

**SUBURBAN EXHIBIT NO. 1**

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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**I. WITNESS BACKGROUND**

**Q1. 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.

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

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

**Q3. Did you hold any positions with Suburban prior to December 2000?**

A. Yes.

**Q4. 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.

**Q5. Did you serve Suburban in any other capacity before February 1989?**

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

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

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

17  
18      Upon leaving George, Greek, King, McMahon & McConnaughey, I continued to practice  
19      before the PUCO until May of 1971 when I was appointed Secretary to the PUCO by  
20      Governor John Gilligan and served as chief of staff until I resigned in 1972 to return to  
21      private practice before the PUCO, concentrating in representing regulated natural gas  
22      distribution companies. I also served for a time as counsel to the Ohio Gas Association.

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

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

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

17 **II. SUBURBAN AND COLUMBIA HISTORY**

18 **Q8. Are you familiar with Suburban's relationship with Columbia Gas of Ohio, Inc.**  
19 **(Columbia) and with the Columbia gas system?**

20 A. Yes.  
21

1 **Q9. How did you become familiar with Suburban's relationship with Columbia and the**  
2 **Columbia gas system?**

3 A. I became familiar with the relationship and the Columbia gas system when I was  
4 Suburban's attorney and by participating in several PUCO cases involving Columbia  
5 and Suburban. I was Suburban's counsel in PUCO Case No. 86-1747-GA-CSS as well as  
6 PUCO Case No. 87-1528-GA-ATA. In PUCO Case Nos. 93-1569-GA-SLF, 94-938-GA-  
7 ATR, and 94-939-GA-ATA, I was Suburban's President and General Counsel.

8 **Q10. Before 1986, do you have personal knowledge of Suburban's relationship and**  
9 **interactions with Columbia and with the Columbia gas system?**

10 A. Yes, I do as I was Suburban's regulatory attorney and represented Suburban in matters  
11 involving Columbia.

12 **Q11. Before 1986, how would you describe the relationship between Columbia and**  
13 **Suburban?**

14 A. Very cordial.

15 **Q12. What changed after 1986?**

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

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

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

1 **Q14. How would you describe Suburban's service area and customer base?**

2 A. Most of Suburban's customer base is residential, and the majority of Suburban's residential  
3 customers are located in southern Delaware County. Residential development in southern  
4 Delaware County has been strong for several decades, which explains our growth from  
5 attaching our first customer in 1989, to approximately 13,910 customers today. Over this  
6 same period, Suburban has invested over \$32.4 million in new plant and equipment in  
7 Marion and Delaware Counties.

8 **Q15. How has population grown in Delaware County compared to the rest of the state?**

9 A. Between 2010 and 2019, the population of Delaware County grew at an annualized rate of  
10 2 percent, the highest in the State of Ohio. The entire state grew at an annualized rate of  
11 0.14 percent during the same period. By comparison, Franklin County, which experienced  
12 the second highest rate of population growth during that time, grew at an annualized rate  
13 of 1.35 percent.<sup>1</sup>

14 **Q16. Previously you stated that Suburban and Columbia are competitors so is Suburban  
15 asking the PUCO to protect it from competition by Columbia?**

16 A. Not at all. Suburban has successfully competed against Columbia for many years. What  
17 Suburban is asking the PUCO to do is to ensure that Columbia is not exceeding the authority  
18 granted to Columbia by the PUCO through approval of Columbia's Demand Side  
19 Management (DSM) Program and abuse the builder incentive program approved in the DSM  
20 Program for the purpose of competing unfairly with Suburban.

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<sup>1</sup> All population figures from Ohio Development Services Agency, 2019 Ohio County Population Estimates, available at <https://development.ohio.gov/files/research/P5007.pdf>.

1 **Q17. Is the purpose of your testimony to ask the PUCO to end Columbia's builder incentive**  
2 **program in this proceeding?**

3 A. No. The purpose of my testimony is to ask the PUCO to enforce its DSM orders, the DSM  
4 rider, and Columbia's tariff and prohibit Columbia from implementing its builder incentive  
5 program in a manner that is inconsistent with the stated purpose of the program as it was  
6 approved by the PUCO in Case Nos. 08-833-GA-UNC, 11-5208-GA-UNC, and 16-1309-  
7 GA-UNC. Columbia should be prohibited from implementing the builder incentive program  
8 that is paid for by Columbia's current customers in areas outside of Columbia's existing  
9 service area for the purpose of expanding its existing service area and using financial  
10 incentives as a competitive tool to enlarge its market power.

