with the expectation that the area would further develop and the gas main on Braumiller would serve that area.

I am sure you understand that based on these facts, Columbia Gas must therefore respectfully decline Suburban's offer to assume the Miller Pipeline Company contract. Thank you for bringing this matter to my attention, and I can assure you that Columbia Gas intends to continue competing fairly on all future projects.

Sincerely,

A handwritten signature in dark ink, appearing to read "John W. Partridge, Jr.", with a stylized flourish at the end.

John W. Partridge, Jr.

SUBURBAN NATURAL GAS COMPANY
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Exhibit 3.6

DAVID L. PEMBERTON, SR.
CHAIRMAN OF THE BOARD

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August 31, 2007

VIA FACSIMILE (614) 460-6455
Mr. John W. Partridge, Jr., President
Columbia Gas of Ohio
P. O. Box 117
Columbus, OH 43216-0117

Re: Estates at Braumiller

Dear Jack:

Thank you for your letter of August 30, 2007 responding to mine of August 24 and August 30, 2007 which, with several exceptions, essentially confirms the facts set forth in my August 30, 2007 transmittal. The exceptions, however, are significant.

First, the facilities to be installed by Columbia are not merely "on the same side of the road of those of Suburban." It is my understanding that they are to be installed within the same subdivision served by Suburban and will physically duplicate and traverse Suburban's existing lines to reach the referenced project.

Second, your statements that "the only facilities located anywhere near the Estates at Braumiller project are customers and facilities which Suburban transferred to Columbia Gas" and that "(w)hen Columbia Gas constructed that line (the line from which it intends to serve the Estates at Braumiller), Suburban had no facilities in that area..." are simply incorrect.

From the inception of its system in Delaware County, which was initially constructed in 1988/1989, Suburban has maintained facilities and served customers on both sides of Braumiller Road between Cheshire and Berlin Station Roads, none of which were transferred to or exchanged with Columbia in 1995. The only facility transferred was a pipeline which ran west of Braumiller along Cheshire Road which served three residential customers (see Section A, Paragraph 2.C of the agreement). Suburban retained all other pipe, facilities, and customers located on Braumiller and Cheshire Roads, including the regulator station originally constructed to serve this area. Moreover, Columbia's gas main at Braumiller was constructed to serve the Dornoch golf course development which began at and faces onto U.S. 23. This facility was not constructed to serve an area which was clearly intended to be served by Suburban under the 1995 settlement agreement, and your statement to the contrary merely heightens the concern expressed in my August 24 letter.

Mr. John W. Partridge, Jr., President
Page 2
August 31, 2007

The Second Amended Joint Petition, Application, And Stipulation And Recommendation Of Columbia Gas Of Ohio, Inc. And Suburban Natural Gas Company, referenced in our correspondence as the settlement agreement and the 1995 Agreement, respectively, was intended to redress the operating and planning difficulties created by the duplication of facilities which had occurred in the competitive climate that existed at that time. While Suburban had not constructed any facilities which traversed or duplicated Columbia facilities, it had acquired facilities, particularly in Franklin County, which posed planning and operational problems for Columbia which were exchanged for duplicative facilities constructed or existing in the area served and/or to be served from Suburban's distribution system. The area of Delaware County to which the settlement applied was generally described as bounded by U.S. 23 on the west, Lazelle Road on the south, Alum Creek Reservoir and Interstate 71 on the east, and U.S. Route 36 and State Route 37 on the north (see Page 3 of Suburban Release And Covenant Not To Sue attached to the settlement agreement).

The exchange of facilities, and customers, was arrived at only after extensive discussions with the Commission's staff and the Commissioners, themselves, to, as the settlement agreement states, resolve our competitive dispute and rationalize our respective distribution systems in Delaware and Franklin Counties in order that both companies could better serve the public and was found by the Commission to be in the public interest. No timeframe was put on the settlement either by the Commission or the parties; and to my knowledge, your proposed service to the Estates at Braumiller constitutes Columbia's first departure from the settlement and a return to the predatory practices found not to be in the public interest by the Commission in approving the settlement. If this represents Columbia's intention "to continue competing fairly on all future projects," we regretfully will have no alternative but to seek enforcement of the settlement agreement from the Commission.

Very truly yours,


David L. Pemberton

DLP:mew

cc: Mr. David L. Pemberton, Jr.

Subu

Columbia Gas[®] of Ohio

A NISource Company

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Fax: (614) 460,8455
jpartridge@nsource.com

John W. Partridge, Jr.
President

September 18, 2007

Suburban Natural Gas Company
David L. Pemberton, Sr.
Chairman of the Board
274 E. Front Street,
P.O. Box 130
Cygnet, OH 43413-0130

RE: Your Correspondence Dated August 31, 2007

Dear Dave:

I am writing in response to your letter dated August 31, 2007 in which you further discuss issues regarding the "Estates at Braumiller" project. As I conveyed in my August 30, 2007 letter, Columbia Gas of Ohio, Inc. ("Columbia") has been strictly adhering to the provisions of its November 6, 1995 Agreement with Suburban ("Agreement"). While Columbia will continue to fulfill the obligations under the Miller Pipeline Company contract, I would like to briefly address the issues you have raised in your letter.

