

**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.)	

**MOTION OF COLUMBIA GAS OF OHIO, INC.,
FOR LEAVE TO SUPPLEMENT TESTIMONY AND
REQUEST FOR EXPEDITED RULING**

Pursuant to Ohio Adm. Code 4901-1-12(C), Columbia Gas of Ohio, Inc. (“Columbia”) files this Motion for leave to supplement the Prepared Direct Testimony of Melissa L. Thompson. The purpose of Ms. Thompson’s supplemental testimony is to address a newly provided letter and chronology of related follow-up communications between representatives of proposed intervenors Delaware County Board of Commissioners and Delaware County Engineer (collectively, “Delaware County”) and Complainant Suburban Natural Gas Company (“Suburban”). A Memorandum in Support of this Motion, and a copy of Ms. Thompson’s proposed supplemental testimony, are attached. Given the approaching hearing date, Columbia respectfully requests an expedited ruling on this Motion.

Respectfully submitted,

/s/ Mark S. Stemm

Mark S. Stemm (0023146)

(COUNSEL OF RECORD)

Eric B. Gallon (0071465)

Porter Wright Morris & Arthur LLP

41 South High Street

Columbus, OH 43215

Telephone: (614) 227-2092

(614) 227-2190

Facsimile: (614) 227-2100

Email: mstemm@porterwright.com

egallon@porterwright.com

(Willing to accept service by e-mail)

Stephen B. Seiple, Asst. General Counsel

(0003809)

Joseph M. Clark, Sr. Counsel (0081179)

Columbia Gas of Ohio, Inc.

290 W. Nationwide Blvd.

P.O. Box 117

Columbus, OH 43216-0117

Telephone: (614) 460-4648

(614) 460-6988

Email: sseiple@nisource.com

josephclark@nisource.com

(Willing to accept service by e-mail)

Attorneys for

COLUMBIA GAS OF OHIO, INC.

MEMORANDUM IN SUPPORT

On March 16, 2018, Columbia filed the Prepared Direct Testimony of Melissa L. Thompson. After Delaware County moved to intervene in this proceeding that same day, Columbia's counsel reached out to Delaware County's counsel and requested copies of communications between Suburban and Delaware County regarding the subject of this proceeding.

On March 20, Delaware County produced a copy of a January 30, 2018 letter from Suburban Chairman David L. Pemberton, Sr., to the Delaware County Commissioners, that Columbia had not previously received during discovery and of which it was unaware. The letter asserts that Columbia has been engaging in unlawful marketing practices in southern Delaware County, asks Delaware County to intervene in this proceeding, and further requests that Delaware County "discontinue processing Columbia's requests for permits, rights of way, and other authorizations to continue constructing facilities which duplicate Suburban's facilities until the PUCO has ruled on Suburban's application for emergency relief * * * ." On March 21, Delaware County produced additional pertinent correspondence between Suburban and Delaware County.

Accordingly, Columbia respectfully requests that the Commission grant it leave to supplement the Prepared Direct Testimony of Melissa L. Thompson to address this newly provided letter and related correspondence. A copy of Ms. Thompson's proposed supplemental testimony is attached. Given the approaching hearing date, Columbia respectfully requests an expedited ruling on this Motion.

Respectfully submitted,

/s/ Mark S. Stemm

Mark S. Stemm (0023146)

(COUNSEL OF RECORD)

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Email: sseiple@nisource.com

josephclark@nisource.com

(Willing to accept service by e-mail)

Attorneys for

COLUMBIA GAS OF OHIO, INC.

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing document is being served via electronic mail on the 23rd day of March, 2018, upon the parties listed below:

Suburban Natural Gas Company
whitt@whitt-sturtevant.com
kennedy@whitt-sturtevant.com
glover@whitt-sturtevant.com
smartin@mmpdlaw.com

/s/ Mark S. Stemm

Mark S. Stemm

**Attorney for
COLUMBIA GAS OF OHIO, INC.**

DMS/10967882v.1

**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.)	

**PREPARED SUPPLEMENTAL DIRECT TESTIMONY OF
MELISSA L. THOMPSON
ON BEHALF OF COLUMBIA GAS OF OHIO, INC.**

/s/ Mark S. Stemm
Mark S. Stemm (0023146)
(COUNSEL OF RECORD)
Eric B. Gallon (0071465)
Porter, Wright, Morris & Arthur LLP
41 South High Street
Columbus, OH 43215
Telephone: (614) 227-2092
(614) 227-2190
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Telephone: (614) 460-4648

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josephclark@nisource.com

(Willing to accept service by e-mail)

March 23, 2018

Attorneys for

COLUMBIA GAS OF OHIO, INC.

**PREPARED SUPPLEMENTAL DIRECT TESTIMONY
OF MELISSA L. THOMPSON**

I. INTRODUCTION

Q. Please state your name and business address.

A. Melissa L. Thompson, 290 W. Nationwide Blvd., Columbus, Ohio 43215.

Q. By whom are you employed?

A. I am employed by Columbia Gas of Ohio, Inc. ("Columbia").

Q. Did you previously file Prepared Direct Testimony in this case?

A. Yes, my Prepared Direct Testimony was filed on March 16, 2018.

Q. What is the purpose of your Supplemental Direct Testimony in this proceeding?

A. The purpose of my supplemental direct testimony is to discuss and attach correspondence that was provided to Columbia on March 20, 2018 by Delaware County.

VI. THE COMPLAINT FILED IN THIS CASE IS PART OF SUBURBAN'S ONGOING ANTI-COMPETITIVE TACTICS TO ESTABLISH AN EXCLUSIVE SERVICE TERRITORY AND LIMIT CUSTOMER CHOICE

C. Delaware County Public Officials

Q. Has Suburban reached out to the Delaware County Commissioners about Columbia or this proceeding?

A. It has. Columbia recently received a copy of a January 30, 2018 letter that Suburban sent to the Delaware County Commissioners. This letter specifically requests that the Delaware County Commissioners "discontinue processing Columbia's requests for permits, rights of way, and other authorizations to continue constructing facilities which duplicate Suburban's facilities..." This letter further requests that the County intervene in this proceeding "on behalf of Delaware County's residents." Suburban warns that, if Columbia is permitted to continue its "predatory and unlawful practices," Delaware County "will become totally monopolized by one natural gas company—Columbia." The correspondence showing this discussion is attached to my testimony as Thompson Attachment O Supplement.

1 **Q. Do you have any other correspondence from Delaware County and Sub-**
2 **urban?**

3 A. Yes. I've also attached e-mail correspondence between and documents pro-
4 vided by Suburban to Delaware County received pursuant to a public rec-
5 ords request on March 20, 2018. This correspondence is attached to my tes-
6 timony as Thompson Attachment O Supplement.

7

8 **Q. Why are you filing this supplement to your testimony now?**

9 A. I am supplementing my testimony now because Columbia did not receive
10 this correspondence and documentation until late in the day on Tuesday,
11 March 20, 2018 and Wednesday, March 21, 2018.

12

13 **Q. Does this complete your Supplemental Direct Testimony?**

14 A. Yes, it does. I reserve the right to file rebuttal testimony as warranted based
15 upon further developments in this case.

CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document is also being served via electronic mail on the 23rd day of March, 2018, upon the parties listed below.

/s/ Eric B. Gallon

Eric B. Gallon

**Attorney for
COLUMBIA GAS OF OHIO, INC.**

Suburban Natural Gas Company
whitt@whitt-sturtevant.com
kennedy@whitt-sturtevant.com
glover@whitt-sturtevant.com
smartin@mmpdlaw.com

From: Hochstettler, Aric [<mailto:AHochstettler@co.delaware.oh.us>]

Sent: Tuesday, March 20, 2018 4:09 PM

To: Stemm, Mark S.

Subject: RE: SNG v. Columbia Gas PUCO Complaint case

Mark:

Attached is a copy of the letter you requested.

Regards,

Aric

Aric I. Hochstettler
Assistant Prosecuting Attorney
140 North Sandusky Street, Third Floor
P.O. Box 8006
Delaware, Ohio 43015
740.833.2690 – *Telephone*
740.833.2689 – *Facsimile*
ahochstettler@co.delaware.oh.us

SUBURBAN NATURAL GAS COMPANY

ESTABLISHED 1882



274 E. FRONT STREET, P.O. BOX 130
CYGNET, OHIO 43413-0130
(419) 655-2345

DAVID L. PEMBERTON, SR.
CHAIRMAN OF THE BOARD

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

January 30, 2018

Mr. Jeff Benton
Mr. Gary Merrell
Ms. Barbara Lewis
Delaware County Commissioners
101 North Sandusky Street
Delaware, Ohio 43015

Dear Commissioners:

As you may know, Suburban Natural Gas Company (Suburban) is a natural gas company and a public utility whose principal office is located at 2626 Lewis Center road at the intersection of Lewis Center Road and South Old State Road in Delaware County. It began providing service in Delaware County in 1988 and previously provided gas service in northwest Ohio which it has continued to do since 1882. It serves more than 17,000 customers, over 13,000 of which reside or do business in Delaware County and over 95% of which are residential. A map of its Delaware County service area is enclosed.

When Suburban entered Delaware County in 1988, it constructed its pipeline system on and north of Lewis Center Road in an area bounded generally by Lewis Center Road, U.S. Highway 36, Old State Road, and the Norfolk and Western railroad tracks—a largely rural area not served by any other natural gas company. Columbia Gas of Ohio, Inc. (Columbia), the only other natural gas company serving Delaware County, then and now, maintained facilities and served customers on and south of Lazelle Road, on and west of U.S. Highway 23, and north of U.S. Highway 36 except one residential subdivision south of Lewis Center Road and customers in and adjacent to the City of Delaware.

Mr. Jeff Benton
Mr. Gary Merrell
Ms. Barbara Lewis
Delaware County Commissioners
Page 2
January 30, 2018

As southern Delaware County began its rapid development in the early nineties, Suburban and Columbia began to compete as they had done in northwest Ohio. However, as in northwest Ohio, Columbia began to engage in marketing practices which the Public Utilities Commission of Ohio (PUCO) found to be unlawful in meeting the competition posed by Suburban in Delaware County (see PUCO Case No. 86-1747-GA-CSS). After extensive negotiations covering two years, Suburban and Columbia reached a settlement agreement intended to eliminate duplication of their facilities in southern Delaware County and the marketing practices complained of by Suburban. Columbia observed that agreement for over twenty years but recently reintroduced these practices in Suburban's service area prompting a further complaint by Suburban which is pending before the PUCO (see PUCO Case No. 17-2168-GA-CSS).

The purpose of this letter is to appeal to you to discontinue processing Columbia's requests for permits, rights of way, and other authorizations to continue constructing facilities which duplicate Suburban's facilities until the PUCO has ruled on Suburban's application for emergency relief and to ask you to intervene in the pending PUCO complaint case on behalf of Delaware County's residents. If Columbia is permitted to continue its predatory and unlawful practices against it, Suburban will not be able to continue or expand its service to Delaware County. We are a family business with limited resources to combat such practices, and Delaware County will become totally monopolized by one natural gas company—Columbia. We do not believe that that would be in the County's or its citizens' best interests.

In addition, the construction of duplicative natural gas pipelines and service facilities is wasteful as well as contrary to the health, safety, and welfare of the public. The construction of such facilities is disruptive to travel, and their existence creates confusion for fire and safety personnel called upon in the event of a natural gas incident. In fact, even where both companies serve in the same subdivision, without actual duplication, Columbia's service personnel have had to rely on our service personnel for directions since, unlike our personnel, they do not live or

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Mr. Gary Merrell
Ms. Barbara Lewis
Delaware County Commissioners
Page 3
January 30, 2018

regularly work in our service area. The area of duplication is currently confined to Cheshire Road, but Columbia has reached out to other areas which, if served by Columbia, would make a patchwork of both companies' service areas in Delaware County.

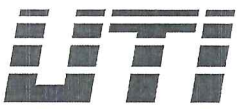
The pending and former complaint cases can be accessed on the PUCO's website, and I would be grateful to pursue this matter in a public session of the Commissioners if desired. Thank you for your attention to this matter.

Very truly yours,

David L. Pemberton

DLP:mew
Enclosure

cc: Ms. Carol O'Brien, Delaware County Prosecuting Attorney
Mr. Russell L. Martin, Delaware County Sheriff
Mr. Jerry Owings, Delaware County Utility Coordinator



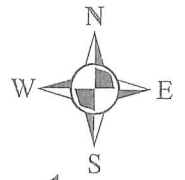
Utility Technologies International
4700 Homer Ohio Lane
Groveport, OH 43125
www.uti-corp.com
P: 614-482-8080