11 **III. COLUMBIA'S DSM PROGRAM**

12 **Q18. What is the builder incentive program that is a part of Columbia's DSM Program?**

13 A. The builder incentive program is currently called the EfficiencyCrafted Homes program  
14 and was first approved as part of Columbia's DSM Program in Case No. 08-833-GA-UNC  
15 in July 2008. The program was re-approved in Case No. 11-5028-GA-UNC, and more  
16 recently in Case No. 16-1309-GA-UNC. Although given a different name at different times  
17 and funded at different levels, the basic concept underlying the program has remained the  
18 same. Broadly speaking, the builder incentive program authorizes Columbia to issue  
19 incentive payments to builders who build homes to certain levels of energy efficiency. The  
20 incentives are funded through a rider charged to Columbia's existing customers. To my  
21 knowledge, the builder incentive program is Columbia's only DSM program that pays  
22 incentives to builders. There is no requirement of the builder incentive program that would

1 require the builders to pass through or share any portion of the DSM incentive with future  
2 customers who purchase the new homes.

3 **Q19. How is Columbia's implementation of the PUCO-approved EfficiencyCrafted Homes**  
4 **program improper and contrary to the PUCO's orders, the rider, and Columbia's**  
5 **tariff?**

6 A. The PUCO did not approve the builder incentive program as a competitive tool to compete  
7 with other utilities, which do not have comparable builder subsidies, to win new builder  
8 developments and expand its service area. Rather, from the very start, as a part of a DSM  
9 program, the purpose of the builder incentive program was to improve energy efficiency in  
10 homes built "in" or "within" Columbia's "service territory."<sup>2</sup> But, today, Columbia is  
11 promoting the builder incentive program to builders as a way to distinguish itself from  
12 competitors that do not offer such incentives so that Columbia can *expand* its service area  
13 rather than enhance energy efficiency within its service area (which was the stated purpose of  
14 the program when Columbia applied for it and/or when it was approved).

15 **Q20. How has Columbia described its builder incentive program in PUCO applications**  
16 **seeking approval of the program?**

17 A. In Columbia's initial application for approval of a builder incentive program within its  
18 DSM Program in Case No. 08-833-GA-UNC, Columbia described the program as follows:

19 Builders of new, gas-heated single-family homes built **in the Columbia service**  
20 **territory** will be the target market for the program. The program will work  
21 extensively to recruit major production builders as well as smaller spec

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<sup>2</sup> *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of a Demand Side Management Program for Residential and Commercial Customers*, Case No. 16-1309-GA-UNC, et al., Opinion and Order at ¶115 (December 21, 2016) (2016 DSM Case).



1 builders. There is already a considerable Energy Star market presence in the  
2 service territory of nearly 10 % of the new home market.<sup>3</sup>

3 A similar statement appears in Columbia's application to renew the builder incentive  
4 program in its expanded DSM Program in Case No. 11-5028-GA-UNC:

5 Builders and buyers of new, gas-heated, single family homes built in the  
6 **Columbia service territory** will be the target market for the program. The  
7 program will seek to maintain participation by existing builders participating  
8 in the Energy Star program, as well as increase participation by Affordable  
9 Housing developers and "value" builders currently building to code minimum.<sup>4</sup>

10 Most recently, in Case No. 16-1309-GA-UNC, Columbia offered this description:

11 Columbia will **continue** its EfficiencyCrafted® Homes program, which offers  
12 incentives to home builders to build homes that exceed state energy code  
13 minimum levels. Participating homebuilders will continue to provide Ohio  
14 homebuyers with Energy Star® or EfficiencyCrafted® Homes that score 70 or  
15 lower on the Home Energy Rating System scale. Both standard market and  
16 affordable housing market homebuilders participate in the program. Columbia  
17 will also maintain its partnership with AEP Ohio in jointly served counties to  
18 match incentives to achieve high levels of energy efficiency in new homes....<sup>5</sup>

19 In its 2008 and 2011 applications, Columbia specifically represented that the builder incentive  
20 program would target builders "in the Columbia service territory." In its most recent 2016  
21 application, Columbia stated that it would "continue" the program. In representing that it  
22 would "continue" a program targeting homes "in the Columbia service territory,"  
23 Columbia's 2016 application implies that the target market is "homes built in the Columbia  
24 service territory."

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<sup>3</sup> *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of a Demand Side Management Program for Residential and Commercial Customers*, Case No. 08-833-GA-UNC, Application at 25 (emphasis added) (July 1, 2008) (2008 DSM Case).