First, it is necessary to clarify your concern that Columbia's "[facilities] are to be installed within the same subdivision served by Suburban and will physically duplicate and traverse Suburban's existing lines to reach the referenced project." Columbia will not provide service to customers within the current service area of Suburban. Rather, Columbia intends to install facilities where necessary that enable it to service customers beyond the current Suburban service areas.

Columbia must also address your interpretation of the Agreement that it "was intended to redress the operating and planning difficulties created by the duplication of facilities which had occurred in the competitive climate that existed at that time." Columbia does not interpret the Agreement to redress the operating and planning difficulties created by duplication of facilities. Rather, the intent of the Agreement, as explicitly stated in the Agreement itself was to resolve issues dealing with various Columbia marketing programs and the direct or indirect payments for customer service lines, house piping, and appliances.

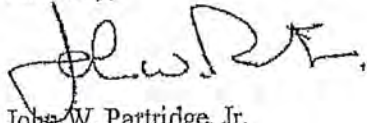
The Agreement does not prohibit Columbia from installing facilities to service the project area, regardless if duplication of facilities occurs in part. Columbia has a contractual relationship with Rockford Homes, which was entered into in the normal and ordinary course of business and which Columbia must honor.

COH0152

Moreover, Columbia does not interpret the Agreement as preventing competition between Suburban and Columbia. Assuming for the sake of argument that the Agreement could be interpreted to prevent competition, restrictions on competition are limited in both geographic scope and time. Columbia's project area is far from the area where Columbia sold facilities to Suburban; however, the project area is close to an area where Suburban sold facilities to Columbia. Under the theory that the Agreement prevents competition in areas where facilities were transferred, since the project area is closest to an area where Suburban sold to Columbia, it would be Suburban that would be prevented from competing for customers, not Columbia. Additionally, a twelve year prohibition on competition is not only against public policy, but unreasonable in duration.

While Columbia must take the positions outlined in this letter, I encourage Suburban and Columbia to continue to work together in an amicable and professional manner. Accordingly, please do not hesitate to contact me should you be interested in gathering the appropriate persons to continue this dialogue. I continue to assure you that Columbia intends to continue competing fairly on all future projects.

Sincerely,



John W. Partridge, Jr.

COH0153

SUBURBAN NATURAL GAS COMPANY
ESTABLISHED 1882



DAVID L. PEMBERTON, SR.
CHAIRMAN OF THE BOARD

2626 LEWIS CENTER ROAD
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September 21, 2007

Mr. John W. Partridge, Jr., President
Columbia Gas of Ohio
P. O. Box 117
Columbus, OH 43216-0117

Re: Estates at Braumiller

Dear Jack:

Thank you for your letter of September 18, 2007 responding to mine of August 31, 2007. Since that letter does not dispute the factual assertions contained in my August 31 transmittal, I assume that we are in agreement as to the facts but, apparently, disagree as to the scope, purpose, and intent of our settlement agreement. Recognizing that you are somewhat at a disadvantage due to the fact that the Columbia representatives who "lived" the litigation, negotiations, and resulting settlement are no longer with the company, I feel compelled, as briefly as possible, to address several assertions in your letter which contradict the facts and circumstances underlying the settlement agreement.

Initially, your contention that the settlement agreement was not intended to redress operating and planning difficulties created by duplication of facilities but was intended merely to resolve marketing and tariff issues is not only contradicted by the express terms of the settlement agreement, itself, but by the history leading to the litigation and the resultant settlement. Were marketing and tariff issues the only matters to be resolved by the settlement agreement, there would have been no need to transfer or exchange any physical facilities at all. In fact, the initial problem between our companies resulted directly and primarily from the wholesale duplication of our lines in the Polaris and Oak Creek subdivision areas which the settlement agreement remedied by requiring a sale of the duplicating facilities to Suburban. As in the Braumiller Estates situation, the Oak Creek subdivision had been committed to Suburban prior to its acquisition by Dominion (then Borror) Homes; and, as in the Braumiller Estates situation, Columbia "climbed over" Suburban's existing facilities to reach the Oak Creek subdivision. In fact, it is these similarities that provoked my initial letter in this matter.

old law Secondly, the absence of a time limit during which the settlement is to guide our relationship in Suburban's service area does not violate public policy, as you contend. While restrictive covenants in simple contracts are required by the courts to be reasonable in scope and duration,

Mr. John W. Partridge, Jr., President

Page 2

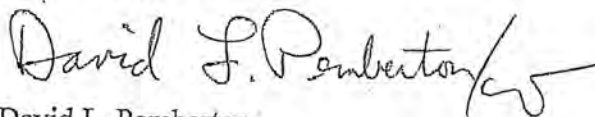
September 21, 2007

the subject agreement is not a simple contract nor is it subject to review by the courts. It is part of an order of the Public Utilities Commission of Ohio which has exclusive jurisdiction in such matters and which specifically retained continuing jurisdiction as to our agreement.

