

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of Columbia Gas of Ohio,)
Inc.'s Letter of Notification for the) Case No. 19-2148-GA-BLN
Marysville Connector Pipeline Project)
)

**PETITION FOR LEAVE TO INTERVENE
AND/OR
MOTION FOR WAIVER
OF
SUBURBAN NATURAL GAS COMPANY**

Pursuant to R.C. 4906.08(A)(3) and Ohio Adm.Code 4906-2-12(A)(2) and (B), Suburban Natural Gas Company (Suburban) respectfully petitions the Ohio Power Siting Board (Board) for leave to intervene in the above-captioned proceeding with the full powers and rights granted to intervening parties. As an initial matter, while Columbia Gas of Ohio, Inc. (Columbia) has requested an accelerated review of its Letter of Notification, Columbia has failed to satisfy the requirements for such acceleration under R.C. 4906.03(F)(3). Specifically, as set forth in more detail in the attached Memorandum in Support, Columbia has not identified any “specific customer or specific customers” for whom the proposed pipeline is “primarily needed to meet the requirements” of that specific customer(s). R.C. 4906.03(F)(3). Moreover, because the proposed Marysville Connector Pipeline Project (Project) is part of a much larger pipeline construction project, the gas pipeline implicated in the Project will be “more than five miles in length.” Id. Thus, accelerated review is not appropriate. As a result, Suburban’s petition to intervene is timely inasmuch as R.C. 4906.08(A)(3) and Ohio Adm.Code 4906-2-12(A)(2) allow parties thirty days after the date of publication of notice, or until January 22, 2020, to intervene in this proceeding.

Alternatively, if the Board determines that Columbia's request for accelerated review was appropriate (which it should not), Suburban respectfully petitions the Board for leave to intervene out of time in this proceeding pursuant to R.C. 4906.08(B) and Ohio Adm.Code 4906-2-12(C). Specifically, given the timing of the publication of public notice by Columbia on the eve of the holidays, Suburban was unaware that Columbia published notice on December 23, 2019 until the notice was filed in the docket on January 6, 2020 and received through docketing on January 7, 2020. The accelerated procedure initiated by Columbia and the accelerated timelines implemented over the intervening holidays create extraordinary circumstances that warrant granting the intervention out of time for good cause. Given that this petition is only four business days out of time and the proceeding is in its early stages (with construction of the Project not slated to begin for more than two years), no prejudice will be caused to any party in granting the petition to intervene out of time. Suburban's participation in the proceeding will also not delay the proceeding. Nonetheless, Suburban agrees to take the record as it exists.

Additionally, if the Board determines that Columbia's request for accelerated review was appropriate (which it should not), and to the extent the Board deems necessary, pursuant to Ohio Adm.Code 4906-6-01(B), Suburban seeks a waiver of Ohio Adm.Code 4906-6-08(A)(6) that requires interested persons to file motions to intervene and/or comments "within ten days of the date of publication."

As demonstrated in the attached memorandum in support, Suburban has a real and substantial interest in this proceeding which may be adversely affected by the outcome herein, and which cannot be adequately represented by any other existing parties. Thus, Suburban satisfies the standard for intervention set forth in Ohio statutes and regulations.

Therefore, Suburban respectfully requests that the Board grant its petition for leave to intervene, its petition for leave to intervene out of time for good cause shown, and/or its motion for waiver of the requirement to intervene in an accelerated certificate application proceeding within ten days, and make Suburban a full party of record in this proceeding.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION.

On December 20, 2019, Columbia Gas of Ohio, Inc. (Columbia) filed a Letter of Notification concerning a proposed pipeline project referred to as the Marysville Connector Pipeline Project (Project).¹ Simultaneously therewith, Columbia also sought accelerated review of its Letter of Notification under R.C. 4906.03(F)(3) and Ohio Adm.Code Chapter 4906-6.² Columbia had seven days to give public notice in newspapers of general circulation in the Project area, which could have placed the notice in the newspaper after the holidays. See Ohio Adm.Code 4906-6-08(A). Instead, Columbia chose to have the public notice published on December 23, 2019, on the eve of the holidays and at a time when interested parties were potentially distracted with family and holiday commitments.³ On December 24, 2019, after the public notice was published, Columbia further amended its Letter of Notification appendix filing.⁴

¹ See Columbia's Letter of Notification: Marysville Connector Pipeline, OPSB Case No. 19-2148-GA-BLN (December 20, 2019).