<sup>4</sup> *In the Matter of the Application of Columbia Gas of Ohio, Inc., for Approval of a Demand Side Management Program for Residential and Commercial Customers and the Application for Approval to Change Accounting Methods*, Case No. 11-5028-GA-UNC, et al., Application at 28 (emphasis added) (September 9, 2011) (2011 DSM Case).

<sup>5</sup> 2016 DSM Case, Application at 11-12 (emphasis added) (June 10, 2016).

1 **Q21. Did the PUCO refer to Columbia’s “service territory” in approving continuation of**  
2 **the builder incentive program in the 2016 DSM Case?**

3 A. Yes. In approving the continuation of the builder incentive program, the PUCO stated:

4 The Commission finds that Columbia’s EfficiencyCrafted Homes program is an  
5 effective method to encourage the construction of energy efficient home **in**  
6 **Columbia’s service territory** and the customer is served by Columbia. Homes  
7 can exist for decades, if not longer, and installing energy efficient and  
8 conservation measures during construction can provide long-term savings for  
9 the resident. The **key factor** is that the home is **located within Columbia’s**  
10 **service territory and the customer is served by Columbia.**<sup>6</sup>  
11

12 **Q22. Do natural gas public utilities have certified service territories?**

13 A. No, but that is not the point. Suburban is not claiming that Columbia is statutorily  
14 prohibited from serving any particular geographic area. But Columbia is prohibited from  
15 using an energy efficiency program paid for by its existing customers as a competitive tool  
16 to expand its service area. Columbia applied for and was granted authority to implement a  
17 builder incentive program “in” Columbia’s “service territory” for the purpose of encouraging  
18 the construction of energy efficient homes for Columbia’s customers within its exiting service  
19 area. The term “service territory” explicitly implies that the program was limited to a  
20 geographic area more limited than the entire State of Ohio--areas where Columbia already  
21 has gas mains or is the only provider capable of extending an existing main to a new  
22 home. If Columbia wished to obtain approval to offer the program anywhere in Ohio, it  
23 could have asked for it, but Columbia did not. It specifically limited its request for approval

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<sup>6</sup> 2016 DSM Case, Order at ¶115 (emphasis added).

1 and approval was granted for energy efficiency homes “located within the Columbia service  
2 territory” for customers served by Columbia.

3 **Q23. Could the term “service territory” also include any geographic area Columbia may**  
4 **serve in the future?**

5 A. No, as that is not what is included in the application, the PUCO orders, or tariff establishing  
6 the DSM rider that collects costs associated with the builder incentive program. If that was  
7 intended, Columbia and the PUCO would not have limited the builder incentive program to  
8 homes located within Columbia’s service territory. The builder incentive program that was  
9 approved was approved specifically for homes located within Columbia’s service territory.  
10 The builder incentive program could have been drafted and/or approved to include a target  
11 area that consisted of “any area currently receiving service from Columbia or served by  
12 Columbia in the future.” Or the builder incentive program could have been created to be  
13 offered “anywhere in the State of Ohio served by Columbia currently or in the future.” Or  
14 the builder incentive program could have been unlimited and silent as to where the homes  
15 were located. But none of that language was adopted as it relates to the builder incentive  
16 program approved by the PUCO in three different cases.

17  
18 Importantly, over three dozen other natural gas local distribution companies, some regulated  
19 and some not, have a recognized “service territory” within Ohio.<sup>7</sup> Columbia’s applications  
20 and the PUCO orders adopting the requested builder incentive program make a distinction

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<sup>7</sup> See Ohio Public Utilities Commission, Natural Gas Distribution Service Providers as of March 15, 2017, available at [https://www.puco.ohio.gov/emplibrary/files/Util/GIS/Gas\\_Maps/Natural\\_Gas\\_Distribution\\_Companies.pdf](https://www.puco.ohio.gov/emplibrary/files/Util/GIS/Gas_Maps/Natural_Gas_Distribution_Companies.pdf).

1 between Columbia's "service territory" and the service territory of other natural gas  
2 providers, and explicitly notified the public that Columbia's builder incentive DSM program  
3 would be offered only in Columbia's service territory. Columbia has also recognized gas  
4 company service areas and has previously stated that "Columbia will not provide service  
5 to customers within the current service area of Suburban. Rather Columbia intends to  
6 install facilities where necessary that enable it to service customers beyond the current  
7 Suburban service areas." See Columbia Letter from John W. Partridge, Jr., President of  
8 Columbia, to David L. Pemberton, Sr. (September 18, 2007). Attached hereto as Exhibit  
9 A.

