

**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)

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

I. INTRODUCTION.

In its Memorandum Contra to Suburban Natural Gas Company's (Suburban) Petition for Leave to Intervene and/or Motion for Waiver (Petition), Columbia Gas of Ohio, Inc. (Columbia) mischaracterizes Suburban's arguments and makes improper and unfounded assumptions about Suburban's practices regarding its monitoring of the docket for Ohio Power Siting Board (Board) matters.¹ Despite those efforts, however, Columbia does not, and cannot, dispute the following facts, which satisfy the intervention standard:

- Suburban did not receive actual, personal notice of the Letter of Notification pursuant to R.C. 4906.06(B);²
- Columbia caused the public notice to be published on December 23, 2019, just before the holidays and did not file the proof of publication until January 6, 2020, after the accelerated deadline for intervention had passed;³

¹ See Columbia Gas of Ohio, Inc.'s Memorandum Contra Petition for Leave to Intervene and/or Motion for Waiver of Suburban Natural Gas Company (January 22, 2020) (Memorandum Contra).

² See *infra* at 3-4.

³ See Petition for Leave to Intervene and/or Motion for Waiver of Suburban Natural Gas Company at 1-2, 6-7 (January 8, 2020) (Petition).

- Suburban’s offices are located outside the primary circulation area of the newspaper publication and Suburban was unaware of the published public notice;
- Suburban petitioned for leave to intervene a mere four business days out of time with this proceeding in its infancy stages (with construction of the Project not slated to begin for more than two years);⁴
- No prejudice will be caused to any party in granting Suburban’s petition to intervene out of time;⁵
- Suburban agrees to take the record as it exists;⁶ and
- The Supreme Court of Ohio has long held that statutes and rules governing intervention should be liberally construed in favor of intervention.⁷

Each of the foregoing supports that, should the Board determine Columbia’s Letter of Notification qualifies for accelerated treatment, the Board should permit Suburban to intervene out of time.

Moreover, with respect to Suburban’s arguments that its intervention was timely because the Letter of Notification does not qualify for accelerated treatment, Columbia asserts that “Suburban’s claims regarding the use of the accelerated application [Letter of Notification] format could properly be raised only after it had timely intervened.”⁸ In essence, Columbia argues that failing to satisfy the accelerated intervention deadline because you were not aware of such deadline serves as a bar to challenge whether accelerated treatment is even appropriate in the first instance. That cannot be the law and policy of the Board; otherwise, a slippery slope could result where utilities would file an accelerated application that does not qualify for acceleration simply to cut-off potential intervenors from challenging that acceleration because they did not comply with the non-applicable accelerated deadlines that were unknown. One of the tenants of the applicable

⁴ Id.

⁵ Id. at 4.

⁶ Id. at 7.

⁷ Id. at 6-7.

⁸ Memorandum Contra at 3-4.

statute is to allow sufficient time for parties to receive notice of such projects and to participate in the case and only grant accelerated review in certain circumstances. R.C. 4906.03 and 4906.08. Columbia's approach would render certain statutory provisions and deadlines meaningless. *Id.* For the reasons set forth in its Petition, Suburban remains steadfast that its Petition was timely because Columbia's Letter of Notification does not qualify for accelerated review.

Finally, in opposing intervention, Columbia essentially asserts that Suburban cannot satisfy the intervention requirements because it is merely a customer of Columbia. That, however, is an understatement of Suburban's real and substantial interest in this proceeding. Suburban takes its supply from Columbia at two points of delivery in order to serve its residential and commercial customers in Delaware County, as well as in other counties. Suburban has requested additional supply from Columbia and was told that no additional capacity is available. As such, Suburban is concerned about the extension of Columbia's pipeline to meet the needs of additional customers, as well as the overall impact of the Project on the system and the region. Suburban needs to ensure that it has sufficient supply from Columbia to be able to continue to serve its customers. Extending the line to serve customers out of Delaware County could impact Columbia's ability to adequately satisfy its obligations to Suburban. And, given Columbia's recent statements regarding natural gas supply shortages and the need for system-wide improvements in the region, Suburban is concerned about the impact the Project will have on natural gas supplies for it and its customers' needs. Suburban's interests are both as a customer of Columbia and as a public utility. As such, Suburban satisfies the standard for intervention set forth in Ohio statutes and regulations, as well as Supreme Court of Ohio precedent.