DESIGN:
KDG
DRAFT:
JSD
CHECK:
CPL

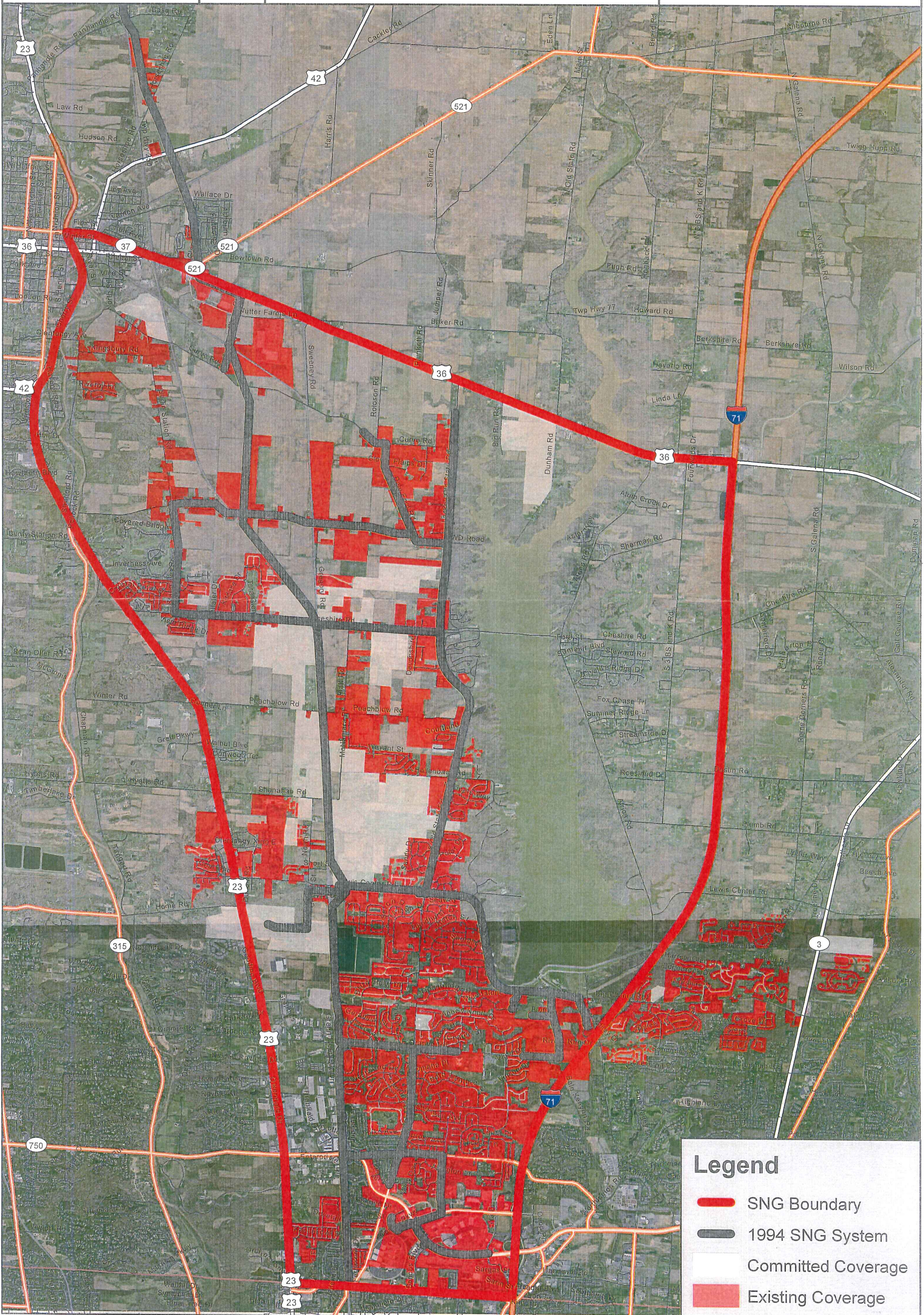
Suburban Natural Gas Company

Service Line 1994

REVISED: 11/1/2017



0 0.5 1 2 Miles



Legend

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

From: Hochstettler, Aric [mailto:AHochstettler@co.delaware.oh.us]
Sent: Wednesday, March 21, 2018 12:16 PM
To: Stemm, Mark S.
Subject: RE: #EXT# FW: Public Records Request - Suburban Natural Gas

Mark:

Attached is the sample Mr. Whitt sent me. In hope that I can address potential additional questions, I did not receive any comments or "redline" drafts from him after I sent him our draft motion. Let me know if you have any additional questions regarding the correspondence.

Aric

Aric I. Hochstettler
Assistant Prosecuting Attorney
140 North Sandusky Street, Third Floor
P.O. Box 8006
Delaware, Ohio 43015
740.833.2690 – *Telephone*
740.833.2689 – *Facsimile*
ahochstettler@co.delaware.oh.us

From: Stemm, Mark S. [mailto:MStemm@porterwright.com]
Sent: Wednesday, March 21, 2018 12:01 PM
To: Hochstettler, Aric <AHochstettler@co.delaware.oh.us>
Subject: RE: #EXT# FW: Public Records Request - Suburban Natural Gas

CAUTION EXTERNAL EMAIL
DO NOT open attachments or click on links from unknown senders or unexpected emails

Aric:

The attached emails include one from Mark Whitt on March 12 with an attachment. Can you provide his "sample?" Thanks.

Do you believe you will reach Mr. Riley today?

Mark

Mark S. Stemm | [Bio](#) | [Porter Wright Morris & Arthur LLP](#) | 41 S High St Suites 2800-3200 | Columbus, OH 43215
Direct: 614-227-2092 | Fax: 614-227-2100 | mstemm@porterwright.com

porterwright

From: Hochstettler, Aric [<mailto:AHochstettler@co.delaware.oh.us>]
Sent: Wednesday, March 21, 2018 11:52 AM
To: Stemm, Mark S.
Subject: #EXT# FW: Public Records Request - Suburban Natural Gas

Mark:

Attached are additional emails from my file.

Aric

Aric I. Hochstettler
Assistant Prosecuting Attorney
140 North Sandusky Street, Third Floor
P.O. Box 8006
Delaware, Ohio 43015
740.833.2690 – *Telephone*
740.833.2689 – *Facsimile*
ahochstettler@co.delaware.oh.us

From: Hochstettler, Aric
Sent: Wednesday, March 21, 2018 11:48 AM
To: 'Stemm, Mark S.' <MStemm@porterwright.com>
Subject: Public Records Request - Suburban Natural Gas

Mark:

Attached are the records you requested. Some pages are duplicates of what I have already provided.

Regards,

Aric

Aric I. Hochstettler
Assistant Prosecuting Attorney
140 North Sandusky Street, Third Floor
P.O. Box 8006
Delaware, Ohio 43015
740.833.2690 – *Telephone*
740.833.2689 – *Facsimile*
ahochstettler@co.delaware.oh.us

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*****Notice from Porter Wright Morris & Arthur LLP*****

This message may be protected by the attorney-client privilege. If you believe that it has been sent to you in error, do not read, print or forward it. Please reply to the sender that you have received the message in error. Then delete it. Thank you.

*****End of Notice*****

----- Message from "Hochstettler, Aric" <AHochstettler@co.delaware.oh.us> on Wed, 21 Mar 2018 15:52:21 +0000 -----

To: "Stemm, Mark S." <MStemm@porterwright.com>

Subject #EXT# FW: Public Records Request - Suburban Natural
: Gas

Mark:

Attached are additional emails from my file.

Aric

Aric I. Hochstettler
Assistant Prosecuting Attorney
140 North Sandusky Street, Third Floor
P.O. Box 8006

Delaware, Ohio 43015
740.833.2690 – *Telephone*
740.833.2689 – *Facsimile*
ahochstettler@co.delaware.oh.us

From: Hochstettler, Aric
Sent: Wednesday, March 21, 2018 11:48 AM
To: 'Stemm, Mark S.' <MStemm@porterwright.com>
Subject: Public Records Request - Suburban Natural Gas

Mark:

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Regards,

Aric

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Assistant Prosecuting Attorney
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Delaware, Ohio 43015
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----- Message from "Hochstettler, Aric" <AHochstettler@co.delaware.oh.us> on Fri, 16 Mar 2018 19:58:46 +0000 -----

To: "Stemm, Mark S." <MStemm@porterwright.com>, "sseiple@nisource.com" <sseiple@nisource.com>

cc: "O'Brien, Carol" <COBrien@co.delaware.oh.us>, Mark Whitt <whitt@whitt-sturtevant.com>

Subject
: Suburban Natural Gas v. Columbia Gas of Ohio - PUCO 17-2168

Counsel:

Please see the attached Motion to Intervene filed today in the above-titled matter. Feel free to contact me at your convenience if you would like to discuss this matter.

Regards,

Aric

Aric I. Hochstettler
Assistant Prosecuting Attorney
140 North Sandusky Street, Third Floor
P.O. Box 8006
Delaware, Ohio 43015
740.833.2690 – *Telephone*
740.833.2689 – *Facsimile*
ahochstettler@co.delaware.oh.us

----- Message from "Hochstettler, Aric" <AHochstettler@co.delaware.oh.us> on Fri, 16 Mar 2018 19:52:11 +0000 -----

To: Mark Whitt <whitt@whitt-sturtevant.com>

cc: Andy Sonderman <asonderman@sngco.com>, Margie West <mwest@sngco.com>

Subject
: RE: Suburban intervention

Thank you. I will also copy you on my email to Seiple and Stemm.

AIH

From: Mark Whitt [mailto:whitt@whitt-sturtevant.com]

Sent: Friday, March 16, 2018 3:46 PM

To: Hochstettler, Aric <AHochstettler@co.delaware.oh.us>

Cc: Andy Sonderman <asonderman@sngco.com>; Margie West <mwest@sngco.com>

Subject: Re: Suburban intervention

CAUTION EXTERNAL EMAIL

DO NOT open attachments or click on links from unknown senders or unexpected emails

Aric –

Attached is a time-stamped copy of Delaware County's motion to intervene

Mark A. Whitt

whittsturtevant LLP

The KeyBank Building
88 E. Broad Street, Suite 1590
Columbus, Ohio 43215
614.224.3911 (direct)
614.804.6034 (mobile)

whitt@whitt-sturtevant.com

From: "Hochstettler, Aric" <AHochstettler@co.delaware.oh.us>

Date: Friday, March 16, 2018 at 10:56 AM

To: Mark Whitt <whitt@whitt-sturtevant.com>

Subject: RE: Suburban intervention

Mark:

Attached is our draft motion to intervene. I welcome your comments and whatever assistance you can provide in regard to filing with PUCO.

Regards,

Aric

Aric I. Hochstettler
Assistant Prosecuting Attorney
140 North Sandusky Street, Third Floor
P.O. Box 8006
Delaware, Ohio 43015
740.833.2690 –*Telephone*
740.833.2689 –*Facsimile*
ahochstettler@co.delaware.oh.us

From: Mark Whitt [<mailto:whitt@whitt-sturtevant.com>]

Sent: Monday, March 12, 2018 1:52 PM

To: Hochstettler, Aric <AHochstettler@co.delaware.oh.us>

Subject: Suburban intervention

Mark A. Whitt

whittsturtevant LLP

The KeyBank Building
88 E. Broad Street, Suite 1590
Columbus, Ohio 43215
614.224.3911 (direct)
614.804.6034 (mobile)

whitt@whitt-sturtevant.com

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----- Message from Mark Whitt <whitt@whitt-sturtevant.com> on Fri, 16 Mar 2018 15:54:06 +0000 -----

To: "Hochstettler, Aric"

<AHochstettler@co.delaware.oh.us>

cc: Andy Sonderman <asonderman@sngco.com>

Subject
: Re: Suburban intervention

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Aric – on quick review, this looks fine. I am happy to file for you this afternoon. If I have any changes after looking at this closer, I will send you a redline.

Mark A. Whitt

whittsturtevant LLP

The KeyBank Building
88 E. Broad Street, Suite 1590
Columbus, Ohio 43215
614.224.3911 (direct)
614.804.6034 (mobile)

whitt@whitt-sturtevant.com

From: "Hochstettler, Aric" <AHochstettler@co.delaware.oh.us>

Date: Friday, March 16, 2018 at 10:56 AM

To: Mark Whitt <whitt@whitt-sturtevant.com>

Subject: RE: Suburban intervention

Mark:

Attached is our draft motion to intervene. I welcome your comments and whatever assistance you can provide in regard to filing with PUCO.

Regards,

Aric

Aric I. Hochstettler
Assistant Prosecuting Attorney
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ahochstettler@co.delaware.oh.us

From: Mark Whitt [mailto:whitt@whitt-sturtevant.com]

Sent: Monday, March 12, 2018 1:52 PM

To: Hochstettler, Aric <AHochstettler@co.delaware.oh.us>

Subject: Suburban intervention

Mark A. Whitt

whittsturtevant LLP

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614.804.6034 (mobile)

whitt@whitt-sturtevant.com

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----- Message from "Hochstettler, Aric" <AHochstettler@co.delaware.oh.us> on Fri, 16 Mar 2018 14:56:37 +0000 -----

To: Mark Whitt
<whitt@whitt-sturtevant.com>

Subject: RE: Suburban intervention

Mark:

Attached is our draft motion to intervene. I welcome your comments and whatever assistance you can provide in regard to filing with PUCO.

Regards,

Aric

Aric I. Hochstettler
Assistant Prosecuting Attorney
140 North Sandusky Street, Third Floor
P.O. Box 8006
Delaware, Ohio 43015
740.833.2690 – *Telephone*
740.833.2689 – *Facsimile*
ahochstettler@co.delaware.oh.us

From: Mark Whitt [mailto:whitt@whitt-sturtevant.com]
Sent: Monday, March 12, 2018 1:52 PM
To: Hochstettler, Aric <AHochstettler@co.delaware.oh.us>
Subject: Suburban intervention

CAUTION EXTERNAL EMAIL
DO NOT open attachments or click on links from unknown senders or unexpected emails

Eric – Attached is a sample motion to intervene

Mark A. Whitt

whittsturtevant LLP

The KeyBank Building
88 E. Broad Street, Suite 1590
Columbus, Ohio 43215
614.224.3911 (direct)
614.804.6034 (mobile)

whitt@whitt-sturtevant.com

----- Message from "Hochstettler, Aric" <AHochstettler@co.delaware.oh.us> on Wed, 21 Mar 2018 15:48:09 +0000 -----

To: "Stemm, Mark S." <MStemm@porterwright.com>
Subject #EXT# Public Records Request - Suburban Natural
: Gas

Mark:

Attached are the records you requested. Some pages are duplicates of what I have already provided.

Regards,

Aric

Aric I. Hochstettler
Assistant Prosecuting Attorney
140 North Sandusky Street, Third Floor
P.O. Box 8006
Delaware, Ohio 43015
740.833.2690 – *Telephone*
740.833.2689 – *Facsimile*

ahochstettler@co.delaware.oh.us

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company for Authority to Establish a)	
Standard Service Offer Pursuant to R.C.)	Case No. 16-1852-EL-SSO
4928.143, in the Form of an Electric Security)	
Plan.)	
)	

In the Matter of the Application of Ohio)	
Power Company for Approval of Certain)	Case No. 16-1853-EL-AAM
Accounting Authority.)	

**MOTION TO INTERVENE
OF
RETAIL ENERGY SUPPLY ASSOCIATION**

In accordance with R.C. 4903.221 and Ohio Adm. Code 4901-1-11, the Retail Energy Supply Association (RESA) respectfully requests issuance of an order granting intervention in this proceeding. A Memorandum in Support follows.