10 **Q24. From your regulatory experience, do you believe that had Columbia disclosed an intent**  
11 **to use the EfficiencyCrafted Homes program as a marketing and competitive tool to**  
12 **expand its service area into the service area of other natural gas providers, the PUCO**  
13 **would have expressed serious concerns?**

14 A. Yes, I believe the PUCO would have expressed concerns based on prior PUCO rulings  
15 where the PUCO has rejected incentive programs designed to give the applicant a  
16 competitive edge or respond to competition. For example, I am aware of a Suburban case,  
17 PUCO Case No. 11-5846-GA-SLF, where the PUCO rejected Suburban's request to offer  
18 builder incentives if necessary to counter Columbia's builder incentive program. The Staff  
19 witness in that case, Steve Puican, testified that "Suburban's program is strictly a  
20 competitive response program. It is intended to compete with Columbia for new load."<sup>8</sup>

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<sup>8</sup> *In the Matter of the Self-Complaint of Suburban Natural Gas Company Concerning its Existing Tariff Provisions*, Case No. 11-5846-GA-SLF, Direct Testimony of Stephen E. Puican at 5 (June 6, 2012).

1 According to Mr. Puican, “the Commission has never before approved a rider with that  
2 intended purpose.” Thus, “[a]lthough I understand the rationale behind Suburban’s  
3 particular proposal in this proceeding, I believe its approval would set a bad precedent by  
4 potentially encouraging competitive response proposals by other LDCs.”<sup>9</sup> Consistent with  
5 Mr. Puican’s recommendation, the PUCO rejected Suburban’s application to offer builder  
6 incentives as a competitive tool.

7 **Q25. Do you have any evidence of Columbia implementing its builder incentive program in**  
8 **such a manner that violates the PUCO orders approving the builder incentive DSM**  
9 **program, DSM rider, and tariff?**

10 A. Yes, I am aware that Columbia offered builder incentives under its DSM Program to a  
11 subdivision outside of Columbia’s “service territory.”

12 **Q26. Which subdivision and how do you know that it was outside of Columbia’s “service**  
13 **territory” as you have described that term?**

14 A. One example is the Glenross subdivisvion. As of 2016, Suburban was serving this  
15 development and it is considered to be within Suburban’s existing “service territory,” not  
16 Columbia’s.

17 **Q27. How is the Glenross subdivision considered to be in Suburban’s “service territory”?**

18 A. Suburban has been serving the Glenross subdivision since the first phase began in the early  
19 to mid-2000s. We supported the developer’s zoning application in 2002. Suburban serves  
20 the first ten phases of the Glenross subdivision, north of Cheshire Road, in Berlin

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<sup>9</sup> *Id.*

1 Township. The builder, Pulte Homes (Pulte), continues to build homes in several phases  
2 on the north side of the development, and Suburban serves those homes as they are  
3 completed. Service to the subdivision is provided by a gas main that runs along the north  
4 side of Cheshire Road, which was built by Suburban in 1988 to serve both sides of Cheshire  
5 Road, north and south, from Braumiller Road on the west to S. Old State Road on the east  
6 and Suburban has been serving customers on both sides of Cheshire Road since then.

7 **Q28. Why or how was the subdivision not encompassed within Columbia's service**  
8 **territory?**

9 A. The subdivision was not within Columbia's service territory as Columbia was not serving  
10 the development and did not have existing facilities to serve the development. To serve  
11 Phase 11 of the Glenross development on the south side of Cheshire Road, Columbia had to  
12 install nearly 7000 feet of 8' main along Cheshire Road, along the opposite side of the street  
13 of the Suburban main that has been in place for over 15 years. Columbia is also scheduled  
14 to install over 3,000 feet of distribution pipe within the development.

15 **Q29. What evidence does Suburban have that Columbia used the EfficiencyCrafted Homes**  
16 **program as a competitive tool in order to serve the Glenross development, which was**  
17 **outside of its service territory?**

18 A. The builder, Pulte, selected Columbia to serve future phases on the south side of Cheshire  
19 Road. Columbia agreed to pay a six-figure sum for builder incentives; build an almost  
20 7,000-foot line extension at no cost to Pulte; and pipe all future phases on the south side of  
21 Cheshire Road at no cost to Pulte. See Exhibit B attached to my testimony. Exhibit B is a  
22 Suburban business record (a memorandum recording the events of a regularly conducted