² Id.

³ See Proof of Publication (January 6, 2020).

⁴ See Amended Appendix C (December 24, 2019).

Proof of publication was filed on January 6, 2020.⁵ If accelerated review is applied (which it should not be), then petitions to intervene were due on January 2, 2020.

Given the timing of the publication of public notice and the intervening holidays, requiring interventions by the public and interested parties to be filed by January 2, 2020, a short deadline tied to a newspaper notice published on December 23, 2019, is unjust and unreasonable. Given the publication date and subsequent holidays, Suburban Natural Gas Company (Suburban) was unaware that Columbia had published public notice on December 23, 2019 until it received Columbia's filed Proof of Publication through docketing on January 7, 2020.

Suburban is an Ohio corporation engaged in the business of providing natural gas to customers in central and northwest Ohio. It is a public utility and natural gas company within the definitions of Sections 4905.02 and 4905.03(E), Revised Code. Suburban currently provides natural gas service in Ohio to over 17,000 residential and commercial customers in Henry, Wood, Delaware, and Marion Counties. Suburban is a customer of Columbia taking supply from Columbia's pipeline system and its interests may be affected by the outcome of this proceeding.

Suburban contends that accelerated review should not apply to this Project for the reasons set forth below, thereby rendering this petition for leave to intervene timely. However, if the Ohio Power Siting Board (Board) finds Columbia's acceleration request appropriate (which it should not), in light of the accelerated procedure and timelines over the intervening holidays, extraordinary circumstances for good cause exist to grant Suburban's petition for leave to intervene out of time. The instant petition is only four business days out of time, and thus, no prejudice will be caused to any party and Suburban's participation in the proceeding will not delay the proceeding. Accordingly, Suburban respectfully requests that the Board grant its petition.

⁵ See Proof of Publication (January 6, 2020).

II. SUBURBAN SATISFIES THE BOARD'S STANDARD FOR INTERVENTION.

Pursuant to Ohio Adm.Code 4906-2-12(B), the Board or Administrative Law Judge may consider the following factors in deciding whether to permit intervention:

- (a) The nature and extent of the person's interests.
- (b) The extent to which the person's interest is represented by existing parties.
- (c) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding.
- (d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.

In analyzing these factors, it is apparent that Suburban's petition to intervene satisfies the Board's standard for intervention.

First, Suburban has an interest in this proceeding as Suburban is a customer of Columbia taking supply from Columbia's pipeline system and Suburban's interests may be affected by this Project, as well as the larger project that the Marysville Connector Pipeline is a part of, the Northern Loop Project. Suburban operates and supplies gas in Delaware County and is concerned with supply issues in the area, including sufficient capacity to meet Columbia's existing customers' needs. However, Suburban is concerned that Columbia's proposal to extend its current pipeline to transport gas out of Delaware County and expand its supply obligations is not in the best interests of its existing customers and the public and will aggravate the current supply problem.

Second, because Suburban has a direct, real, and substantial interest in the issues raised in this proceeding and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest, Suburban's interest will not be adequately

represented by other parties to this proceeding. The municipalities, Board of County Commissioners, Board of Township Trustees, and non-profit entity, Ohio Gas Access Partnership, Inc. will not adequately represent Suburban's interests. Suburban is a public utility and natural gas company and currently provides natural gas service to residential and commercial customers in Henry, Wood, Delaware, and Marion Counties. As a public utility and natural gas company, as well as a customer of Columbia, Suburban has a unique interest in this proceeding that may be affected by this Project and that cannot be adequately represented by any other party to the proceeding.

Finally, Suburban's participation in this proceeding will contribute to a just and expeditious resolution of the issues involved and will not unduly delay the proceeding or prejudice an existing party. This proceeding is in its early stages and construction of the Project is not expected to begin until February 2022. Additionally, the Project appears to be part of a larger project that is also not expected to begin until February 2022. Moreover, Suburban has a unique perspective, extensive experience and extensive knowledge regarding local gas supplies and pipelines in the area, all of which can assist the Board in its consideration of this matter. Accordingly, Suburban's participation will not unduly delay the proceeding or unjustly prejudice an existing party.