MEMORANDUM IN SUPPORT

R.C. 4903.221 confers a right to intervene to any person who may be “adversely affected” by a Commission proceeding. In considering a request to intervene, the Commission must consider the nature of the intervenor’s interest, the extent that interest is represented by existing parties, the intervenor’s potential contribution to a just and expeditious resolution of the issues, and whether intervention would unduly delay the proceeding. *See* R.C. 4903.221(B)(1-4). *See also* Ohio Admin. Code 4901-1-11.

RESA meets all of the criteria for intervention. RESA is a non-profit 501(c)(6) organization headquartered in Harrisburg, Pennsylvania. Its member companies supply retail electricity and natural gas to residential, commercial, industrial, and governmental customers throughout the United States. In Ohio, RESA members serve customers throughout the state,

including the service territory of Ohio Power Company (AEP Ohio).¹ Since 2010, RESA has participated in most of the electric security plan proceedings before the Commission. RESA is (and has been) active in many other electric industry proceedings as well.

RESA's Ohio members have existing and potential business interests in AEP Ohio's service territory that will be affected by the outcome of this proceeding. These interests cannot be adequately represented by other parties. The Commission's decision in this matter will affect the viability of the competitive retail electric market in AEP Ohio's service territory, where RESA members provide electric power and other products and services to retail customers. RESA's participation in this proceeding will contribute to a just resolution of the issues affecting its members. The Commission has granted intervention to RESA in previous ESP proceedings. *See, e.g.*, Case Nos. 16-0395-EL-SSO, 14-1297-EL-SSO, 14-0841-EL-SSO, 13-2385-EL-SSO. The factors that warranted intervention in those proceedings are also present here.

Accordingly, RESA respectfully requests that the Commission grant this Motion to Intervene and that it be made a full party of record.

¹ RESA's Ohio members are AEP Energy, APG&E, Champion Energy Services LLC, Constellation NewEnergy Inc, Crius, Direct Energy Services LLC, Dynegy, ENGIE Resources, IGS Energy, Just Energy, Liberty Power, NextEra Energy Services, Noble Americas Energy Solutions LLC, Nordic Energy Services, LLC, NRG Energy Inc., Spark Energy, and Starion Energy. **[CONFIRM]**

Dated: December 28, 2016

Respectfully submitted,

/s/ Mark A. Whitt

Mark A. Whitt (0067996)

Andrew J. Campbell (0081485)

Rebekah J. Glover (0088798)

WHITT STURTEVANT LLP

The KeyBank Building, Suite 1590

88 East Broad Street

Columbus, Ohio 43215

Telephone: (614) 224-3946

Facsimile: (614) 224-3960

whitt@whitt-sturtevant.com

campbell@whitt-sturtevant.com

glover@whitt-sturtevant.com

(Counsel willing to accept service by email)

ATTORNEYS FOR RETAIL ENERGY
SUPPLY ASSOCIATION

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum in

Support was served by electronic mail this 28th day of December, 2016 to the following:

stnourse@aep.com
dconway@porterwright.com
christopher.miller@icemiller.com
fdarr@mwncmh.com
mpritchard@mwncmh.com
william.michael@occ.ohio.gov
kevin.moore@occ.ohio.gov
bojko@carpenterlipps.com
ghiloni@carpenterlipps.com
mfleisher@elpc.org
cmooney@ohiopartners.org
paul@carpenterlipps.com
kurt.helfrich@thompsonhine.com
stephanie.chmiel@thompsonhine.com
michael.austin@thompsonhine.com
tdougherty@theoec.org
mleppla@theoec.org
mkurtz@bkllawfirm.com
kboehm@bkllawfirm.com
jkylercohn@bkllawfirm.com
lhawrot@spilmanlaw.com
dwilliamson@spilmanlaw.com
charris@spilmanlaw.com
stephen.chriss@walmart.com
greg.tillman@walmart.com
rick.sites@ohiohospitals.org
mwarnock@bricker.com
dparram@bricker.com
dborchers@bricker.com

/s/ Rebekah J. Glover

One of the Attorneys for Retail Energy Supply
Association

**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.)	

**MOTION TO INTERVENE OF THE DELAWARE COUNTY
BOARD OF COMMISSIONERS AND DELAWARE COUNTY ENGINEER**

In accordance with R.C. 4903.221 and Ohio Adm. Code 4901-1-11, the Delaware County Board of Commissioners (the “Board”) and the Delaware County Engineer (the “Engineer”) (collectively, the “County”), by and through the Delaware County Prosecuting Attorney, respectfully request issuance of an order granting intervention in this proceeding. A Memorandum in Support follows.

MEMORANDUM IN SUPPORT

R.C. 4903.221 confers a right to intervene to any person who may be “adversely affected” by a Commission proceeding. In considering a request to intervene, the Commission must consider the nature of the intervenor’s interest, the extent that interest is represented by existing parties, the intervenor’s potential contribution to a just and expeditious resolution of the issues, and whether intervention would unduly delay the proceeding. *See* R.C. 4903.221(B)(1-4). *See also* Ohio Admin. Code 4901-1-11.

The County meets all of the criteria for intervention. The Board is the duly elected board of county commissioners for Delaware County, a political subdivision of the State of Ohio, and

the Engineer is the duly elected county engineer for Delaware County. The Board, besides being a natural gas customer, is the owner of hundreds of miles of highways within Delaware County and, as a result, is responsible for the construction and maintenance of such highways and the rights-of-way in which they are located, with the Engineer coordinating and administering such functions. The Board is also the owner and operator of the Delaware County Sewer District with hundreds of miles of sanitary sewer facilities within rights-of-way and easements. The County is also responsible for the provision of emergency services, including emergency medical services and 9-1-1 emergency communications throughout Delaware County.

While the pleadings in this matter refer to certain public health, safety, and welfare interests, the parties in this matter are not in a position to adequately represent the public interests specific to Delaware County. The Commission's decision in this matter will affect the County's ability to construct and maintain public infrastructure, specifically with respect to the acquisition of additional easements and rights-of-way, the issuance of permits within the existing rights-of-way, and the construction and relocation of public utilities. Particularly, the unnecessary duplication of natural gas facilities and related appurtenances will increase costs for the County and create practical difficulties in administering future construction and maintenance activities. Furthermore, the Commission's decision in this matter will affect the County's ability to promptly and appropriately respond to emergencies that involve natural gas facilities. Particularly, the unnecessary duplication of natural gas facilities and related appurtenances will create uncertainty in the response protocols, jeopardizing life and property. The County's participation in this proceeding will contribute to a just resolution of the issues. Finally, intervention by the County in the limited scope contemplated herein will not unduly delay the proceeding.

Accordingly, the County respectfully requests that the Commission grant this Motion to Intervene and that it be made a full party of record.

Dated: March 16, 2018

Respectfully submitted,

CAROL HAMILTON O'BRIEN
DELAWARE COUNTY
PROSECUTING ATTORNEY

/s/ Aric I. Hochstettler
Aric I. Hochstettler (0081081)
Assistant Prosecuting Attorney
140 North Sandusky Street, 3d Floor
P.O. Box 8006
Delaware, Ohio 43015
740.833.2690 – *Telephone*
740.833.2689 – *Facsimile*
AHochstettler@co.delaware.oh.us

*Counsel for Delaware County Board of
Commissioners and Delaware County
Engineer*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum in Support was served by electronic mail this 16th day March, 2018, upon the following:

Mark A. Whitt, Esq. – whitt@whitt-sturtevant.com
Attorney for Suburban Natural Gas

Stephen B. Seiple, Esq. – sseiple@nisource.com
Attorney for Columbia Gas of Ohio, Inc.

/s/ Aric I. Hochstettler

Aric I. Hochstettler (0081081)

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MEMORANDUM IN SUPPORT

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Dated: March 16, 2018

Respectfully submitted,

CAROL HAMILTON O'BRIEN
DELAWARE COUNTY
PROSECUTING ATTORNEY

/s/ Aric I. Hochstettler
Aric I. Hochstettler (0081081)
Assistant Prosecuting Attorney
140 North Sandusky Street, 3d Floor
P.O. Box 8006
Delaware, Ohio 43015
740.833.2690 – *Telephone*
740.833.2689 – *Facsimile*
AHochstettler@co.delaware.oh.us

*Counsel for Delaware County Board of
Commissioners and Delaware County
Engineer*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum in Support was served by electronic mail this 16th day March, 2018, upon the following:

Mark A. Whitt, Esq. – whitt@whitt-sturtevant.com
Attorney for Suburban Natural Gas

Stephen B. Seiple, Esq. – sseiple@nisource.com
Attorney for Columbia Gas of Ohio, Inc.

/s/ Aric I. Hochstettler
Aric I. Hochstettler (0081081)

Hochstettler, Aric

From: O'Brien, Carol
Sent: Friday, March 02, 2018 3:46 PM
To: Hochstettler, Aric
Subject: FW: Follow up

From: Andrew Sonderman [mailto:asonderman@sngco.com]
Sent: Tuesday, February 06, 2018 10:40 AM
To: O'Brien, Carol <COBrien@co.delaware.oh.us>
Subject: RE: Follow up

***** ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails. *****

Thanks, Carol. The only e-mail I had for you at the office was the general address. I will use this in future!

Andrew J. Sonderman
President and Chief Operating Officer
Suburban Natural Gas Company
2626 Lewis Center Road
Lewis Center, Ohio 43035
740.548.2450

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From: O'Brien, Carol [<mailto:COBrien@co.delaware.oh.us>]
Sent: Tuesday, February 6, 2018 10:37 AM
To: asonderman@sngco.com
Subject: Follow up

Andrew

Thank you for your follow up – obviously David got my email from Joe because it went to my home email! Please use this email for future correspondence. I don't always check my private email during the day – though I check my work email at all hours.

Carol

Carol Hamilton O'Brien
Prosecutor
Delaware County, OH
140 N. Sandusky St.,
Delaware, OH 43015
740-833-2690

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Hochstettler, Aric

From: O'Brien, Carol
Sent: Wednesday, March 14, 2018 8:30 AM
To: Hochstettler, Aric
Subject: FW: Follow-up to Visit by David Pemberton
Attachments: 172168 Dispatch Story.pdf; ATT00001.htm; 172168 PUCO SNG Complaint.pdf; ATT00002.htm; 172168 PUCO Motion for Emergency Relief.pdf; ATT00003.htm

Think I sent this to you already...

From: Carol O'Brien [<mailto:cahobowen@gmail.com>]
Sent: Tuesday, February 06, 2018 10:03 AM
To: O'Brien, Carol <COBrien@co.delaware.oh.us>
Subject: Fwd: Follow-up to Visit by David Pemberton

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Sent from my iPad

Begin forwarded message:

From: "Andrew Sonderman" <asonderman@sngco.com>
Date: February 6, 2018 at 9:55:47 AM EST
To: <cahobowen@gmail.com>
Subject: Follow-up to Visit by David Pemberton

Good morning, Carol. Thank you for visiting with Dave yesterday. He told me you'd like to review the Complaint Suburban filed with the Public Utilities Commission regarding the builder incentives Columbia of Ohio is employing using ratepayer provided money to compete with Suburban in areas where Suburban has facilities, and Columbia heretofore has not. I have attached three documents. Interestingly, the Dispatch published a story today on this matter and it is included here. I also include the PUCO Complaint, and our Motion for Emergency Relief.

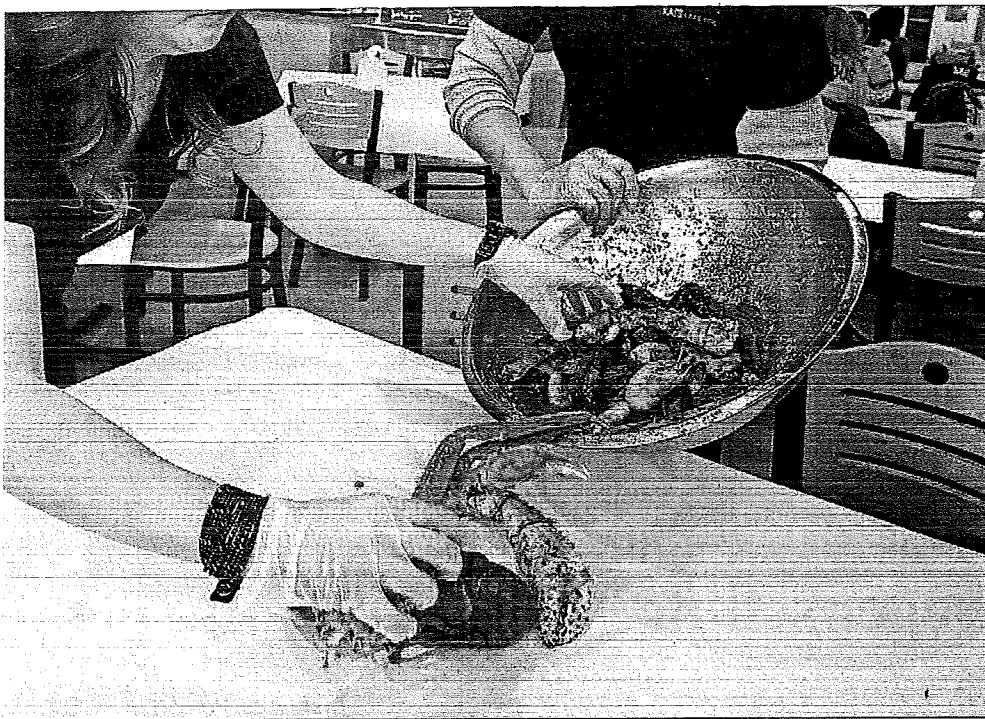
Please contact me if you are unable to open the attachments, or if you have any follow-up questions. Thanks for your interest. We believe in vigorous competition on an even playing field, and we've done well in competitive situations against Columbia based on our ability to meet builders' and developers' needs in a flexible and timely way as they plan and build subdivisions. But this ratepayer subsidized incentive program puts a "thumb on the scale".

Happy to discuss this with you at your convenience!

Andrew J. Sonderman
President and Chief Operating Officer
Suburban Natural Gas Company

2626 Lewis Center Road
Lewis Center, Ohio 43035
740.548.2450

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create their own spice mixes at Kai's Crab Boil on the Northwest Side. [TOM DODGE/DISPATCH]

invites diners to get hands-on with their meal

iffany Cho said.

