

In The Matter of the Application of Columbia)
Gas of Ohio, Inc. for)
Adjustments to Rider IRP and Rider DSM) Case No. 19-1940-GA-RDR
Rates.)

Pursuant to R.C. 4903.221 and Ohio Adm. Code 4901-1-11, the Suburban Natural Gas Company (Suburban) moves to intervene in the above-captioned proceeding before the Public Utilities Commission of Ohio (Commission). As demonstrated in the attached Memorandum in Support, Suburban has a real and substantial interest in the proceeding which may be adversely affected by the outcome and which cannot be adequately represented by any other party. Further, Suburban's participation will not unduly delay the proceedings or prejudice any other party. Accordingly, Suburban satisfies the standard for intervention set forth in Ohio statutes and regulations. Suburban respectfully requests that this Commission grant its motion to intervene for these reasons and those set forth in more detail in the attached Memorandum in Support.

In addition, as required by the Attorney Examiner's March 6, 2020 Entry, Suburban also submits its comments to the application of Columbia Gas of Ohio, Inc. (Columbia). Those comments also are set forth in the attached Memorandum in Support.

Respectfully submitted,

/s Kimberly W. Bojko

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter of the Application of Columbia)
Gas of Ohio, Inc. for)
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MEMORANDUM IN SUPPORT

I. Introduction.

On February 28, 2020, Columbia Gas of Ohio, Inc. (Columbia) submitted an application to the Public Utilities Commission of Ohio (Commission) to adjust its Rider IRP and Rider DSM.¹ The Demand Side Management (DSM) Program offers direct financial incentives to homebuilders for each energy efficient home that they build that exceeds state energy code minimum levels (builder program).² Columbia's customers pay for the incentives through a Commission-approved alternative rate plan authorizing Columbia to establish Rider DSM.³ The Commission specified that Columbia was only to offer rebates under the DSM Program to builders and existing customers within its service territory.⁴ Columbia has since disregarded the Commission's Order and used its DSM Program to stifle competition within Delaware County, Ohio. In addition, Columbia's anticompetitive actions are contrary to the DSM Rider, tariffs, and statutory authority.

¹ In the Matter of the Annual Application of Columbia Gas of Ohio, Inc. for an Adjustment to Rider IRP and Rider DSM Rates, Case No. 19-1940-GA-RDR (February 28, 2020).

² In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a Demand Side Management Program for Residential and Commercial Consumers. Case No. 08-0833-GA-UNC (July 1, 2008).

³ Id. at 1.

⁴ In the Matter of the Joint Application of Columbia Gas of Ohio, Inc. and Suburban Natural Gas Company for Approval of Certain Tarff Modifications. Case No. 94-939-GA-ATA (November 9, 1995).

II. Intervention.

R.C. 4903.221 and Ohio Adm. Code 4901-1-11 establish the standards for intervention in Commission proceedings. R.C. 4903.221 provides, in pertinent part, that any person “who may be adversely affected” by a Commission proceeding is entitled to seek intervention in that proceeding. R.C. 4903.221(B) further requires the Commission to consider the nature and extent of the prospective intervenor’s interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding, and the prospective intervenor’s potential contribution to a just and expeditious resolution of the issues involved. Ohio Adm. Code 4901-1-11 permits intervention to a party who demonstrates a real and substantial interest in the proceeding and who is so situated that the disposition of the proceeding may impair or impede its ability to protect that interest and whose interest is not adequately represented by an existing party.

As a natural gas distribution utility in Delaware County, anticompetitive behavior within its operating territory directly harms Suburban. The Commission has made it clear that unfair competition and discrimination between utilities constitutes an injury in violation of the Ohio Revised Code.⁵ The harm to Suburban from anticompetitive behavior is amplified when the size differential between Suburban and Columbia’s customer base is accounted for.

Additionally, the Commission has previously noted Suburban’s failure to intervene in Columbia’s prior DSM proceedings.⁶ In that case the Commission found Suburban’s objections to Columbia’s DSM Program to be untimely since Suburban raised the issue as a “collateral attack” and had not participated in any of the DSM proceedings before the Commission. Adhering to the

⁵ See Entry, Case No. 86-1747-GA-CSS.

⁶ See Order, Case No. 17-2168-GA-CSS.

Commission's prior directive, Suburban now seeks to intervene and object to the implementation of Columbia's DSM Program in a proceeding deemed appropriate by the Commission.