1 activity), documenting a discussion that Suburban's Vice President of System Development,  
2 had with a representative of Pulte on October 13, 2017, regarding an incentive program  
3 Columbia offered to Pulte in order for Columbia to serve the Glenross development. The  
4 memorandum explains that Pulte selected Columbia over Suburban because of the  
5 incentive program Columbia offered.<sup>10</sup>

6 **Q30. Is Glenross the only instance where Columbia promoted its builder incentives**  
7 **improperly?**

8 A. No. Suburban has evidence that Columbia promised builder incentives to the developer  
9 we work with in Berlin Manor, located in Berlin Township, to switch to Columbia. Berlin  
10 Manor is located farther east from Glenross along Cheshire Road where we already have  
11 supply mains installed and are serving customers. Columbia offered builder incentives (up  
12 to \$800 per lot) to this developer who Suburban had been serving in southern Delaware  
13 County; the developer called a meeting to inquire as to what builder incentives Suburban  
14 would offer in response. See Exhibit C attached to my testimony.<sup>11</sup> Exhibit C is an email  
15 from Columbia to Berlin Manor; Columbia's own statement explaining their Energy  
16 Efficiency Rebate program for builders and the level of incentives provided.

17  
18 Also see Exhibit D attached to my testimony, which is another Suburban business record (a  
19 memorandum recording the events of a regularly conducted activity), documenting a  
20 discussion that Suburban's Vice President of System Development had with a representative

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<sup>10</sup> See Exhibit B (Record of Regularly Conducted Activity dated October 13, 2017).

<sup>11</sup> See Exhibit C (Columbia email dated April 6, 2017).

1 of Belin Manor in January 2018, regarding whether Berlin Manor would use Columbia  
2 instead of Suburban because of Columbia's builder incentive program offered by  
3 Columbia.<sup>12</sup>

4  
5 Also see Exhibit E attached to my testimony, which is another Suburban business record (a  
6 memorandum recording the events of a regularly conducted activity), documenting a meeting  
7 that I attended between Suburban and representatives of Romanelli & Hughes on October 24,  
8 2016, where Columbia was described as using the builder incentives as a marketing tool.<sup>13</sup>

9 **Q31. Have you confirmed the level of builder incentives offered by Columbia?**

10 A. Yes. Through discovery in this case, Columbia stated that in January through September  
11 2019, it spent \$2,483,167.56 on its EfficiencyCrafted Homes Program to provide incentives  
12 to builders to build 3,163 homes, which is an average of approximately \$785.67 in builder  
13 incentives per home.<sup>14</sup>

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<sup>12</sup> See Exhibit D ((Record of Regularly Conducted Activity dated January 2018).

<sup>13</sup> See Exhibit E (Record of Regularly Conducted Activity dated October 25, 2016). Please note that there is a typographical error in the subject line of the Memorandum as the meeting occurred on October 24, 2016).

<sup>14</sup> See Testimony of Andrew S. Metz on Behalf of Columbia at 4, ln 33-26 (February 28, 2020); see also Exhibit F (Columbia Discovery Response to OCC-INT-02-004 (March 4, 2020) (Columbia identifies the EfficiencyCrafted Homes Program as the New Home Solutions Program)); see also Exhibit G (Columbia Discovery Response to Staff Data Request No. DSM-12 (December 23, 2019)).



1 **Q32. In your experience, has Suburban found it necessary to offer developers and/or**  
2 **builders in southern Delaware County incentives to build energy efficient homes?**

3 A. No. Over half of Delaware County residents over the age of 25 have a Bachelor's  
4 Degree,<sup>15</sup> and Delaware County's median income is nearly \$92,000 with over 20% of  
5 households reporting income between \$100,000 and \$150,000.<sup>16</sup> It is commonly accepted  
6 that wealthier, highly educated individuals place more value on energy efficiency than the  
7 general population. Suburban has not found it necessary to offer incentives to home  
8 builders, developers, or home buyers to induce them to build or buy energy efficient  
9 homes. In fact, the same quality of homes can be found in the first ten phases of the  
10 Glenross subdivision served by Suburban without builder incentive payments as in the  
11 phases served by Columbia. The only difference is that Columbia provided cash and other  
12 "incentives" to Pulte none of which was received by the home buyer.

13  
14 **IV. RELIEF REQUESTED**

15 **Q33. Why doesn't Suburban simply offer its own DSM Program and builder incentive**  
16 **program?**

17 A. Suburban filed an application for approval of a builder incentive program in Case No. 11-  
18 5846-GA-SLF, but the PUCO rejected it, in large part because Suburban was using the

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<sup>15</sup> See Ohio Development Services Agency, Educational Attainment: Ohio by the Numbers, available at <https://development.ohio.gov/files/research/P7006.pdf>.