Suburban has a real and substantial interest in this proceeding which may be adversely affected by the outcome herein, and which cannot be adequately represented by any other existing parties. Thus, Suburban satisfies the standard for intervention set forth herein and should be authorized to intervene in this proceeding with the full powers and rights granted to intervening parties.

III. SUBURBAN’S PETITION TO INTERVENE IS TIMELY BECAUSE COLUMBIA’S LETTER OF NOTIFICATION DOES NOT QUALIFY FOR ACCELERATED REVIEW.

In order for Columbia to request accelerated review of its Letter of Notification, the Project must satisfy the threshold requirements of R.C. 4906.03(F)(3). Specifically, the Project must be “[a] gas pipeline that is not more than five miles in length or is primarily needed to meet the requirements of a specific customer or specific customers.” R.C. 4906.03(F)(3). Columbia failed to demonstrate that the Project satisfies those threshold requirements.

Columbia has not identified any specific customer or specific customers for whom the Project is needed to meet their requirements. *Id.* Rather, in its Letter of Notification, Columbia notes that the “natural gas pipeline is being built for economic development near Marysville, Union County, Ohio.”⁶ R.C. 4906.03(F)(3). Moreover, Columbia has asserted that the “need for the Project is to increase economic development and service reliability.”⁷ That assertion, however, does not identify the specific customer or customers whose requirements the Project is primarily needed to meet. Absent such a demonstration, accelerated review is not appropriate.

Accelerated review also is not appropriate because the Project is just one part of a much larger gas pipeline construction project that exceeds the “five miles in length” threshold. R.C. 4906.03(F)(3). Specifically, Columbia has planned a larger pipeline, called the Northern Loop Project, which is “designed to bring natural gas from pipelines on the eastern side of Franklin County, where supplies are abundant, to areas north and west of Columbus.”⁸ It should be indisputable that the Project is part of the Northern Loop Project. For example, Columbia has

⁶ See Letter of Notification at 2; see also *id.* (“The Project will provide natural gas service to new industries and residential development along the route.”).

⁷ *Id.*

⁸ See www.columbiagasohio.com/services/work-in-your-neighborhood/northern-loop-project “How does the Northern Loop project answer the need for new gas supplies?”

referred to the Northern Loop and the Marysville Connector as “one” project.⁹ In keeping consistent with considering the Northern Loop and the Marysville Connector as one project, Columbia also has virtually identical construction schedules and projected in-service dates for the Project and the Northern Loop Project.¹⁰ Given that the Project is part of the much larger pipeline in the Northern Loop Project, the “one” project will be more than five miles in length. Thus, the Project should not be subject to accelerated review because it is indisputably part of a longer pipeline.

Assuming the Board does not accept Columbia’s request for accelerated review, Ohio Adm.Code 4906-2-12(A)(2)(b) allows for petitions to intervene to be filed within thirty days after the date of publication of notice. As set forth above, the date of publication was December 23, 2019. As such, Suburban has until January 22, 2020 to petition to intervene. Accordingly, this petition is timely.

IV. IN THE ALTERNATIVE, SUBURBAN IS ENTITLED TO PETITION TO INTERVENE IN THIS PROCEEDING OUT OF TIME.

Alternatively, if the Board determines that Columbia’s request for accelerated review was appropriate (which it should not), Suburban respectfully petitions the Board for leave to intervene out of time in this proceeding pursuant to R.C. 4906.08(B) and Ohio Adm.Code 4906-2-12(C).

A. Extraordinary Circumstances and Good Cause Exist to Allow Suburban to Petition to Intervene Out of Time.

R.C. 4906.08(B) and Ohio Adm.Code 4906-2-12(C) grants the Board the discretion to grant petitions for leave to intervene as a party filed by persons identified under R.C.

⁹ See <https://www.linkedin.com/posts/columbia-gas-of-ohio-exclusive-columbia-gas-pitches-union-county-activity-6613586744749146112-4m7t>.