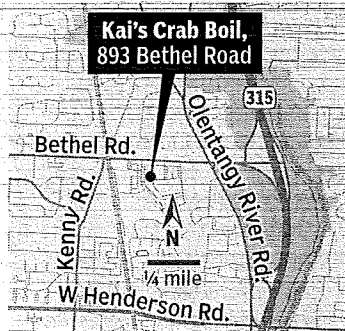
"You bring the family, friends, put two tables together and dump the food on the table," Sheng said.

Kai's specializes in Louisiana-style seafood boils, which can include shrimp, crab legs, crawfish, lobster and clams. Customers can add potatoes, corn and sausage for \$1 each.

Bibs and plastic gloves are provided. There's even a sink in the dining room for those who need a more thorough cleanup.

At Kai's, 893 Bethel Road in the Olentangy Plaza, diners can create their own boil or choose one of three "house" combos, all served with

SEE FOOD, C4



Source: maps4news.com/©HERE
GATEHOUSE MEDIA

will open later this year.

SEE MITCHELL, C4

NATURAL GAS

Small utility: Columbia not playing fair

By Dan Gearino
The Columbus Dispatch

A small natural-gas utility company says its much larger rival is playing dirty as both companies seek to serve a fast-growing part of Delaware County.

Suburban Natural Gas Co., which has about 17,000 customers, filed a formal complaint with utility regulators, alleging that Columbia Gas of Ohio, which has 1.5 million customers, is taking improper steps to attract business in and around the Glenross subdivision.

"Just as it did in the 1980s, Columbia is once again offering rebates and other financial incentives to prospective customers, developers and builders in areas already served by Suburban," said the complaint. "Unlike the 1980s, Columbia now has a rider that it can use to recover the cost of these incentives from (Columbia's) ratepayers."

SEE UTILITY, C6

UTILITY

From Page C1

In response, Columbia is asking the Public Utilities Commission of Ohio to dismiss the case. This is the latest episode in a contentious relationship between the two companies, both of which are regulated utilities. Columbia in its response called this complaint the latest in Suburban's responses to what the larger utility says is legitimate competition.

Suburban initially filed the complaint in October. In recent weeks, there have been dueling filings about

what information can be disclosed as part of the case.

Glenross, located east of U.S. 23 and north of Lewis Center, has 550 houses, and developers are planning to build 400 more, according to the complaint.

Natural gas utilities operate within unofficial territories that are marked by the presence of lines to deliver gas. If a new development is near the lines from multiple utility companies, the builders can choose which company will serve the project area.

Suburban says Columbia is improperly using an energy-efficiency program to provide one-time payments to builders as an incentive to choose

Columbia. Funding for the program comes from charges paid by Columbia customers.

One of the events that triggered Suburban's complaint was discovering that Columbia is planning to build a new line along Cheshire Road. Suburban says that makes little sense other than as an attempt to encroach into areas where Suburban has a presence, according to the complaint.

Also, Suburban says Columbia is violating terms of a 1995 agreement that helped resolve a previous conflict between the companies.

Columbia says it has done nothing wrong, and certainly nothing illegal, and is accusing

Suburban of distorting the meaning the 1995 agreement.

"The (PUCO) should see Suburban's motion and complaint for exactly what they are — an attempt to (engage in) backdoor restraint of trade in Delaware County," Columbia said in a filing.

The stakes are high for Suburban, which is based in Lewis Center and is the current incarnation of a business founded in 1882. The majority of its customers are in Delaware County, including the Polaris area, and that region is the company's best prospect for growth. Suburban also has customers in Marion County and parts of northwest Ohio.

The existence of small companies such as Suburban is one of many quirks of Ohio's regulated market for the delivery of natural gas, which consists of four large utility companies — Columbia, Dominion, Duke and Vectren — and then about 20 companies with much smaller territories. In addition, dozens of unregulated gas suppliers sell contracts in much of the state.

The Suburban complaint is much like a civil lawsuit. If the sides do not settle, the case may progress to a trial-like hearing, followed by a decision by the five-member PUCO.

dgearino@dispatch.com
@dangearino

SPOTLIGHT on HOMES

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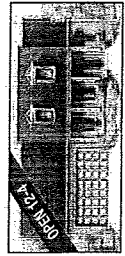
ASHVILLE



4 BURROUGHS DR \$269,990
Ashton Crossing, 4 BR, 2.5 BA, 2,949 sq ft, 2 car garage & full unfinished basement. 1st fl: 9' ceilings, study w/french doors, formal DR, island kitchen w/SS appls, upgraded cabinetry, morning rm all open to FR. 2nd fl: owners suite w/en suite & lg WIC, 3 add'l BR each w/WIC, hall BA, & huge lot.

JASON BYERLY
614-579-5050
FISCHER HOMES

CANAL WINCHESTER



6090 HARRISON LN \$384,990
Beautiful Villages at Westchester. Features island kitchen with stainless steel appls, multi-height maple cabinetry, ceramic tile floors, morning rm all open to the living rm w/gas fireplace w/ceramic surround. Living rm off the kitchen - office or dining room. Upstairs w/try ceiling, dbl bowl vanity, soaking tub, separate shower. HUGE walk-in closet. There are 3 add bdrms.

TIM SHUTRUMP
513-315-2451
FISCHER HOMES

CANAL WINCHESTER



6107 HARRISON LN \$299,990
Villages at Westchester, 3 BR, 2 BA, 2 car garage, 1,677 sq ft & full unfinished basement. Open concept living w/ island kitchen w/SS appliances, granite counter top, tile floors, fireplace, hardwood floors, rm all open to lg BR. Master's suite w/ceiling, en suite & WIC. Study w/french doors, 1st flr laundry rm.

TIM SHUTRUMP
513-315-2451

CENTRAL OHIO



John DeFourny & Company are looking for a few more properties to sell. Thinking of Selling? Heck, anybody can get an appraisal. Call us about our services. We work harder and do more for our clients. Exceed expectations. Call or email today! Get Results.

TEAM DEFOURNY
614-267-7400
JOHN@D4NY.COM

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TEAM DEFOURNY
614-267-7400
JOHN@D4NY.COM

CONDOS NW



7013 FORELAND LN \$409,900
Free Standing Dublin ranch condo in Ballantrac Community. Full brnt with 9ft ceilings, 3 BR, 3 full BA, formal dining and screen porch. Very open design w/huge island SS appls, granite tops, Falc and more! Call 614-876-home for more info

KELLY SHEFFIELD
614-876-HOME

1. Immediately cease and desist from extending its duplicative distribution main east from Braumiller Road along Cheshire Road in Delaware County, Ohio;
2. Immediately cease and desist from offering financial incentives to developers and builders in Suburban's operating area;
3. Account for and suspend payment of any such financial incentives already offered or accepted; and
4. Separately account for all construction costs incurred in extending distribution mains and facilities into Suburban's operating area, with such costs being subject to ratemaking disallowance pending the outcome of this proceeding.

As explained in the supporting memorandum, Suburban will suffer immediate and irreparable injury if the requested emergency relief to preserve the status quo is not granted. Because time is of the essence, Suburban requests an expedited ruling on this motion, in accordance with Rule 4901-1-12 (C).

MEMORANDUM IN SUPPORT

This motion is being filed concurrently with a Verified Complaint. The Complaint details how Columbia is using its builder incentive program, not to promote energy conservation or demand-side management, but to build duplicative gas facilities and lure customers away from Suburban's system and onto Columbia's. This is not speculation. Columbia's contractors are currently on site and ready to break ground on a main extension project *on the opposite side of the same street where Suburban has had mains in place for years.*

Columbia is violating both the letter and spirit of a 1995 Stipulation that was supposed to *permanently* end the promotion of financial incentives in areas served, or readily-capable of being served, by Suburban. The Commission understood the serious harm that these practices had caused to Suburban. That is why it retained jurisdiction "to continue to review the companies' practices in this area. Nothing in our acceptance of this stipulation should be interpreted as precluding the Commission's ability to review and limit the practices or take other remedial actions when the activities described in the tariff are undertaken in a manner which violates Section 4905.33, Revised, Code, or other pertinent sections of the Revised Code." Case No. 93-1569-GA-SLF et al., Finding and Order (Jan. 18, 1996) ¶ 10.

The authority to issue an order carries with it the authority to enforce an order, and the Commission's enforcement authority includes the power to grant interim emergency relief. The circumstances here not only justify interim emergency relief; they require it. Not one more improper incentive payment should be offered or made. Not one foot of unnecessary pipe should

be laid. The Commission should preserve the status quo by entering an order requiring Columbia to immediately cease the illegal and improper conduct alleged in the Complaint.

ARGUMENT

The Commission has broad supervisory authority to regulate public utilities. R.C. 4905.04, 4905.06. This authority includes the power to investigate and determine the “regulations, practices, and service to be installed, observed, used, and rendered,” and the exercise of this authority requires the public utility to “obey such order and do everything necessary or proper to carry it into effect.” R.C. 4905.37.

The Commission may act without notice or a hearing “to prevent injury to the business or interests of the public utility or of any public utility.” R.C. 4909.16. “[I]n the case of any emergency to be judged by the commission, it may temporarily alter, amend, or, with the consent of the public utility concerned, suspend any existing rates, schedules, or order relating to or affecting any public utility.” *Id.* Such an order “shall take effect at such time and remain in force for such length of time as the commission prescribes.” *Id.*

The Commission has historically considered requests for emergency relief by considering the same factors courts apply in deciding whether to grant injunctive relief. *See AT&T Ohio v. Dayton Power & Light Co.*, Case No. 06-1509-EL-CSS, Entry (March 28, 2007) ¶¶ 7-8, 13. These factors are: (i) the likelihood of success on the merits; (ii) whether irreparable harm will occur if emergency relief is not granted; (iii) whether third parties will be unjustifiably harmed if emergency relief is not granted; and (iv) whether granting emergency relief is in the public interest. *See id.* at 9 ¶ 7, citing *Proctor & Gamble Co. v. Stoneham*, 747 N.E.2d 268, 273 (Ohio App. 2000). No one factor is dispositive; rather, the four factors must be balanced. *City of Cleveland v. Cleveland Elec. Illum. Co.*, 684 N.E.2d 343, 350 (Ohio App. 1996). As shown below, each of these factors weigh decidedly in favor of granting emergency relief.

A. Suburban will likely succeed on the merits.

Suburban must show that there is “a substantial likelihood” that it will prevail on the merits of the underlying claim. *Proctor & Gamble*, 747 N.E.2d at 273. The allegations in the Verified Complaint establish a strong showing of the likelihood of success.

As detailed in the Complaint, Columbia is improperly leveraging its existing builder incentive programs to gain a cost advantage over Suburban—a ploy not permitted by the Commission’s prior orders or Columbia’s tariffs. If Columbia offers a builder several hundred (or even thousands) of dollars in rebates and incentives, but Suburban does not (and it does not), there is an obvious incentive for the builder to choose Columbia as the natural gas provider. Columbia has no skin in the game with the incentives it offers; whatever discount it extends to the builder is recovered through Columbia’s DSM Rider. Suburban does not have such a rider, so any attempt to match Columbia’s incentives would be financially ruinous to both the company and its ratepayers.

The Complaint details how Columbia’s activities are unreasonable and unlawful in several different respects. As alleged in Count 1, Columbia’s EnergyCrafted Homes program is “substantially similar to” the programs Columbia agreed not to offer in areas served or capable of being served by Suburban. (Verified Compl. ¶ 27.) Columbia is therefore violating the 1995 Stipulation and subsequent order entered in Case No. 93-1569-GA-SLF.

Count 2 demonstrates Columbia’s violation of the December 21, 2016 Opinion and Order approving its DSM Program. In a series of orders dating back to 2008, Columbia represented its builder incentive program as an offering available “in” or “within” Columbia’s service territory. (Verified Compl. ¶¶12-14.) Granted, natural gas companies do not have service “territories” in the same sense as electric or water utilities (*See* R.C. 4933.25 (water and sewer utilities required

to obtain certificate of public convenience and necessity); R.C. 4933.83(A) (establishing exclusive service territories to electric suppliers)), and the very nature of a builder incentive program entails service to previously unserved locations. But in offering incentives to builders in areas already served by Suburban, and extending distribution mains that duplicate Suburban's existing mains in order to serve those builders, Columbia is operating well outside its "service territory" under any reasonable definition.

Counts 3 and 4 establish Columbia's violation of both its DSM Rider and Main Extension Tariff, both of which are being used by Columbia to underwrite its wrongful conduct. And in Count 5, Suburban ties Columbia's violations of Commission orders and its tariff to statutory provisions that prohibit Columbia's predatory, unlawful behavior.

The obligations in the 1995 Stipulation, the findings in the Commission's prior orders, the conditions in Columbia's DSM Rider and Main Extension Tariff, the requirements of the Ohio Revised Code—all of these prohibit incentives and discounts in areas where Suburban also serves customers. It is not even a close question. Columbia's anticipated defense—that the Commission has approved Columbia's DSM program—is itself a violation. The incentive program Columbia is operating to compete against Suburban is not the program it advertised or that the Commission approved.

A showing of success on the merits on just one count in the Complaint would support the request for emergency relief. Here there is a substantial likelihood that Suburban will prevail on the merits on *all* counts.

B. Suburban will continue suffering irreparable harm if emergency relief is not granted.

Columbia's unlawful actions do not just foretell future harm; Suburban is currently being harmed, and irreparably so.

Columbia's last attempt to put Suburban out of business by aggressively promoting financial incentives was addressed in Case No. 93-569-GA-SLF et al. (Verified Compl. ¶7.) The parties agreed to a comprehensive stipulation to settle competitive issues in overlapping service areas. (*Id.* ¶¶ 6-10.) Suburban released Columbia from all claims arising under its builder incentive program, with the expectation that Columbia would not later resurrect "any program substantially similar to such programs" in areas served or readily capable of being served by Suburban. (*Id.* ¶ 9.) Suburban reasonably relied on this commitment. The Commission retained jurisdiction to enforce this commitment if necessary. (*Id.* ¶ 10.) Suburban planned its system accordingly to meet the needs of both present and future customers.