<sup>16</sup> See Ohio Development Services Agency, Ohio County Profiles, Delaware County, available at <https://development.ohio.gov/files/research/C1022.pdf>.

1 program merely as a competitive response tool, which is exactly what Columbia is doing  
2 now. The PUCO should, and, in fact, must apply the same standard to Columbia.  
3

4 Again, Suburban is not challenging the fact that Columbia has a builder incentive program  
5 or contending that its approved builder incentive program in its DSM Program should be  
6 eliminated, Suburban is requesting that the PUCO find that Columbia is implementing its  
7 builder incentive program improperly and unlawfully, beyond the authority granted to it.  
8 Suburban is asking the PUCO to prohibit Columbia from using the builder incentive  
9 program as a competitive tool for purposes of expanding its “service territory” and to limit  
10 the use of the builder incentive program as part of Columbia’s DSM Program to homes  
11 located within Columbia’s service territory as approved by the PUCO.

12 **Q34. Is this what you are recommending that the PUCO do in this case?**

13 A. Yes, the PUCO should order Columbia to implement its EfficiencyCrafted Homes  
14 program in Delaware County in the manner in which it was approved. The builder  
15 incentive program should not be used as a competitive tool, but instead should be used to  
16 increase energy efficiency within Columbia’s service area for the benefit of Columbia’s  
17 existing customers who pay for the DSM Program. The builder incentive program simply  
18 is not being used as advertised by Columbia or intended by the PUCO as indicated when  
19 it approved Columbia’s current builder incentive program.<sup>17</sup>

20 **Q35. Does this conclude your direct testimony?**

21 A. Yes, it does.

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<sup>17</sup> 2016 DSM Case, Order at ¶115.

Exhibit  
A

Columbia Gas<sup>®</sup>  
of Ohio

A NiSource Company

200 Civic Center Drive  
Columbus, OH 43215  
(614) 480.5952  
Fax: (614) 480.8455  
jpartridge@nsource.com

John W. Partridge, Jr.  
President

September 18, 2007

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

RE: Your Correspondence Dated August 31, 2007

Dear Dave:

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

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

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

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

COH0152

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

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

Sincerely,

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

John W. Partridge, Jr.

COH0153

**Exhibit  
B**


**SUBURBAN NATURAL GAS COMPANY**  
ESTABLISHED 1882

211 FRONT STREET, P.O. BOX 130  
CYGNET, OHIO 43113-0130  
(419) 655-2345  
FAX: (419) 655-2274  
2626 LEWIS CENTER ROAD  
LEWIS CENTER, OHIO 43085-9206  
(740) 548-2450  
FAX: (740) 549-4939

**Memorandum**

October 13, 2017

Called Jeff Thompson, with Pulte, at 7:50 a.m. on 10/13/2017 to ask about Glenncross and if SNG was serving the south side of Cheshire Road and if he had heard about Columbia coming down Cheshire Road. He explained to me yes he knew they were coming and they would serve the south side of Cheshire Road. I asked if there was a reason why and Jeff told me there was an incentive program with Columbia. I told him thank you and I understand what he had told me. Also, Jeff said he really liked working with SNG and the incentive was the reason SNG wouldn't be used on the south side of Cheshire.

  
S. Aaron Roll  
Vice President  
System Development

AR/hc

cc: Andrew Sonderman  
File

Exhibit  
C

**Aaron Roll**

---

**From:** John Wicks <john.wicks@rpddllc.com>  
**Sent:** Thursday, April 6, 2017 12:50 PM  
**To:** Aaron Roll  
**Cc:** John Wicks  
**Subject:** FW: Berlin Manor

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

John C. Wicks  
614.323.7800

*THIS INFORMATION IS PRIVILEGED AND CONFIDENTIAL AND FOR THE SOLE USE OF THE ADDRESSEE(S). Any other use is strictly prohibited. If you have received this message erroneously, kindly destroy the communication immediately and contact me. Thank you.*

**From:** jcodispoti@nsource.com [mailto:jcodispoti@nsource.com]  
**Sent:** Wednesday, April 5, 2017 6:43 PM  
**To:** John Wicks  
**Cc:** ddenniston@advancedcivildesign.com; donnayoung@nsource.com  
**Subject:** RE: Berlin Manor

Thanks for your email, John.