II. EXTRAORDINARY CIRCUMSTANCES EXIST AUTHORIZING SUBURBAN TO BE GRANTED LEAVE TO INTERVENE FOR GOOD CAUSE SHOWN.

Assuming, *arguendo*, that Columbia's Letter of Notification qualifies for accelerated treatment (which it does not),⁹ extraordinary circumstances exist supporting the granting of Suburban's petition for leave to intervene out of time for good cause shown. Columbia's Memorandum Contra does not change that fact. For example, in its efforts to overcome the existing extraordinary circumstances supporting leave to intervene, Columbia relies upon the fact that "six other potential intervenors were able to file timely petitions to intervene[.]"¹⁰ This assertion, however, is disingenuous. What Columbia fails to disclose to the Board is that all but two of those intervenors were served with, and thus had actual notice of, the Letter of Notification pursuant to R.C. 4906.06(B).¹¹ And, as to one of the other intervenors, Ohio Gas Access Partnership Inc. (OGAP), while it may not have been served directly, some of its members and Board members included municipalities or other public entities that were provided actual notice pursuant to R.C. 4906.06(B).¹² And, with respect to the Logan County Board of Commissioners (the only other purported "timely" intervenor who did not receive personal notice of the Letter of Notification), the Logan County Chamber of Commerce is a member of OGAP and likely received

⁹ See Petition at 5-6.

¹⁰ Memorandum Contra at 5-6.

¹¹ See Letter of Notification at 8-10; see also Petition for Leave to Intervene of the Madison County Commissioners (December 31, 2019); Notice to Intervene as a Party Board of Township Trustees, Jerome Township, Union County, Ohio (December 31, 2019); Notice to Intervene as a Party Board of Township Trustees, Millcreek Township, Union County, Ohio (December 31, 2019); Notice to Intervene as a Party Board of County Commissioners, Union County, Ohio (December 31, 2019).

¹² See Petition for Leave to Intervene of the Ohio Gas Access Partnership, Inc. (January 2, 2020) at 2 ("OGAP's members include public entities, including the City of Marysville . . ."); see also Letter of Notification at 8 (listing out 11 representatives of the City of Marysville who received actual notice of the Letter of Notification). Also see <https://www.ohiogap.org/about-us/>.

notice either through them or another source.¹³ Columbia does not and cannot contend that Suburban received actual notice of the Letter of Notification pursuant to R.C. 4906.06(B) because Suburban did not. Indeed, in addition to Suburban and Logan County, the only other intervenor who did not receive personal, actual service (or have members or Board members receive personal, actual service) was the Delaware County Board of Commissioners, and they also received notice after the accelerated deadline for intervention had expired and thus filed a petition for leave to intervene out of time on January 17, 2020.¹⁴

Moreover, Columbia also tries to mischaracterize Suburban’s argument by claiming that Suburban made an “admission that it was following the docket in this case” and because of this “admission,” Suburban cannot establish extraordinary circumstances.¹⁵ No such admission, however, was ever made. As set forth above, Columbia did not personally notify Suburban of this matter. As a result, Suburban did not receive any notification of this matter through the public docketing system. And, contrary to Columbia’s unfounded assumption, Suburban is not a law firm and does not have legal counsel on retainer to monitor generally the Public Utilities Commission of Ohio’s (PUCO) (or the Board’s) public docketing system for it on a daily basis, and does not monitor the public docketing system itself on a daily basis. Thus, the only way Suburban would have known about this matter is through the holiday-eve publication notice – in a newspaper with a primary circulation area that does not include either of Suburban’s corporate offices– or by word of mouth. To be clear, Suburban never saw the publication notice in the Marysville newspaper. Rather, Suburban was made aware of Columbia’s filing through word of mouth *after* the

¹³ See <https://www.ohiogap.org/ogap-members/>; see also Petition for Leave to Intervene of the Logan County Board of County Commissioners (January 2, 2020).

¹⁴ See Petition for Leave to Intervene of the Delaware County Board of Commissioners at 2 (January 17, 2020).

¹⁵ Memorandum Contra at 5.

publication date and contacted the undersigned counsel to investigate *after* the holidays. At that time, Suburban did not even know Columbia had sought accelerated treatment. Shortly after being retained, it was undersigned counsel who became aware of the publication notice through its filing on the public docketing system on January 6, 2020 and Columbia's request for an accelerated review of its application – days after the accelerated intervention deadline. In short, neither Suburban nor its undersigned counsel knew that Columbia's application was on an accelerated basis and had an accelerated intervention deadline until after the time to intervene had already lapsed. As a result, Suburban immediately moved to intervene as soon as its recently retained undersigned counsel learned of the deadline.