Suburban's investment in the Glen Ross subdivision and adjacent areas over the past three decades is now in jeopardy. Suburban currently serves over 550 customers in Glen Ross, and had expected over time to serve nearly 500 more. (*Id.* ¶ 16.) Columbia is now in the process of duplicating Suburban's facilities by laying mains on the other side of Cheshire Road; a precursor to cherry-picking new construction. (*Id.* ¶¶ 19-23.) At least one builder has agreed to take service from Columbia—not because the builder intends to build homes to a greater energy-efficiency standard, but to get the free money Columbia is offering. (*Id.* ¶¶ 19, 21.) It is only a matter of time before other builders follow suit.

With each illegal payment offered or made, with each permit granted, with each foot of main placed in the ground, Columbia further encroaches upon Suburban's territory and takes away new business, leaving Suburban with no alternative but to seek legal resource and remedies to protect its rights. The Commission should not wait until resolution of this dispute to restrain and reverse patently impermissible activities. By then, it will be too late to unscramble the egg. Suburban's right to take discovery, present its case at hearing, and enforce a final order will not

provide complete or necessary relief in a timely manner; only through the emergency relief will Suburban be spared further immediate and irreparable harm.

C. No third parties will be unjustifiably harmed if emergency relief is not granted.

The third factor requires consideration of whether “the potential injury that may be suffered by [the defendant] will not outweigh the potential injury suffered by [the plaintiff] if the injunction is not granted.” *City of Cleveland*, 684 N.E.2d at 350. Columbia will suffer no injury, if emergency relief is granted.

Suburban seeks only to preserve the status quo—that the parties continue to operate under the terms of the 1995 Stipulation and that Columbia limit the utilization of available financial incentives to builders and developers in areas that it currently serves. If Columbia ultimately prevails on the merits, it can proceed with the main extensions. If the injunction is not granted however, and Suburban prevails on the merits, more illegal financial incentives will be offered, more permits will be granted, more pipes will be laid, more harm will occur to Suburban’s business relationships and reputation—potential injuries, the extent of which, Suburban cannot be made whole simply by an award of money damages.

D. Granting injunctive relief is in the public interest.

The interest of the public weighs strongly in favor of granting emergency relief. In the absence of emergency relief, illegal financial incentives will be offered, unnecessary permits will be applied for, and duplicative, redundant gas facilities will be installed. Columbia must incur costs to conduct these impermissible activities—costs that, absent Commission action, would be borne by Columbia’s ratepayers. The design of efficient gas facilities, the deterrence of uncompetitive behavior, and the avoidance of imprudent and unreasonable costs are all in the public interest.

E. Expedited treatment of this request for emergency relief is warranted.

Pursuant to OAC 4901-1-12, any motion may include a specific request for an expedited ruling. The grounds for the expedited ruling are the same as the grounds for the emergency relief: Suburban will suffer immediate and irreparable harm, if Columbia continues to utilize improper incentives to obtain new business in areas that Suburban serves. The Commission should act to restrain the illicit activities as quickly as possible before those activities cause further harm to Suburban's business relationships and reputation. The expedited ruling for emergency relief, once granted, will preserve the status quo in Suburban's service territory, while the administrative process runs its course and resolution of this dispute can be achieved.

CONCLUSION

If ever a case justified emergency relief, it is this one. Suburban cannot stress enough how important it is that the Commission take immediate action. Columbia will undoubtedly deny and defend the allegations against it, as is its right. But the ultimate merits of Suburban's claims are not the issue. The issue is whether Suburban has presented credible allegations that Columbia is engaging in improper or unlawful conduct that threatens immediate harm. The Verified Complaint establishes this in spades. Granting emergency relief will harm no one. Denying it could be ruinous for Suburban.

Date: October 20, 2017

Respectfully Submitted,

/s/ Mark A. Whitt

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CERTIFICATE OF SERVICE

This document was filed via the Commission's e-filing system on October 20, 2017.

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:

Stephen B. Seiple sseiple@niscource.com

s/ Mark A. Whitt

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/20/2017 3:50:08 PM

in

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

**Summary: Motion for Interim Emergency Relief and Request for Expedited Treatment
electronically filed by Ms. Rebekah J. Glover on behalf of Suburban Natural Gas Company**

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

SUBURBAN NATURAL GAS COMPANY
2626 Lewis Center Road
Lewis Center, Ohio 43035

Complainant,

v.

COLUMBUS GAS OF OHIO, INC.
C/O Corporation Service Company
50 West Broad Street, Suite 1330
Columbus, Ohio 43215

Respondent.

Case No. 17-2168-GA-CSS

**VERIFIED COMPLAINT
and
REQUEST FOR EMERGENCY RELIEF**

Columbia Gas of Ohio, Inc. (Columbia) has dusted-off the playbook it used in the 1980s to once again attempt to put Suburban Natural Gas Company (Suburban) out of business. The Commission must immediately put a stop to Columbia's unlawful and unjust tactics.

Just as it did in the 1980s, Columbia is once again offering rebates and other financial incentives to prospective customers, developers, and builders in areas already served by Suburban. Unlike the 1980s, Columbia now has a rider that it can use to recover the cost of these incentives from ratepayers. Suburban does not purport to represent the interests of Columbia's ratepayers. But the fact that Columbia has embarked on a project to enrich itself and destroy a competitor *at no cost to itself* further highlights the injustice to Suburban.

Columbia's actions fly in the face of a 1995 Stipulation in which Columbia agreed to stop doing exactly what it has now resumed: offering financial incentives to developers and builders

to unjustly gain an anti-competitive advantage over Suburban. Columbia has violated the stipulation. And it is no defense that Columbia's renewed cash incentives are part of a DSM program. Columbia asked for, and the Commission approved, a builder incentive program for prospective customers *within* Columbia's service area. Columbia is using this program primarily as a marketing tool to *expand* its service area in direct competition with Suburban. Indeed, Columbia's pipeline construction contractor, Miller Pipeline, is onsite making final preparations to install distribution mains *literally* on the other side of the street from Suburban's existing mains.

Accordingly, for its Complaint against Columbia, Suburban alleges and avers as follows:

PARTIES AND JURISDICTION

1. Suburban Natural Gas Company is a "natural gas company" and "public utility" under R.C. 4905.02 and 4905.03. Suburban serves approximately 17,000 customers in Ohio.
2. Columbia Gas of Ohio, Inc. is a "natural gas company" and "public utility" under R.C. 4905.02 and 4905.03. Columbia serves over 1.5 million customers in Ohio.
3. The Commission has personal jurisdiction over Columbia and subject matter jurisdiction to hear and decide this action under R.C. 4905.04, 4905.05, 4905.06, 4905.26, and 4929.08.
4. The Commission has authority, and indeed the responsibility under these circumstances, to grant the interim, emergency relief requested herein under R.C. 4909.16.

FACTS COMMON TO ALL CLAIMS

A. The 1995 Stipulation

5. Suburban and Columbia each serve customers in southern Delaware County.

6. In the mid-1980s, Columbia began to aggressively promote financial incentives and other special deals to prospective customers, developers, and builders that Suburban, being a much smaller company, could not match. In complaint hearings concerning this practice, Columbia witnesses admitted that they had been ordered by management, “when confronted by competition with Suburban, to do whatever was necessary to meet or beat the competition,” even if it meant violating Columbia’s PUCO tariff. (Case No. 86-1747-GA-CSS, Tr. at 61(cross examination of R. Parshall).)

7. Suburban, Columbia, and the Commission eventually came to agree that the continued duplication of facilities would prove ruinous, and was not in the public interest. Columbia filed a self-complaint in Case No. 93-1569-GA-SLF to obtain clarification of certain existing tariff language, which was followed by joint applications between Suburban and Columbia to transfer certain facilities and customers. (Case Nos. 94-938-GA-ATR, 94-939-GA-ATA.) These three proceedings were eventually consolidated.

8. The parties filed a Second Amended Joint Petition, Application, and Stipulation in November 1995, which the Commission approved in a January 18, 1996 Finding and Order (the “1995 Stipulation,” attached as Exhibit A).

9. The 1995 Stipulation was intended to “resolve all contested issues.” (Stipulation at 2.) These contested issues included Columbia’s use of financial incentives to builders and developers in competitive areas, under the Buckeye Builder, Scarlet Builder, Gray Builder, High Volume Single Family Builder, and Mark of Efficiency programs. Suburban released all claims

arising from these programs, with the reasonable expectation that Columbia would not later resurrect “any program substantially similar to such programs” in areas served by Suburban, and expressly reserved the right to litigate Columbia’s resort to such renewed marketing tools. (*See id.*, Exhibit 7.)

10. In its Finding and Order adopting the 1995 Stipulation, the Commission expressly reserved jurisdiction over the competitive issues raised in that proceeding. “The commission expects to continue to review the companies’ practices in this area. Nothing in our acceptance of this stipulation should be interpreted as precluding the Commission’s ability to review and limit the practices or take other remedial actions when the activities described in the tariff are undertaken in a manner which violates Section 4905.33, Revised, Code, or other pertinent sections of the Revised Code.” (Finding and Order ¶ 10.)

B. Columbia’s DSM Program

11. As part of the resolution of its last and final gas cost recovery (GCR) proceeding, Columbia agreed to file an application for approval of a comprehensive DSM program by July 1, 2008. (Case No. 05-221-GA-GCR, Stipulation (Dec. 8, 2007) at 21 ¶ 38.) The Commission approved the stipulation in a January 23, 2008 Opinion and Order.

12. Columbia filed a DSM application on July 1, 2008, in Case No. 08-833-GA-UNC. Among other DSM offerings, Columbia proposed a Residential New Construction program. This program began as a research project to determine “how best to build efficient homes in Columbia’s territory.” (Application at 25.) The program offered a \$1000 rebate per qualified home to builders meeting certain energy efficiency standards. (*Id.* at 25). Columbia budgeted \$6.9 million for the program for the period 2009-2011. (*Id.* at 24.) The Commission approved the

program in a July 23, 2008 Finding and Order, pursuant to the alternative rate plan provisions of R.C. 4929.05.

13. Columbia filed an application on September 9, 2011, in Case No. 11-5028-GA-UNC, to continue and expand its DSM programs for the period 2012-2016. The Residential New Construction program was renamed Energy Efficient New Homes, but the general program design remained the same. The application represented that the “direct financial incentives” for energy-efficient construction would be provided to home builders “within” or “in” “Columbia Gas of Ohio’s service territory.” (Application at 27, 28.) Columbia’s budget for the program increased to \$10.2 million. (*Id.* at 26.) The application was ultimately resolved by stipulation, without any evidentiary hearing or findings of fact, and approved by the Commission in a December 4, 2011 Finding and Order.

14. Most recently, in Case No. 16-1309-GA-UNC, Columbia again sought to continue and expand its DSM programs. The Energy Efficient New Homes program was again renamed, this time to EfficiencyCrafted Homes. (Application at 11-12.) The program continues to offer direct cash incentives to home builders, but in an unspecified amount. The program budget for the 2017-2022 period is nearly \$20 million. (*Id.* at 25.) This proceeding was also resolved by stipulation, which the Commission approved in its December 21, 2016 Opinion and Order.

C. Columbia’s anti-competitive use of incentive programs.

15. In February 2002, a large tract of agricultural land in Delaware County was rezoned for residential use to accommodate what is now known as the Glen Ross subdivision. As part of the rezoning process, Suburban submitted information on behalf of the developer indicating that Suburban was capable of serving, and would serve, the Glen Ross subdivision.

16. Suburban subsequently extended distribution mains along Cheshire Road to serve current and future development in the Glen Ross subdivision. From the 2005 BIA Parade of Homes to the present, Suburban has installed distribution lines from its mains to each new home in the Glen Ross development. Suburban currently serves over 550 customers in this development. Based on information available to Suburban, approximately 490 homes will be built in the next phase of development. Suburban has managed and planned its system to accommodate this growth, including a planned \$8.5 million system improvement required to serve this area.

17. The Glen Ross subdivision is not within Columbia's service territory, either as of the date of the final order in Case No. 16-1309-GA-UNC or presently.

18. The 1995 Stipulation was intended to permanently end Columbia's use of builder incentive programs in areas served, or readily-capable of being served, by Suburban. Such areas include the Glen Ross subdivision and adjacent developments.

19. Suburban was recently informed by a builder in the Glen Ross subdivision that it has been offered financial incentives from Columbia as an inducement to take service from Columbia instead of Suburban.

20. In addition, Suburban has learned that at least two other builders in subdivisions adjacent to or in the vicinity of Glen Ross have been offered similar cash incentives by Columbia.

21. The builders who have been offered cash incentives by Columbia have built and, on information and belief, will continue to build homes to the same energy efficiency standards as the homes built in areas currently served by Suburban, without cash incentives.

22. Columbia has obtained, or will imminently obtain, permits or other authorization to connect to the transferred facilities west of Braumiller Road and construct gas mains nearly a mile to the east, along Cheshire Road. The purpose of this main extension is to serve new construction in Glen Ross and neighboring subdivisions. The planned extension is shown in red on Exhibit B.

23. As shown on Exhibit B, Columbia's planned main extension will duplicate Suburban's existing distribution mains along Cheshire Road. Columbia's existing facilities are depicted in green.

24. On information and belief, Columbia has recovered or intends to recover the cost of financial incentives provided to builders through its Demand Side Management Rider, P.U.C.O. No. 2, Twelfth Revised Sheet No. 28.

25. But for Columbia's use of the EnergyCrafted Homes program and other incentives for the improper purpose of competing with Suburban, builders who have or will accept financial incentives from Columbia would otherwise remain customers of Suburban.

Count 1: Violation of the 1995 Stipulation

26. Complainant incorporates the allegations in paragraphs 1 through 25 as if fully rewritten.

27. Columbia's EnergyCrafted Homes program is "substantially similar to" the programs Columbia agreed to terminate in the 1995 Stipulation.

28. Columbia is using the EnergyCrafted Homes program to gain an unfair competitive advantage to secure customers in areas currently served by Suburban.

29. Columbia's actions are directly contrary to the 1995 Stipulation and the Finding and Order approving same. By extending its mains and proposed distribution lines into Suburban's operating area and offering financial incentives to builders, Columbia is violating

the purpose and intent of the 1995 Stipulation, which authorized the sale and exchange of facilities to eliminate the wasteful duplication and destructive competitive practices now being reintroduced into Suburban's operating area. Moreover, Columbia's intended duplication of facilities confounds Suburban's planning for system betterment to serve committed and anticipated growth in its operating area.