I apologize I missed you via phone. It is not correct that your project is in Suburban territory.

Columbia Gas of Ohio is free to compete with any natural gas company. In the State of Ohio there are no "franchise territories" therefore, no territory is a certain natural gas provider. With that said, Columbia Gas of Ohio does have a Energy Efficiency Rebate program that most builders participate in. Depending on the builder those rebates can average anywhere from a few hundred dollars per home to \$800 per home, depending on the equipment that is being installed.

There are rebates available to homeowners as well. Whether they need a new shower head or thermostat, they are able to purchase those directly from our website, which can be found here: <https://www.columbiagasohio.com/ways-to-save/simple-energy-solutions>

In addition, homeowners have the opportunity to choose their natural gas supplier (marketer through a program called choice) if they are a customer of Columbia Gas of Ohio. They can shop rates and choose the best program that fits their needs. Suburban Natural Gas doesn't offer a choice program.

Of interest in terms of construction is that Columbia Gas of Ohio takes care of all natural gas facilities installation upstream to the meter set. Service lines and meter sets are owned and operated by Columbia Gas of Ohio, therefore homeowners do not have to responsibility to have their service lines inspected or fixed in the event of a leak or repair needed. Those lines are also monitored and walked every few years to ensure proper working order and safety.

I would certainly appreciate the opportunity to meet and discuss this further. Please feel free to give me a call if you have any questions. I look forward to hearing back from you.

Best regards,

Joe Codispoti

Joe Codispoti | Columbia Gas of Ohio | New Business Development Manager |  
290 W Nationwide Boulevard Columbus, OH 43215 | (O) 614-460-6354 | (C) 614-203-8633  
Email: [jcodispoti@nlsource.com](mailto:jcodispoti@nlsource.com)

From: John Wicks <[john.wicks@rpdllc.com](mailto:john.wicks@rpdllc.com)>  
To: "[jcodispoti@nlsource.com](mailto:jcodispoti@nlsource.com)" <[jcodispoti@nlsource.com](mailto:jcodispoti@nlsource.com)>, "[ddenniston@advancedcivildesign.com](mailto:ddenniston@advancedcivildesign.com)" <[ddenniston@advancedcivildesign.com](mailto:ddenniston@advancedcivildesign.com)>,  
Cc: "[donnayoung@nlsource.com](mailto:donnayoung@nlsource.com)" <[donnayoung@nlsource.com](mailto:donnayoung@nlsource.com)>, John Wicks <[john.wicks@rpdllc.com](mailto:john.wicks@rpdllc.com)>  
Date: 04/05/2017 02:37 PM  
Subject: RE: Berlin Manor

---

USE CAUTION: This email was sent from an external source.

I was under the impression that this site was within Suburban Natural Gas territory. Is that not correct?

John C. Wicks  
614.323.7800

*THIS INFORMATION IS PRIVILEGED AND CONFIDENTIAL AND FOR THE SOLE USE OF THE ADDRESSEE(S). Any other use is strictly prohibited. If you have received this message erroneously, kindly destroy the communication immediately and contact me. Thank you.*

**From:** [jcodispoti@nlsource.com](mailto:jcodispoti@nlsource.com) [mailto:[jcodispoti@nlsource.com](mailto:jcodispoti@nlsource.com)]  
**Sent:** Wednesday, April 5, 2017 11:39 AM  
**To:** [ddenniston@advancedcivildesign.com](mailto:ddenniston@advancedcivildesign.com); John Wicks  
**Cc:** [donnayoung@nlsource.com](mailto:donnayoung@nlsource.com)  
**Subject:** Berlin Manor

Good morning David and John,

My name is Joe Codispoti and I am a Development Manager for Columbia Gas of Ohio. I was recently made aware of the proposed development in Delaware, Berlin Manor.

I wanted to be sure I reached out to you and introduced myself as well as make you aware that I will be your contact for the project in getting natural gas facilities to the site. If site plans are available, please feel free to send those to me directly for our engineers to process and design. In the meantime, I have attached an Attachment A gas load form for the development that can be sent back with the development plans.

If you have any questions, feel free to give me a call. Thank you for your time and I look forward to working with you.