Finally, while Columbia attempts to distinguish the cases cited by Suburban, it does not dispute, and indeed concedes, the long-standing policy upon which those cases rely: 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). And, it was this policy for which Suburban cited these cases. Moreover, these cases repeatedly have been cited by the PUCO for this same proposition:

Secondly, although the OCC's filing was a day late, the Supreme Court of Ohio has stated that intervention ought to be liberally allowed so that the positions of all persons with a real and substantial interest in the proceedings can be considered by the Commission; and that in the absence of evidence showing that intervention would unduly prolong or delay the proceedings, intervention should be granted. *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 384, 2006-Ohio-5853 at ¶ 20. . . . Although OCC's filing was a day late, our granting of OCC's motion will not unduly delay the Commission's consideration of PRO-TEC's Application or result in any prejudice to the Applicant. Accordingly, OCC's motion

to intervene should be granted.¹⁶

Here, a mere four business days has passed, the hearing has not been scheduled yet, and there will not be any delay in allowing Suburban to intervene to protect its real and substantial interest in this proceeding.

Similarly, Columbia's attempts to distinguish the decision in *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 (December 4, 2007) (*AMP-Ohio*) is unavailing. Simply put, the Board in this case considered whether an intervention was timely under the standard of extraordinary circumstances and relied upon the Supreme Court of Ohio's long-standing policy in favor of intervention. The facts of the extraordinary circumstances in *AMP-Ohio* are not why this case is relevant here. What is relevant is that, even in the context of a standard, 30-day period for intervention, the Board exercised its discretion, followed the long-standing policy in favor of allowing intervention, and allowed out-of-time intervenors leave to intervene in the case. *Id.*; see also *PRO-TEC*, Finding and Order at *3 (February 27, 2019); *In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan*, Case No. 08-917-EL-SSO, Entry at 2 (October 29, 2008) (granting motions to

¹⁶ *In the Matter of the Application of PRO-TEC Coating Company, LLC for Approval of a Reasonable Arrangement with Ohio Power Company*, Case No. 19-124-EL-AEC, 2019 WL 1025258 (Ohio P.U.C.), Finding and Order at *3 (February 27, 2019) (*PRO-TEC*); see also *In the Matter of the Application of Ohio Power Company to Update its Alternative Energy Rider and Auction Cost Reconciliation Rider*, Case No. 15-1052-EL-RDR, 2018 WL 1587822 (Ohio P.U.C.), Finding and Order at *3 (March 28, 2018) (noting that the intervention criteria "are liberally construed in favor of intervention"); *In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan*, Case No. 08-917-EL-SSO, Entry (October 29, 2008) at Finding (4); compare with *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals* (finding that IGS's motion to intervene filed seven months after the deadline and after the hearing had been in progress for one week was untimely: "We do not find that IGS presents any extraordinary circumstances which justify granting its untimely motion. While IGS cites to two cases in which intervention was granted after the deadline, the two intervenors were granted intervention after the intervention deadline, both were granted well before the hearing began.").

intervene filed October 10, 2008 and October 24, 2008 even though the deadline for interventions was September 4, 2008). Importantly, if leave may be granted in the context of the standard 30-day intervention period, it is even more reasonable to grant it in the context of a mere 10-day accelerated intervention period, particularly when those ten days include Christmas Eve, Christmas Day, New Year's Eve, and New Year's Day.

In sum, the accelerated procedure initiated by Columbia and the accelerated timelines implemented over the intervening holidays, as well as the fact that Suburban was not entitled to individual notice and is not within the primary circulation area of the newspaper publication, create extraordinary circumstances that warrant granting the intervention out of time for good cause.

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

In its Memorandum Contra, Columbia does not claim that Suburban's interest is adequately represented by existing parties. Nor does Columbia argue that Suburban's intervention will unjustly prejudice any existing party. Instead, Columbia simply argues that Suburban cannot satisfy the first factor of Ohio Adm.Code 4906-2-12(B) because Suburban is just a general customer of Columbia.¹⁷ As an initial matter, that is a mischaracterization of Suburban's real and substantial interest in this proceeding. Suburban takes its supply from Columbia from two points of delivery in order to serve its residential and commercial customers in Delaware County as well as in other counties. Suburban has requested additional supply from Columbia and was told that no additional capacity is available. As such, Suburban is concerned about the extension of Columbia's pipeline to meet the needs of additional customers, as well as the overall impact of the

¹⁷ See Memorandum Contra at 9-10.