30. Suburban has been damaged by Columbia's violations of the 1995 Stipulation.

Count 2: Violation of Order approving DSM Programs

31. Complainant incorporates the allegations in paragraphs 1 through 30 as if fully rewritten.

32. In its applications in Case Nos. 08-833-GA-UNC, 11-5028-GA-UNC, and 16-1309-GA UNC, Columbia specifically represented that the DSM programs described therein would be limited to entities "in" or "within" Columbia's service territory.

33. In approving the applications filed in Case Nos. 08-833-GA-UNC, 11-5028-GA-UNC, and 16-1309-GA UNC, the Commission authorized Columbia to implement DSM programs "in" or "within" Columbia's service territory.

34. The Glen Ross subdivision was not, and is not, "in" or "within" Columbia's service territory.

35. Columbia has not sought a waiver of the Commission's order in Case No. 16-1309-GA-UNC, or otherwise sought authorization to offer DSM programs to entities located outside Columbia's service territory.

36. By offering and extending DSM programs and incentives to entities located outside its service territory, Columbia is in violation of the Commission's December 21, 2016 Opinion and Order in Case No. 16-1309-GA-UNC.

37. Suburban has been damaged by Columbia's violation of the aforementioned Opinion and Order.

Count 3: Violation of DSM Rider

38. Complainant incorporates the allegations in paragraphs 1 through 37 as if fully rewritten.

39. The Commission's December 21, 2016 Opinion and Order in Case No. 16-1309-GA-UNC authorizes Columbia to recover eligible DSM program costs through Columbia's DSM Rider.

40. The cost of programs extended to entities not located in or within Columbia's service territory are not eligible for recovery through the DSM Rider.

41. Columbia has, or will, recover or attempt to recover ineligible costs through its DSM Rider, effectively subsidizing Columbia's unlawful activities.

42. Suburban has been damaged by Columbia's violation of its DSM Rider.

Count 4: Violation of Main Extension Tariff

43. Complainant incorporates the allegations in paragraphs 1 through 42 as if fully rewritten.

44. Columbia's Commission-approved tariff establishes mandatory policies for the extension of distribution mains. *See* P.U.C.O. No. 2, Rules and Regulations Governing the Distribution and Sale of Gas, Third Revised Sheet Nos. 9 and 10 (eff. May 31, 2017) ("Main Extension Tariff").

45. On information and belief, Columbia is offering to, or has, agreed with builders or others to waive deposits or other charges required under the Main Extension Tariff.

46. Suburban has been damaged by Columbia's violation of its Main Extension Tariff.

Count 5: Statutory Violations

47. Complainant incorporates the allegations in paragraphs 1 through 46 as if fully rewritten.

48. Under R.C. 4905.32, no public utility shall charge or receive a rate or charge for any service rendered, or to be rendered, except as specified in its tariff.

49. Under R.C. 4905.33, no public utility shall directly or indirectly charge or receive a lesser compensation for any service rendered, or to be rendered, than specified in its tariff. Additionally, no public utility shall furnish free service or service for less than actual cost for the purpose of destroying competition.

50. Under R.C. 4905.35, no public utility shall make or give any undue or unreasonable preference or advantage to any person or corporation.

51. Under R.C. 4929.08(B), no natural gas company shall implement an alternative rate plan in a manner than violates the policy of this state specified in R.C. 4929.02.

52. By extending DSM programs to ineligible entities, seeking cost recovery of ineligible costs through Rider DSM, waiving deposits and fees under its Main Extension Tariff, duplicating the existing gas distribution facilities of Suburban, and otherwise extending preferences and advantages for the purpose of destroying competition, Columbia is in violation of R.C. 4905.32, 4905.33, R.C. 4905.35 and R.C. 4929.08.

53. Suburban has been damaged by Columbia's statutory violations.

Count 6: Request for Emergency Relief

54. Complainant incorporates the allegations in paragraphs 1 through 53 as if fully rewritten.

55. The Commission has general jurisdiction and supervision to issue just and reasonable orders necessary to ensure safe, adequate, reliable, and competitively-neutral service. *See* R.C. 4905.04, 4905.05, 4905.06, 4905.37, 4905.38, 4905.54.

56. In approving the 1995 Stipulation, the Commission expressly reserved jurisdiction to “review and limit the practices or take other remedial actions when the activities described in the tariff are undertaken in a manner which violates Section 4905.33, Revised, Code, or other pertinent sections of the Revised Code.” (Finding and Order ¶ 10.)

57. Additionally, R.C. 4909.16 authorizes the Commission, when “deemed necessary to prevent injury to the business or interest of the public or of any public utility in this state in case of any emergency to be judged by the commission,” to “temporarily alter, amend, or, with the consent of the public utility concerned, suspend any existing rates, schedules, or order relating to or affecting any public utility. . .” Such an emergency order “shall apply to one or more of the public utilities in this state” and “shall take effect at such time and remain in force for such length of time as the commission prescribes.”

58. The allegations raised herein justify the immediate issuance of an order directing Columbia to: (a) immediately cease and desist from extending its duplicative distribution main east from Braumiller Road along Cheshire Road; (b) immediately cease and desist from offering financial incentives to developers and builders in Suburban’s operating area; (c) account for and suspend payment of any such financial incentives already offered or accepted; and (d) separately account for all construction costs incurred in extending distribution mains and facilities into

PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests issuance of necessary Commission orders:

- A. Granting the interim emergency relief requested herein;
- B. Finding that reasonable grounds for complaint have been stated, in accordance with R.C. 4905.26;
- C. Finding that Columbia has violated Commission orders, its tariffs, and Title 49, Ohio Revised Code, as alleged herein;
- D. Abrogating or modifying the DSM provisions of Columbia's alternative rate plan, as authorized by R.C. 4929.08;
- E. Granting such other and further relief as the Commission deems just and proper.

VERIFICATION

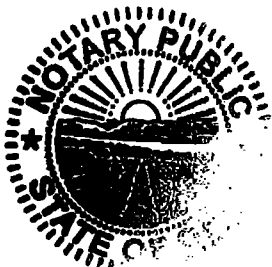
DELAWARE COUNTY)
)
STATE OF OHIO)

David L. Pemberton, Sr., being sworn in accordance with law, states that he is the Chairman of the Board of Suburban Natural Gas Company, and that the allegations in the foregoing Verified Complaint are true and correct to the best of his knowledge, information and belief.

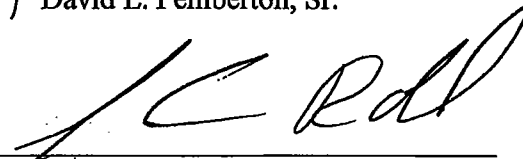


David L. Pemberton, Sr.

Sworn to in my presence on October 20, 2017.



S. AARON ROLL
Notary Public, State of Ohio
My Commission Expires
9/9/22



Notary Public

Date: October 20, 2017

Respectfully Submitted,

/s/ Mark A. Whitt

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INSTRUCTIONS FOR SERVICE

TO THE DOCKETING DIVISION:

Please serve the Verified Complaint to:

Columbia Gas of Ohio, Inc.
C/O Corporation Service Company
50 West Broad Street, Suite 1330
Columbus, Ohio 43215

A courtesy copy is being emailed to Stephen B. Seipel, Assistant General Counsel, Columbia Gas of Ohio, Inc. (sseiple@nisource.com)

SUBURBAN NATURAL GAS COMPANY

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(740) 548-2450

January 30, 2018

Mr. Jeff Benton
Mr. Gary Merrell
Ms. Barbara Lewis
Delaware County Commissioners
101 North Sandusky Street
Delaware, Ohio 43015

Dear Commissioners:

As you may know, Suburban Natural Gas Company (Suburban) is a natural gas company and a public utility whose principal office is located at 2626 Lewis Center road at the intersection of Lewis Center Road and South Old State Road in Delaware County. It began providing service in Delaware County in 1988 and previously provided gas service in northwest Ohio which it has continued to do since 1882. It serves more than 17,000 customers, over 13,000 of which reside or do business in Delaware County and over 95% of which are residential. A map of its Delaware County service area is enclosed.

When Suburban entered Delaware County in 1988, it constructed its pipeline system on and north of Lewis Center Road in an area bounded generally by Lewis Center Road, U.S. Highway 36, Old State Road, and the Norfolk and Western railroad tracks—a largely rural area not served by any other natural gas company. Columbia Gas of Ohio, Inc. (Columbia), the only other natural gas company serving Delaware County, then and now, maintained facilities and served customers on and south of Lazelle Road, on and west of U.S. Highway 23, and north of U.S. Highway 36 except one residential subdivision south of Lewis Center Road and customers in and adjacent to the City of Delaware.

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As southern Delaware County began its rapid development in the early nineties, Suburban and Columbia began to compete as they had done in northwest Ohio. However, as in northwest Ohio, Columbia began to engage in marketing practices which the Public Utilities Commission of Ohio (PUCO) found to be unlawful in meeting the competition posed by Suburban in Delaware County (see PUCO Case No. 86-1747-GA-CSS). After extensive negotiations covering two years, Suburban and Columbia reached a settlement agreement intended to eliminate duplication of their facilities in southern Delaware County and the marketing practices complained of by Suburban. Columbia observed that agreement for over twenty years but recently reintroduced these practices in Suburban's service area prompting a further complaint by Suburban which is pending before the PUCO (see PUCO Case No. 17-2168-GA-CSS).

The purpose of this letter is to appeal to you to discontinue processing Columbia's requests for permits, rights of way, and other authorizations to continue constructing facilities which duplicate Suburban's facilities until the PUCO has ruled on Suburban's application for emergency relief and to ask you to intervene in the pending PUCO complaint case on behalf of Delaware County's residents. If Columbia is permitted to continue its predatory and unlawful practices against it, Suburban will not be able to continue or expand its service to Delaware County. We are a family business with limited resources to combat such practices, and Delaware County will become totally monopolized by one natural gas company—Columbia. We do not believe that that would be in the County's or its citizens' best interests.

In addition, the construction of duplicative natural gas pipelines and service facilities is wasteful as well as contrary to the health, safety, and welfare of the public. The construction of such facilities is disruptive to travel, and their existence creates confusion for fire and safety personnel called upon in the event of a natural gas incident. In fact, even where both companies serve in the same subdivision, without actual duplication, Columbia's service personnel have had to rely on our service personnel for directions since, unlike our personnel, they do not live or

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regularly work in our service area. The area of duplication is currently confined to Cheshire Road, but Columbia has reached out to other areas which, if served by Columbia, would make a patchwork of both companies' service areas in Delaware County.

The pending and former complaint cases can be accessed on the PUCO's website, and I would be grateful to pursue this matter in a public session of the Commissioners if desired. Thank you for your attention to this matter.

Very truly yours,

David L. Pemberton

DLP:mew
Enclosure

cc: Ms. Carol O'Brien, Delaware County Prosecuting Attorney
Mr. Russell L. Martin, Delaware County Sheriff
Mr. Jerry Owings, Delaware County Utility Coordinator

BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO

Suburban Natural Gas Company)
)
Complainant,)
)
v.)
)
Columbia Gas of Ohio, Inc.)
)
Respondent.)

Case No. 17-2168-GA-CSS

DIRECT TESTIMONY OF
DAVID L. PEMBERTON, SR.
ON BEHALF OF COMPLAINANT

Q. Please state your name and business address.

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

Q. By whom are you employed?

A. Suburban Natural Gas Company

Q. What positions do you hold with that company?

A. I am Chairman of the Board, a director, and Chief Executive Officer of the company.

Q. How long have you held those positions?

A. Since December, 2000.

Q. Did you hold any positions with that company before December, 2000?

A. Yes.

Q. What were those positions and for how long did you serve?

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

Q. Did you serve the company in any other capacity before February, 1989?

A. Yes. From 1974 until February, 1989, I was the company's independent regulatory attorney.

Q. As the company's independent regulatory attorney, what were your duties and responsibilities?

A. To advise the company's management about its duties and responsibilities as a public utility under Ohio law and to represent the company in rate and service matters before the various municipalities it served and before the Public Utilities Commission of Ohio.

Q. Would you briefly state your qualifications and experience as an attorney?

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

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

During my active practice as an attorney, I remained a member in good standing with the Ohio State and Columbus Bar Associations, as well as other specialized bar associations, the Supreme Court of Ohio, and the United States Supreme Court. Throughout my legal career, I received and maintained an Av rating from my peers and was selected by Marquis Publishing Co. for inclusion in its First Edition of Who's Who In American Law.

Q. Returning to your employment with Suburban, what are your duties as Chairman of the Board and Chief Executive Officer?

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

Q. Who is the President and Chief Operating Officer of the company?

A. Andrew J. Sonderman

Q. How long has he held that position?

A. Since February, 2015.

Q. Are you authorized to appear and testify on Suburban's behalf in this proceeding?

A. Yes.

- Q. Is Mr. Sonderman authorized to appear and testify in this proceeding?
- A. Yes.
- Q. Are you familiar with the allegations contained in this complaint?
- A. Yes.
- Q. Are you familiar with Suburban's relations with Columbia Gas of Ohio, Inc., the respondent in this proceeding, and with the Columbia Gas system?
- A. Yes.
- Q. Do you have personal knowledge of the various proceedings involving competition between Columbia Gas of Ohio, Inc. and Suburban and the issues involved therein since 1986?
- A. Yes.
- Q. How did you obtain that knowledge?
- A. In the 1986 case, PUCO Case No. 86-1747-GA-CSS, I was attorney for the complainant, Suburban. In the 1987 case, PUCO Case No. 87-1528-GA-ATA, I was the attorney for Suburban as an intervenor. In PUCO Case Nos. 93-1569-GA-SLF, 94-938-GA-ATR, and 94-939-GA-ATA, I was Suburban's President and General Counsel.
- Q. Before 1986, do you have personal knowledge of Suburban's relations with Columbia Gas of Ohio, Inc. and with the Columbia Gas system?
- A. Yes.
- Q. How did you acquire that knowledge?
- A. As I said, I was Suburban's regulatory attorney.
- Q. How would you describe those relationships?
- A. Very cordial.