¹⁰ See Letter of Notification at 4; see also Columbia’s website page titled Northern Loop Project at www.columbiagasohio.com/services/work-in-your-neighborhood/northern-loop-project.

4906.08(A)(2) or (3) in extraordinary circumstances for good cause shown. The Supreme Court of Ohio has long held that statutes and rules governing intervention should be “generally liberally construed in favor of intervention.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 384 (quoting *State ex rel. Polo v. Cuyahoga Cty. Bd. of Elections* (1995), 74 Ohio St.3d 143, 144). Indeed, this Board has relied upon this long-standing principle in granting interventions out of time in extraordinary circumstances for good cause shown. See, e.g., *In the Matter of the Application of American Municipal Power-Ohio, Inc., for a Certificate of Environmental Compatibility and Public Need for an Electric Generation Station and Related Facilities in Meigs County, Ohio*, Case No. 06-1358-EL-BGN, 2007 WL 4244737, *2, Entry (December 4, 2007).

Here, extraordinary circumstances and good cause exist to warrant allowing Suburban to intervene out of time. As an initial matter, Suburban qualifies to petition for intervention under R.C. 4906.08(A)(3). More importantly, as set forth above, because of Columbia’s publication timing on the eve of the holidays, Suburban was not aware that Columbia published notice on December 23, 2019 until the notice was filed in the docket on the January 6, 2020 and received through docketing on January 7, 2020. The accelerated procedure initiated by Columbia and the accelerated timelines implemented over the intervening holidays creates extraordinary circumstances that warrant granting the intervention out of time. Given that the petition is only four business days out of time and the proceeding is in its early stages (with the Project not even slated to begin construction until 2022), no prejudice will be caused to any party in granting the petition out of time. Suburban’s participation in the proceeding will also not delay the proceeding. Nonetheless, Suburban agrees to take the record as it exists.

Accordingly, in light of the accelerated proceeding implemented over the holidays and the fact that the proceeding is in its early stages, good cause exists to grant Suburban's petition to

intervene out of time. Good cause also exists to grant Suburban's intervention because there is a question as to whether the Letter of Notification should even be considered on an accelerated basis as it is part of the larger Northern Loop Project.¹¹ Both projects will impact gas supply issues in the area and should be fully considered together under the non-accelerated process.

B. Good Cause Exists to Grant a Limited Waiver of Ohio Adm.Code 4906-6-08(A)(6).

If the Board determines that Columbia's request for accelerated review was appropriate (which it should not), and to the extent the Board deems necessary, pursuant to Ohio Adm.Code 4906-6-01(B), Suburban seeks a waiver of Ohio Adm.Code 4906-6-08(A)(6) that states that "interested persons may file motions to intervene and/or file comments within ten days of the date of publication." Specifically, as set forth above, due to the accelerated filing request, the intervening holidays, and the timing of the publication of the public notice by Columbia that triggered the intervention deadline, a waiver of the rule is necessary in order to allow Suburban a reasonable opportunity to participate. Due to the accelerated process implemented over the holidays, Suburban did not become aware that Columbia had published notice until after the deadline for intervention in an accelerated proceeding had passed. As such, Suburban respectfully requests a limited waiver of Ohio Adm.Code 4906-6-08(A)(6) that requires motions to intervene to be filed within ten days of the date of publication in an accelerated review proceeding for good cause shown to allow it to file four business days out of time in this proceeding. This request will not affect the substantial rights of any party and will not prejudice any party. Given the importance of ensuring all interested parties are able to participate in proceedings that may impact them, good cause exists to grant such waiver.

¹¹ See Section III, supra.

V. CONCLUSION.

For the foregoing reasons, Suburban respectfully requests that the Board grant its petition for leave to intervene, its petition for leave to intervene out of time for good cause shown, and/or its motion for waiver of the requirement to intervene in an accelerated certificate application proceeding within ten days so that Suburban is made a full party of record in this proceeding.

Respectfully submitted,

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Counsel for Suburban Natural Gas Company

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served upon all parties of record via electronic mail January 8, 2020.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

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Summary: Petition For Leave to Intervene and/or Motion for Waiver of Suburban Natural Gas Company electronically filed by Mrs. Kimberly W. Bojko on behalf of Suburban Natural Gas Company