Project on the system and the region. Suburban needs to ensure that it has sufficient supply from Columbia to be able to continue to serve its customers and meet its obligations. Extending the line to serve customers out of Delaware County could impact Columbia's ability to adequately satisfy its obligations to Suburban. And, given Columbia's recent statements regarding natural gas supply shortages and the need for system-wide improvements in the region, Suburban is concerned about the impact the Project will have on natural gas supplies for it and its customers' needs. Suburban's interests are both as a customer of Columbia and as a public utility. Suburban's interest is to protect and ensure that the Project does not divert or detract from natural gas supply available to Suburban to serve its customers.

Moreover, contrary to Columbia Gas' implications, customers routinely intervene in matters before the Board and the PUCO.¹⁸ Simply stated, Suburban has a real and substantial interest in this proceeding. As such, Suburban satisfies the standard for intervention set forth in Ohio statutes and regulations, as well as Supreme Court of Ohio precedent.

¹⁸ See, e.g., *In the Matter of the Application of the Dayton Power & Light Co. for Auth. to Amend Its Filed Tariffs to Increase the Rates & Charges for Elec. Serv.*, Case No. 91-414-EL-AIR, Entry (Dec. 13, 1991) (Granting motion to intervene because movants, customers of DP&L, "set forth a real and substantial interest" in the proceeding); *In the Matter of the 1990 Long-Term Forecast Report of Ohio Power Co. in the Matter of the 1990 Long-Term Forecast Report of the Columbus Southern Power Co.*, Case No. 90-659-EL-FOR, Entry (July 22, 1991) (Granting motion to intervene because movants, as customers of Ohio Power Company and Columbus Southern Power Company, "set forth valid interests" in the proceeding); *In the Matter of the Application of Gen. Tel. Co. of Ohio for Auth. to Adjust Its Rates & Charges & to Change Its Tariffs.*, Case No. 81-383-TP-AIR, Entry (Nov. 23 1981) (Granting leave for the City of Brunswick to intervene because the City and its citizens who were customers of General Telephone of Ohio had a real and substantial interest in the case); *In the Matter of the Application of Ohio Am. Water Co. to Increase Its Rates for Water & Sewer Services Provided to Its Entire Serv. Area.*, Case No. 09-391-WS-AIR (Jan. 5, 2010) (Granting motions to intervene where movants were "Ohio American customers with a real and substantial interest in [the] proceeding."); see also *In the Matter of the Application of Ohio Am. Water Co. to Increase Its Rates for Water & Sewer Services.*, Case No. 07-1112-WS-AIR (July 22, 2008) (same); *In Re Ohio Am. Water Co.*, Case No. 06-433-WS-AIR, Entry (Nov. 7, 2006) (same); *In the Matter of the Application of Ameritech Ohio for Auth. to Furnish Intralata, Dedicated Private Line Services Within the State of Ohio.*, Case No. 96-155-TP-ACE, Finding and Order (July 15, 1999) (Granting intervention because, "[a]s potential competitors and customers of Ameritech's private line services, [the Commission] believe[d] that the companies have a real and substantial interest in the proposed application.").

Finally, the other challenge Columbia raises to intervention is that Suburban may unduly delay the proceeding if it asserts that the Project is part of a much larger project called the Northern Loop Project.¹⁹ As a result, Columbia asserts that Suburban will contend that the Board should consider the Project in the context of the Northern Loop Project. Putting aside the fact that Columbia has stated itself that this Project is part of the Northern Loop Project,²⁰ other intervenors have asserted similar concerns.²¹ Since these issues appear likely to be raised in this proceeding by other parties, Suburban's involvement in this case will not unduly delay the proceeding.

As such, Suburban satisfies the standard for intervention set forth in Ohio Adm.Code 4906-2-12(B) and R.C. 4906.08.

¹⁹ Memorandum Contra at 9-10.

²⁰ See Initial Comments of the Ohio Gas Access Partnership, Inc. at 1-3, n.1-4 (January 2, 2020).

²¹ See Initial Comments of the Ohio Gas Access Partnership, Inc. (January 2, 2020); see also Petition for Leave to Intervene of the Madison County Commissioners at 3 (December 31, 2019); Petition for Leave to Intervene of the Ohio Gas Access Partnership, Inc. at 4-7 (January 2, 2020); Petition for Leave to Intervene of the Logan County Board of Commissioners at 3-4 (January 2, 2020); Petition for Leave to Intervene of the Delaware County Board of Commissioners at 4-5 (January 17, 2020).

IV. CONCLUSION.

For the foregoing reasons, and for the reasons set forth in its Petition, 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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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 also is being served via electronic mail on January 29, 2020 upon the parties listed below.

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Summary: Reply Brief in Support of 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