- Q. What changed?
- A. The State of Ohio's regulatory policy for public utilities changed from encouraging cooperation to encouraging competition. Suburban and Columbia became competitors.
- Q. How did that affect Suburban's and Columbia's relationship?
- A. As competitors, they could no longer rely on mutual support in areas in which both maintained facilities and served customers. Due to its smaller size and limited resources, this put Suburban at a disadvantage.
- Q. Where did Suburban and Columbia first begin competing?
- A. In the unincorporated areas of Wood County surrounding Bowling Green, Ohio.
- Q. Would you describe where and how that competition occurred?
- A. Yes. Suburban owned and operated two high-pressure supply lines extending west on the north and south sides of Bowling Green from a Columbia Transmission Corporation interstate transmission line to unincorporated areas and villages west of Bowling Green.
- Q. When were those lines constructed by Suburban?
- A. In the late 1950's.
- Q. When did Suburban begin serving customers in the Bowling Green area from those lines?
- A. Almost immediately.
- Q. Were any of those customers located in the municipal limits of Bowling Green?
- A. Not initially.
- Q. How did they eventually become residents of Bowling Green?
- A. As the municipal limits of Bowling Green expanded.

Q. Who served Bowling Green?

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

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

A. No.

Q. When and how did Suburban and Columbia begin to compete in the unincorporated areas surrounding Bowling Green?

A. In 1985, Suburban began soliciting commercial customers located on U.S. Highway 25 north of Bowling Green.

Q. Were any of these customers located within the municipal limits of Bowling Green?

A. No.

Q. Were any of these customers served by Columbia?

A. No.

Q. What type of commercial customers were they?

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

Q. Had any of them been offered natural gas service by Columbia?

A. Not before Suburban began soliciting them and offering service.

Q. Did Suburban begin serving customers on the south side of Bowling Green?

A. Yes.

Q. Where and why?

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

- Q. Did this include the Woodland Mall?
- A. Yes.
- Q. How did Columbia react to Suburban's service offerings in 1985?
- A. Very aggressively.
- Q. Would you explain your answer.
- A. Yes. The word came down from Columbus to Columbia's Bowling Green managers that they were to go to any length to meet and beat Suburban's competition in and around Bowling Green.
- Q. Did that include offering free service lines?
- A. Yes.
- Q. Did that include offering free regulators?
- A. Yes.
- Q. Did that include offering appliance allowances?
- A. Yes.
- Q. Did that include offering free line extensions?
- A. Yes.
- Q. Did that include offering lower and special rates?
- A. Yes.
- Q. Were these offerings in violation of Columbia's PUCO tariffs?
- A. Yes.
- Q. Did Columbia's managers know and acknowledge this?

- A. Yes.
- Q. Did the PUCO find this to be true in PUCO Case No. 86-1747-GA-CSS?
- A. Yes, all except the rate concessions.
- Q. Did the PUCO also find that these sales practices violated the various state statutes cited and relied upon by Suburban in that case?
- A. Yes.
- Q. How did Columbia characterize these sales practices?
- A. As marketing incentives.
- Q. Did Columbia's unlawful sales practices succeed?
- A. Yes. Suburban was unable to gain a single customer.
- Q. Did Columbia's management try to justify its behavior in that case?
- A. Yes. Columbia's Vice President for Rates and Depreciation testified that "competition is competition" and attempted to characterize Suburban's competition as predatory.
- Q. How did he define that term?
- A. A competitor's behavior is predatory when it enters another's service area, duplicates facilities, and begins offering competitive services.
- Q. How did he characterize the term "service area"?
- A. An area traditionally served by a company.
- Q. Isn't this the very same behavior engaged in by Columbia in this case?
- A. Yes.
- Q. Did this witness ultimately concede that the areas sought to be served by Suburban in that case were areas traditionally served by both Suburban and Columbia and

that Suburban had been a competitive factor in the Bowling Green area for many years?

A. Yes.

Q. Did Suburban duplicate any of Columbia's facilities in attempting to provide service in those areas?

A. No.

Q. Did Suburban offer any of the "marketing incentives" offered by Columbia in that case?

A. No.

Q. How did PUCO Case No. 87-1528-GA-ATA arise?

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

Q. Why did Suburban intervene in that case?

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

Q. How did Columbia characterize its purpose in filing PUCO Case No. 87-1528-GA-ATA?

A. It stated that it was concerned about using marketing incentives when competing with electric companies as a result of the PUCO's findings in PUCO Case No. 86-

1747-GA-CSS and, in particular, the restriction against offering line extensions to prospective customers.

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

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

Q. Were there any other intervenors in that case?

A. Yes.

Q. Who were these other intervenors?

A. Primarily electric companies.

Q. What appeared to be their interest?

A. Columbia's main extension policies.

Q. Did Suburban have any concerns in this area?

A. Yes.

Q. What were Suburban's concerns?

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

Q. Had this occurred in PUCO Case No. 86-1747-GA-CSS?

A. Yes.

- Q. How did Suburban and Columbia resolve this issue?
- A. Columbia agreed not to extend its mains to serve new customers without performing an economic study to justify the cost and to charge customer deposits where the costs were not justified.
- Q. Did it agree to provide Suburban copies of those studies when competing with Suburban?
- A. Yes.
- Q. Was this agreement incorporated into Columbia's tariff?
- A. No, but the Commission recognized it as an enforceable part of Columbia's and Suburban's settlement agreement in that case.
- Q. Were Columbia's other incentive programs addressed in PUCO Case No. 87-1528-GA-ATA?
- A. No.
- Q. Why were Columbia's other incentive programs not specifically dealt with in that case?
- A. They were not included in Columbia's tariff at the time and had not been used in competition with Suburban.
- Q. Were they eventually used in competition with Suburban?
- A. Yes.
- Q. When and under what circumstances did Columbia introduce these other incentives in competing with Suburban?
- A. As southern Delaware County began to develop in the early nineties, Suburban began to have success in obtaining commitments to serve residential developments—at first several small ones but eventually larger ones. In anticipation of serving developments north of Lazelle Road, Suburban had constructed a high-pressure supply line on Powell Road from its main supply line east to I-71. A major developer in this area had acquired a large tract of land near

the intersection of Powell and south Old State Roads, and Suburban had obtained a verbal commitment to serve this development to be known as Oak Creek. Ultimately, the land was acquired by Dominion Homes whose President informed Suburban's agent that it would not be serving the development because Columbia had met with him and informed him that its co-op advertising program with Borrer Corporation, Dominion Homes' parent company, was conditioned on Columbia serving all of the Borrer Corporation's developments, including Oak Creek, and that all of Borrer's residential developments in central Ohio would lose Columbia's advertising incentives if Columbia did not serve Oak Creek.

Q. How many developments did this affect?

A. Sixteen.

Q. Did Columbia have facilities to serve in this area?

A. No.

Q. How did it access the Oak Creek development?

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

Q. Did Suburban complain to Columbia?

A. Yes, but to no avail. We also considered legal action, but our attorneys did not feel that we had a strong enough factual basis for a lawsuit at that time given that Suburban's commitment to serve the development was given by the prior landowner.

Q. Do you have any written documentation of this use of Columbia's builders' incentives against Suburban?

A. Yes. Exhibits 1 and 2 attached to my testimony are memoranda prepared in the ordinary course of business and provided to our attorneys at that time regarding Columbia's duplication of facilities and use of builders' incentives in obtaining the right to serve the Oak Creek development.

Q. Were there other incidents of Columbia's use of builders' incentives against Suburban at the time?

A. Yes.

Q. Would you elaborate.

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

Q. Did Suburban agree to match Columbia's offer?

A. No.

Q. Why not?

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

Q. Has Suburban ever offered to "match" Columbia's builders' incentives?

A. No.

Q. What did Suburban do in response to the Villages of Alum Creek situation?

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

Q. What was the result of that meeting?

A. Andy agreed that Columbia's offer of builders' incentives violated the purpose and intent of the settlement reached in PUCO Case No. 87-1528-GA-ATA even though they were not specifically addressed in that case. He pled ignorance that Columbia had used or proposed to use these incentives in competition with Suburban and

had met with Columbia's field personnel to avoid future violations. Those discussions convinced him that some broader settlement between our companies would be preferable to a piecemeal approach since applying the legal language of the restrictions incorporated into our tariffs in that case was difficult in the field, particularly where competition with alternate fuels might be involved. We agreed to attempt to work on an omnibus settlement to resolve all of the competitive issues between our companies.

Q. What did the parties consider to be those issues at that time?

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

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

A. This was the first time the parties had decided to try to amicably settle the competitive issues between them, and Andy suggested a self-complaint would avoid the caustic allegations of a complaint filed by Suburban under Section 4905.26 of the Revised Code as to the unlawfulness of the builders' incentive programs. A self-complaint would avoid this, coupled with Columbia's agreement not to oppose Suburban's intervention and participation. It was also thought that this approach would provide more procedural flexibility to resolve the issues, including PUCO staff participation.

Q. Did this approach work?

A. Yes. As the record in that proceeding indicates, there were numerous conferences and discussions, with not only the PUCO staff but the Commissioners, permitting open and candid exchanges of views and ideas. The initial solution was to undo the duplications of facilities which had evolved in southern Delaware County and

separate the parties territorially. This approach raised potential antitrust issues, and both parties employed special antitrust attorneys to guide them through this process resulting in the initial Joint Petition And Stipulation filed in that case whereby the parties would exchange facilities and enter into covenants not to compete—Suburban withdrawing its service in northern Franklin County and portions of southern Delaware County and Columbia essentially withdrawing its service in a defined area in southern Delaware County bounded on the south by Lazelle Road; on the north by U.S. Highway 36; on the west by the Norfolk & Southern railroad tracks; and on the east by I-71 and Alum Creek Reservoir.

Q. How did this solve the parties' competitive issues?

A. Suburban's then existing distribution system was located exclusively in the area conceded by Columbia once the facilities to be transferred to Columbia were transferred and Columbia would not retain any facilities in this area which were to be transferred to Suburban. Pursuant to the covenants not to compete, each party would be free to offer whatever incentives it wanted or not to offer any incentives if it chose, solving both the duplication and the incentives issues.

Q. Why was the Joint Petition And Stipulation rejected by the Commissioners?

A. Chairman Glazer considered the settlement to be inconsistent with the State of Ohio's policy of promoting competition among public utilities. He also expressed some ill-defined concerns about potential antitrust issues.

Q. What did the parties do?

A. We went back to the drawing board and, with the staff's participation, restyled the Joint Petition And Stipulation to accommodate the Chairman's concerns.

Q. Did this restyling result in the Amended Joint Petition And Stipulation filed in that case?

A. Yes.

Q. What were the major changes made in that version of the parties' settlement proposal?

A. We eliminated the covenants not to compete and substituted a separate ancillary agreement requiring either party to first seek PUCO approval before reentering the

areas described in the covenants not to compete and obtaining findings that the facilities to be constructed would not result in wasteful duplication or be contrary to the public interest. A case would be formally docketed, and the party whose area was to be reentered would be automatically granted intervention.

Q. Was there any precedent for such an arrangement?

A. Yes. In PUCO Case No. 87-1528-GA-ATA, Dayton Power & Light Company had advocated a similar procedure to prevent wasteful duplications between gas and electric companies.

Q. Do you recall whether that procedure was approved in this case?

A. No. I withdrew as counsel once Suburban's agreement with Columbia was found acceptable in that case.

Q. Did Chairman Glazer find the Amended Petition And Stipulation acceptable?

A. No. In fact, he misinterpreted the parties' substitution of the ancillary agreement as an attempt to mislead the Commission rather than remove the issue from formal consideration by the Commission, a cosmetic change suggested by the Commission staff, and became even more adamantly against anything resembling an agreement not to compete.

Q. What did the parties then do?

A. After a brief respite, the parties once again resumed settlement discussions. Southern Delaware County was beginning to explode with residential developments, and both parties were eager to resolve the underlying issues before events outpaced their ability to disengage and resume their respective competitive practices—Columbia to continue to meet electric competition with its incentive programs and Suburban to be free to compete without having to deal with those programs.

Q. Is this what produced the Second Amended Petition And Stipulation?

A. Yes.

Q. What were the major changes made in that version of the parties' settlement proposal?

A. The parties abandoned the ancillary agreement providing for PUCO approval before reentering each other's service area and agreed not to include any specific language limiting competition in their respective service areas.

Q. Why were these changes made?

A. It was clear that Chairman Glazer would not allow any agreement to be approved which contained such provisions and he controlled the Commission's agenda. In addition, without the state action provided by the Commission's approval, Columbia's antitrust attorneys were reluctant to allow any specific language to be included in the Stipulation.

Q. Did Suburban's attorneys agree?

A. No. They were satisfied that such an agreement in connection with the sale and exchange of the parties' facilities would not violate antitrust laws even without the state action exemption. However, Columbia would not budge on this issue.

Q. So what did Suburban decide?

A. I decided that I could trust the honesty and integrity of Columbia's management and, particularly, its General Counsel's, Andy Sonderman, and decided to proceed with the Stipulation without any covenants not to compete, without any ancillary agreements, and without any specific provision regarding duplication of facilities or the parties' competitive practices and rely on the general language of the Stipulation and its purpose and intent, i.e., to resolve all of the parties' competitive disputes, which clearly involved wasteful duplication of facilities and Columbia's builders' incentive programs.

Q. Did you request any specified assurances in the Stipulation to buttress this decision?

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

Q. Did Columbia agree to this request?

A. Yes.

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

A. Yes.

Q. These maps have been marked Exhibits 3 through 6. Would you please explain these maps.

A. Yes. First, I should state that I did not prepare the maps; but they were prepared under my direction, supervision, and control.

Q. Thank you. Please proceed.

A. Exhibit 3 depicts Suburban's southern Delaware County distribution system as it existed in 1994 and actually had existed since it was constructed in 1988 and 1989. Exhibit 4 depicts the area within which Columbia's covenant not to compete was to apply pursuant to the Stipulation as originally submitted to the Commission in PUCO Case Nos. 93-1569-GA-SLF, et al. Exhibit 5 depicts the expanded area within which Suburban reserved the right to sue should Columbia reintroduce builders' incentive programs in resolving the Second Amended Stipulation in PCUO Case Nos. 93-1569-GA-SLF, et al. Exhibit 6 depicts violations of the settlement reached in that case engaged in by Columbia in the area reserved to Suburban in Exhibit 5 in 2007 and in this case.