Finally, the service area intended to be protected from the practices engaged in prior to the settlement agreement is broader than the mere presence of physical facilities and extends to the boundaries referenced in my August 31, 2007 letter. In approving the sale and exchange of facilities, it was the Commission's intention to rationalize service within this area. That is why the transfer of Columbia's 6-inch high pressure line between Orange and Lewis Center Roads was ordered and approved, even though Suburban had no duplicating facilities in this area. The Commission did not consider "checker board" service areas to be in the public interest since they would inevitably lead to further duplications. With this understanding, we find your assurances with regard to respecting Suburban's service area reassuring.

I sincerely appreciate the substance and tone of your letters and hope that our prior decade of congenial relations will continue. I would like to consult further with our attorneys before accepting your offer to meet however.

Very truly yours,

A handwritten signature in dark ink, reading "David L. Pemberton" with a stylized flourish at the end.

David L. Pemberton

DLP:mew

cc: Mr. David L. Pemberton, Jr.

Blind cc: John W. Bentine, Esquire

CHESTER WILLCOX & SAXBE LLP

Attorneys and Counselors at Law

JOHN W. BENTINE

DIRECT DIAL 614-334-6121
jbentine@cwslaw.com

October 4, 2007

Daniel A. Creekmur, Esquire
Columbia Gas of Ohio
200 Civic Center Drive
P.O. Box 117
Columbus, OH 43216-0117

Dear Mr. Creekmur:

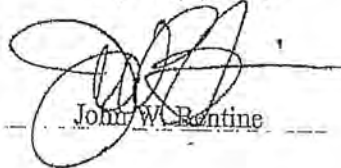
Your letter of September 28, 2007 to David L. Pemberton, Sr. of Suburban Natural Gas Company has been referred to me for reply.

After reviewing the correspondence between Messrs. Pemberton and Partridge, I concur that a personal dialogue would probably not be productive at this time. Suburban continues to believe that the actions taken by Columbia with regard to the Estates at Braumiller violate the parties' settlement agreement, but also believes that they were the result of mistaken communications at the operations level rather than originating with Columbia's executive offices.

This belief, coupled with the assurances given with regard to respecting Suburban's service area, have prompted my advice to Suburban that no further action be taken on this matter unless further violations occur. In the latter event, however, Suburban specifically reserves the right to raise, and does not waive, its objections to, and any claims arising from, the Estates at Braumiller situation, should enforcement of the settlement agreement be required at some future date.

Mr. Pemberton asks that I transmit his appreciation for Mr. Partridge's prompt attention to this matter.

Very truly yours,



John W. Bentine

JWB/bej

cc: David J. Pemberton, Sr.

ND: 4830-0025-0625, v. 2

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COH0118

SUBURBAN NATURAL GAS COMPANY
ESTABLISHED 1882



DAVID L. PEMBERTON, SR.
CHAIRMAN OF THE BOARD

2626 LEWIS CENTER ROAD
LEWIS CENTER, OHIO 43035-9206
(740) 548-2450

November 20, 2007

VIA FACSIMILE (614) 460-6455
Mr. John W. Partridge, Jr., President
Columbia Gas of Ohio
P. O. Box 117
Columbus, OH 43216-0117

Dear Jack:


I have been advised that Columbia's representatives are once again violating the settlement agreement entered into between our companies and approved by the PUCO in Case No. 93-1569-GA-SLF, et al. on January 18, 1996. Specifically, Columbia's representatives are offering to install facilities and provide service to a new project to be constructed on the north side of Lazelle Road immediately adjacent to the City of Columbus' fire station at 480 Lazelle Road.

Suburban maintains and operates two pipelines on the aforesaid property, one of which was acquired from Columbia through the purchase and transfer of facilities approved in the above-referenced proceedings and capacity therefrom leased back to Columbia to be used solely for the purpose of providing natural gas service to the Oak Creek and Wynstone subdivisions. That portion of the settlement agreement addressing the sale and lease of this pipeline specifically provides that "Columbia would have no right to make new taps on, or construct additional laterals from, that pipeline" (Pages 4-5, Paragraph 5 of settlement agreement). Columbia's proposed service violates the purpose and intent of this provision of the settlement agreement, as well as the more general provisions referred to in prior correspondence. We also have reason to believe that Columbia has offered marketing incentives to obtain this account which raises as well the tariff issues intended to be put to rest by our agreement.

Should Columbia fail or refuse to withdraw its offer to serve the subject premises, we shall have no alternative but to seek enforcement of the settlement agreement and resume our complaints regarding Columbia's marketing programs within the area covered by the settlement agreement.

Your prompt response to this letter is essential.

Very truly yours,


David L. Pemberton

DLP:mew

cc: Mr. David L. Pemberton, Jr.
John W. Bentine, Esquire

This foregoing document was electronically filed with the Public Utilities

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3/16/2018 5:02:10 PM

in

Case No(s). 17-2168-GA-CSS

Summary: Text Direct Testimony of David L. Pemberton, Sr. electronically filed by Ms. Rebekah J. Glover on behalf of Suburban Natural Gas Company