Moreover, in the Second Entry on Rehearing, the Commission first clarified that "[it] may also consider additions, revisions, or amendments to Columbia's DSM Program as part of Columbia's DSM Program renewal application or the annual DSM rider proceedings. 2016 DSM Case, Second Entry on Rehearing (Apr. 10, 2019) at 19."⁷ Therefore, the Commission may elect to review individual DSM programs in the annual rider update proceedings.

For the foregoing reasons, Suburban has a direct, real, and substantial interest in the issues raised in this proceeding and is so situated that the disposition of the proceeding may, as a practical matter, impair or impede its ability to protect that interest. Suburban's interests will not be adequately represented by other parties to the proceeding. Finally, Suburban's intervention is timely and will not unduly delay or prolong the proceeding.

In sum, Suburban satisfies the criteria set forth in R.C. 4903.221 and Ohio Adm. Code 4901-1-11, and is, therefore, authorized to intervene with the full powers and rights granted by the Commission to intervening parties.

III. Comments.

A. Columbia's DSM Program Directly Violates a Commission Order

When the Commission authorized Columbia's DSM Program, it did so with the directive that the builder program be implemented "in" or "within" Columbia's service territory (Case Nos. 08-833-GA-UNC, 11-5028-GAUNC, and 16-1309-GA UNC). Since the Commission's 2016 Order, Columbia has offered the builder territory that is not now nor has ever been parts of its service territory. Since 2002, Suburban has operated and invested in the area now known as the

⁷ See also Case No. 18-1701-GA-RDR Entry at Paragraph 39 (April 24, 2019).

Glenn Ross subdivision in southern Delaware County. Suburban serves over 500 customers within the subdivision and has planned an \$8.5 million improvement system to support its customers within this territory. Despite Suburban's established relationship to this territory and against direct orders from the Commission, Columbia is increasingly using financial incentives to expand its service area. Columbia plans to build a main extension, a project that duplicates and will run parallel to Suburban's existing Cheshire Road distribution main, so that it can serve Glen Ross and adjacent subdivisions. This expansion project evidences that Columbia is disregarding the Commission's authority and using financial incentives to enlarge its market power.

B. Columbia's DSM Program Violates the DSM Rider

On December 21, 2016, the Commission authorized Columbia to recover certain DSM Program costs through the DSM Rider (Opinion and Order in Case No. 16-1309 GA-UNC), including costs associated with the builder program. Costs that extend to entities not located within Columbia's service territory are not recoverable through the rider. By using the DSM program to expand its service territory, Columbia is recovering ineligible costs to the direct harm of Suburban.

C. Columbia's DSM Program Violates the Main Extension Tariff

The Commission approved mandatory policies for the extension of distribution mains when it authorized Columbia's tariff. 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"). It is believed that Columbia has subsequently waived or agreed to waive, obligatory charges and deposits under the Main Extension Tariff. Again, Columbia is using a mechanism intended for the recovery of investments to undermine Suburban's operations in its operating area.

D. Columbia's Actions Violate the Ohio Revised Code

Columbia's actions in regards to its DSM Program are in direct violation of legislative authority. R.C. 4905.32 dictates that, "no public utility shall charge or receive a rate or charge for any service rendered, except as specified in its tariff." Under R.C. 4905.33, public utilities are prohibited from charging lesser compensation than specified in their tariffs. Similarly, undercharging customers "for the purpose of destroying competition" violates the Ohio Revised Code. R.C. 4905.35 makes it illegal for a utility to "make or give any undue or unreasonable preference to any person or corporation." Lastly, the Ohio Revised Code forbids natural gas companies from implementing alternative rate plans that violate Ohio policy, including residential customers' choice. (R.C. 4929.08(B); (R.C. 4929.02).

IV. Conclusion.

For the foregoing reasons, Suburban respectfully requests that it be allowed to intervene in this proceeding and be made a party with full rights therein. In addition, Suburban respectfully requests that the Commission prohibit Columbia from unjustly enriching itself from investments it did not fund and to the detriment of competing utilities, such as Suburban. Simply put, Columbia's use of the DSM Program violates the Commission's orders, the DSM Rider, tariffs, and statutory requirements, and are contrary to Ohio's public policy of promoting robust competition among utilities.

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 March 20, 2020 upon the parties listed below.

/s/ Kimberly W. Bojko
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Case No(s). 19-1940-GA-RDR

Summary: Motion to Intervene and Comments electronically filed by Mrs. Kimberly W. Bojko on behalf of Suburban Natural Gas Company