Q. Would you more specifically describe the violation depicted in Exhibit 6 which occurred in 2007?

A. Yes. In August of that year, we learned that Columbia was proposing to serve a portion of a residential subdivision which Suburban was already serving abutting the east side of Braumiller Road. To serve that portion of the subdivision, known as Braumiller Estates, Columbia proposed to run a pipeline from Royal Dornoch Golf Course south on Braumiller Road to the entrance of the subdivision, parallel to Suburban's existing lines, and cross over to serve the portion that had previously been committed to Suburban. In the process, Columbia proposed to duplicate pipelines which Suburban had constructed in 1988 and which served residences on both sides of Braumiller Road. Moreover, the subdivision involved was wholly and

clearly within the area within which Columbia agreed not to engage in such activities in Case Nos. 93-1569-GA-SLF, et al.

Q. What action or actions did Suburban take in response?

A. I sent a letter to Columbia's then President, Jack Partridge, to advise him of this situation and requested his intervention. Upon investigation with the developer, I learned that the portion of the development to be served by Columbia was awarded by mistake; but the developer had entered into a contract with Columbia and was reluctant to reverse this decision. I sent a further letter to Mr. Partridge advising him of this and offered to assume any obligations Columbia might have incurred in reliance on this contract. His response indicated that he was misinformed, asserting that the facilities Columbia proposed to use had been transferred to Columbia by Suburban and that the subdivision involved was not within the area reserved to Suburban by the Second Amended Stipulation, both of which assertions were in error. While insisting that Columbia intended to strictly abide by the Stipulation, Columbia nevertheless proceeded to take the actions described.

Q. Do you have copies of that correspondence?

A. Yes. It is attached to my testimony as Exhibits 7 through 14.

Q. What was Suburban's response?

A. Suburban filed a motion to reopen and enforce the Second Amended Stipulation and the Commission's order in Case Nos. 93-1569-GA-SLF, et al. with the PUCO.

Q. Did Suburban ultimately decide to dismiss that case?

A. Yes.

Q. Why did Suburban ultimately decide to dismiss that case?

A. As I previously stated, the developer involved made a personal appeal that Suburban do so. It did not want to become embroiled in a dispute between Columbia and Suburban. We honored this request.

Q. Were there any other violations of the 1995 Stipulation between the 2007 incident and the incident involved in this case involving duplications of Suburban's

distribution system or the use of marketing incentives in the area depicted in Exhibit 5?

A. No.

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

A. That's correct.

Q. Returning your attention to Exhibit 6, what other violations of the 1995 Stipulation are depicted?

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

Q. How did Suburban learn of this violation of the parties' agreement?

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

Q. Did the developer's local representative give any reason for this switch?

A. Yes.

Q. What was the reason?

A. Columbia is going to pay the developer between \$300 and \$800 per lot for the right to serve the rest of the development.

Q. Did he give any other reason?

- A. No. In fact, he stated that but for Columbia's offer to pay for the right to serve the rest of the development, Suburban would have served the rest of the development.
- Q. Are you aware of any other offer of similar incentives made by Columbia within the area depicted on Exhibit 4?
- A. Yes. Columbia's representative made the same offer to a major developer in this area to take away several major developments committed to Suburban; and other developers have advised Suburban that they have agreed or may agree to switch to Columbia, one of whom has asked if Suburban had changed its policy of not offering or paying such incentives.
- Q. Mr. Pemberton, do you know of any precedent for proceeding with a settlement of a case based on an understanding as a basis for a specific agreement rather than a specific provision regarding that understanding?
- A. Yes. In fact, Columbia and Suburban proceeded with the settlement reached in PUCO Case No. 87-1528-GA-ATA on the understanding that Columbia would provide Suburban with the cost studies referred to in Section 34 of its PUCO tariff, as amended, which, by the way, it failed to do in this case, without including this requirement in an agreement or in the amended tariff itself.
- Q. Was the Commission called upon to address the validity of this understanding?
- A. Yes. When Dayton Power & Light Company requested that it, too, be provided copies of such studies, the Commission held that Columbia need not do so even though Columbia had agreed to provide Suburban with copies based on the understanding arrived at in settling that case.
- Q. Are there any others?
- A. Yes. Mr. Sonderman agreed that the marketing incentives addressed in PUCO Case Nos. 93-1569-GA-SLF, et al. were included in the settlement reached in PUCO Case No. 87-1528-GA-ATA even though they were not specifically included in the restrictive language incorporated into the parties' tariffs in that case.
- Q. As an experienced trial lawyer before this Commission and others, would you consider such unwritten agreements or understandings unusual?

A. No.

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

A. Since the 1995 Stipulation was negotiated, there have been significant changes in Columbia's management. In the meantime, Suburban has successfully competed with Columbia in the area within which Columbia agreed not to duplicate facilities or offer builders' incentives. It would appear that Columbia has decided that it cannot compete with Suburban on a level playing field and so it has decided to reintroduce these predatory practices into Suburban's service area.

Q. Are you familiar with Columbia's DSM program and the builders' incentives authorized in the cases instituting and extending that program?

A. Yes, generally.

Q. Has Suburban been subjected to competition from that program?

A. It is my understanding that that is the program currently being offered in Suburban's Delaware County service area.

Q. Does Suburban consider the offering of that program within its service area to be unlawful?

A. Yes.

Q. Why?

A. Initially, because Columbia specifically restricted the offering of this program to customers or prospective customers, including builders and developers, within its service area.

Q. Is or was the Glenross subdivision within Columbia's service area?

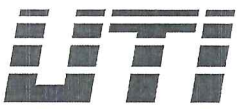
A. No.

Q. Upon what do you base your answer?

- A. Initially, if there is anything at all that qualifies as a natural gas company's "service area," it is the area served by Suburban on and adjacent to Cheshire Road. Suburban has constructed and maintained service lines and facilities in this area since 1988 and has served customers there for nearly 30 years. As shown by Exhibits 4, 5, and 6, Columbia, itself, has by its course of conduct and agreements and proposed agreements with Suburban during this period acknowledged this fact. Secondly, this area meets Columbia's own definition of this term as used by its witness, Mr. Thomas Devers, in PUCO Case No. 86-1747-GA-CSS of which this Commission can and should take administrative notice. Mr. Devers sponsored Columbia's exhibit in that case setting forth Columbia's competitive policies when competing with other natural gas distribution companies and, specifically, smaller natural gas companies such as Suburban. Basically, he characterized a company's service area as an area traditionally served by a company. More recently, Columbia's own field engineer acknowledged that this area is considered Suburban's service area. Prior to the construction of the pipeline involved in this case, Columbia neither owned nor maintained any facilities on Cheshire Road other than the line west of Braumiller Road transferred by Suburban under the 1995 Stipulation.
- Q. Did Mr. Devers also testify as to what conduct Columbia would consider predatory or engaging in destructive competition?
- A. Yes. He testified that Columbia would consider a competitor's duplicating Columbia's existing lines and "raiding" its customers and markets in such an area destructive competition.
- Q. Isn't that what Suburban is alleging Columbia is doing in this case?
- A. Yes.
- Q. Did Mr. Devers testify also as to whether Columbia would engage in such practices?
- A. Yes. Its policy states and Mr. Devers testified that Columbia would not engage in such practices unless another natural gas company engaged in such practices.
- Q. Were Columbia's competitive practices specifically filed with and presented to this Commission?
- A. Yes, in July, 1986.

- Q. Do you know whether Columbia has ever withdrawn these practices or amended them in any way?
- A. Not to my knowledge.
- Q. So they would still remain effective to this day?
- A. Yes, I believe so.
- Q. Is there any other basis for your belief that offering its DSM program in competition with Suburban would be unlawful?
- A. Yes. In that same case, PUCO Case No. 86-1474-GA-CSS, Columbia attempted to justify similar incentive programs on the basis that their cost was absorbed solely and completely by Columbia's shareholders and had no adverse effect on customers who did not receive the benefits of those programs. I understand that the costs of Columbia's DSM program is recovered from all of its customers through a rider and that Columbia's shareholders even enjoy a return on these "investments."
- Q. Mr. Pemberton, are you a Columbia customer?
- A. Yes.
- Q. Does your monthly bill include such a rider?
- A. Yes.
- Q. Do you receive any benefit from that program?
- A. No.
- Q. Is there any other basis for your belief that Columbia's offering its DSM program in competition with Suburban in the area involved in this case would be unlawful?
- A. Yes. Columbia agreed not to offer such programs in this area in arriving at the Stipulation approved in PUCO Case Nos. 93-1569-GA-SLF, et al.
- Q. What will be the consequences to Suburban should the Commission deny Suburban the relief requested in this case?

- A. Suburban has invested over \$40 million in the area depicted in Complainant's Exhibit 6 in reliance as the Stipulation approved in PUCO Case Nos. 93-1569-GA-SLF, et al. and has finalized an additional \$8.5 million loan to extend its existing supply line to meet both near-term and long-term capacity requirements in that area which has been approved by the Commission. If the Commission denies Suburban the relief requested in this case, this line extension could become stranded investment jeopardizing Suburban's very existence due to Suburban's inability to compete with Columbia's unlawful builders' incentives. As evidence as to Columbia's intentions in this regard, the Commission should note that the Columbia pipeline involved in this case is an eight-inch, high density pipeline designed not merely to serve the development in question but to cannibalize the entire area depicted in Complainant's Exhibit 6.
- Q. Columbia's lawyer has alleged that what Suburban is seeking in this case is a "thinly veiled attempt to cobble together a de-facto exclusive service territory" within which Columbia is prohibited from competing with Suburban. Is that true?
- A. Absolutely not. It is not competition that Suburban is attempting to avoid in this case but unfair and unlawful competition. Suburban has added over 10,000 customers to its system in Delaware County since the 1995 Stipulation was approved, in competition with Columbia, and is prepared to continue to compete with Columbia on a level playing field.
- Q. Does that complete your prepared direct testimony in this case?
- A. Yes.



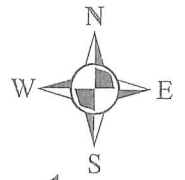
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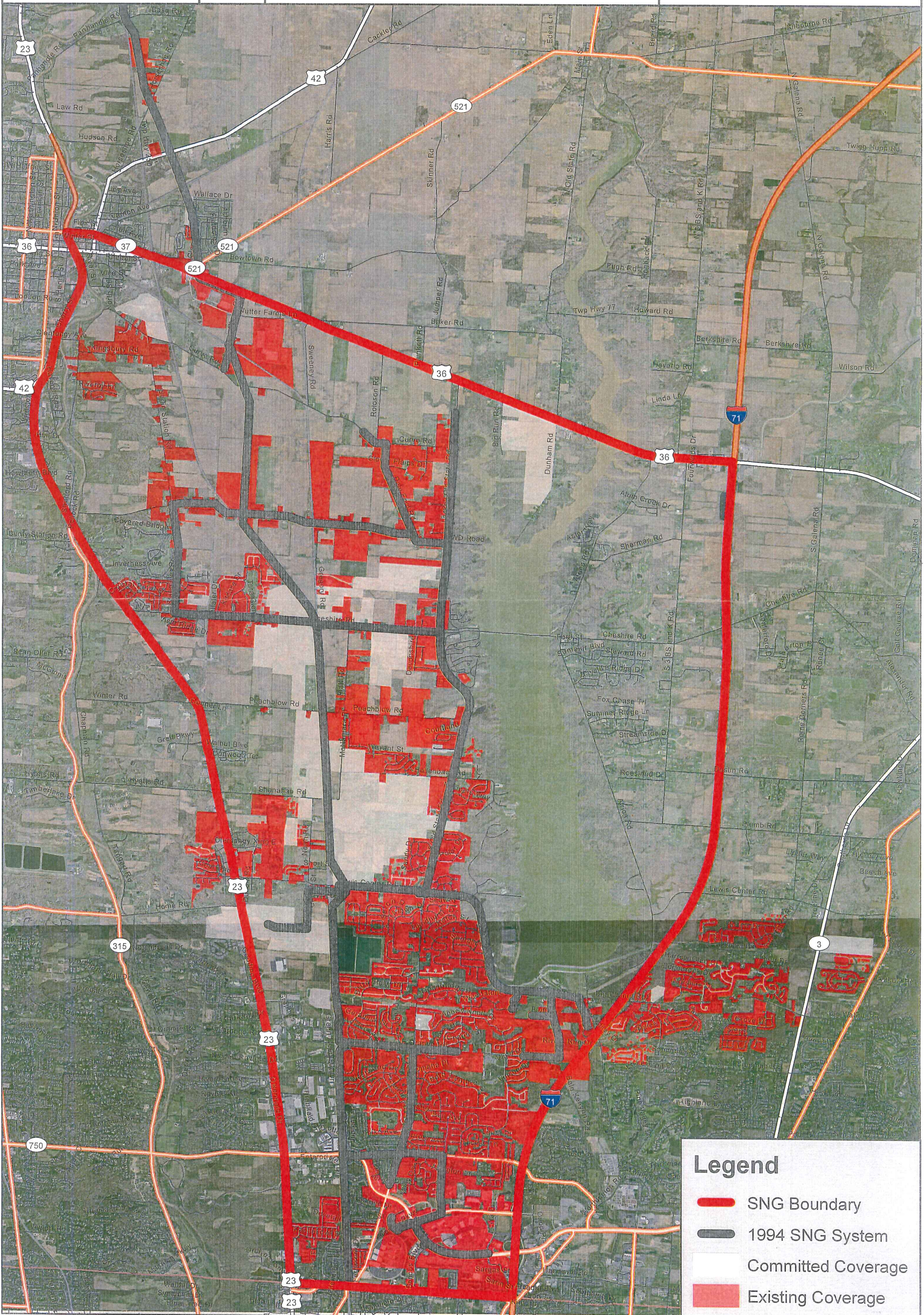
Suburban Natural Gas Company

Service Line 1994

REVISED: 11/1/2017



0 0.5 1 2 Miles



Legend

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

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

Summary: Motion for Leave to Supplement Testimony and Request for Expedited Ruling electronically filed by Mr. Eric B. Gallon on behalf of Columbia Gas of Ohio, Inc.