Joe Codispoti | Columbia Gas of Ohio | New Business Development Manager |  
290 W Nationwide Boulevard Columbus, OH 43215 | (O) 614-460-6354 | (C) 614-203-8633  
Email: [jcodispoti@nlsource.com](mailto:jcodispoti@nlsource.com)

**Exhibit  
D**

**SUBURBAN NATURAL GAS COMPANY**  
ESTABLISHED 1882

211 FRONT STREET, P.O. BOX 130  
CYGNERT, OHIO 43413-0130  
(419) 655-2345  
FAX: (419) 655-2274  
2626 LEWIS CENTER ROAD  
LEWIS CENTER, OHIO 43035-9206  
(740) 548-2450  
FAX: (740) 549-4939

January 2018

Talk with John Wicks about construction of Berlin Manor. He told me should be ready for gas late summer 2018. It was also discussed he was happy with SNG but COH was pressuring him to go with them. Told me they had some kind of program for builders but didn't know much about it.

*LC Roll*



# Memorandum

**SUBURBAN NATURAL GAS COMPANY**



TO: File

FROM: Andrew J. Sonderman

DATE: October 25, 2016

SUBJECT: Meeting with Vince Romanelli, October 24, 2015

Dave Pemberton, Aaron Roll and I met with Mr. Romanelli and his operations director Chuck Orth at the R&H offices. The meeting was requested by Orth to discuss the availability of cash payments per lot in a 156 acre parcel south of Berlin Station Road and the Conrail tracks. Suburban serves Glenross immediately south and east of this parcel; preliminary grading and sewer work has commenced.

At the outset, Dave asked Vince if R&H has any problems or issues with Suburban's service. Vince and Chuck confirmed that there are no issues. Vince asked Aaron if Suburban has facilities in the vicinity of Pollack Road and Braumiller; Aaron responded that we stubbed out our 4 inch to the east of the Stockdale Farm property Romanelli has acquired, putting us in position to extend into Stockdale Farm and north into Terra Alta.

Turning to the parcel immediately at issue, Vince noted that he was anticipating a sale of lots in the 156 acres to Ryan Homes. Chuck Orth said he thought Ryan may think Columbia of Ohio will serve this plan, and that Ryan would qualify for a rebate under COH's Efficiency Crafted Homes program (currently under PUCO review, but previously approved) of \$800+ per lot. Chuck confirmed that Ryan had not inquired about this, and Chuck had not suggested that COH would be the gas utility for this plan.

Anticipating where this was going, Dave provided historical context of the development of Suburban's southern system, and the competition with Columbia to establish a foothold in the market. He noted that Suburban's hallmark has been outstanding, timely and flexible service to developers of plans—a level of service that Columbia has not matched. He noted COH's on again-off again incentives under different managements intended to "win" business, and stated that Suburban's unwavering position has been that it cannot provide cash incentives given our comparative resources. He noted our 2015 profits were less than

\$500,000. He pointed to Don Kenney as a developer who has repeatedly asked for cash incentives—and who would insist on similar treatment if any other developer was provided cash rebates by SNG. After hearing what our profit last year was, Vince asked about our sale of gas, to which Dave responded that we earn no margin on the gas we purchase on behalf of our customers, and that our earnings are based on our delivery service for the gas we distribute.

Vince noted that Columbia serves a plan immediately adjacent to this parcel west of Glenn Parkway. Ultimately, he asked what cash payments per lot Suburban was prepared to offer. Dave responded: “Nothing”. He reiterated that SNG cannot survive in a bidding war with COH based on such payments—and noted that SNG is prepared to litigate the rebate program Columbia has in place if it is used to compete for builders against SNG. COH is funding these rebates through a rider paid by its customers—its investors are not investing a dime. I noted that this rebate program is ostensibly intended to incentivize the qualifying builders to construct and equip homes that meet the “Energy Star” certification requirements established by the Department of Energy. However, qualifying builders, including R&H, are meeting those certification requirements in developments served by Suburban without such rebates.

Vince stated that he was to meet with Ryan representatives on October 25. Chuck Orth noted that R&H understands Suburban’s position and has to make a “business decision” on how to deal with Ryan’s potential demand for COH to serve this plan. Dave responded that while we didn’t prefer to rely on legal rights with respect to this specific tract of land, it is a fact that a 1988 right of way agreement granted Suburban the right to install the gas system to serve customers along streets established or dedicated by the owner (and R&H as successor) on this land. Neither Vince nor Chuck responded to this statement.

AJS

PUCO Case No. 19-1940-GA-RDR  
OCC Interrogatory Set 2 No. 4  
Respondent: Andrew Metz

**COLUMBIA GAS OF OHIO, INC.**  
**RESPONSE TO THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**  
**INTERROGATORIES**  
**DATED MARCH 4, 2020**

INT-02-004. Identify the total number of unique customers that participated in each program in 2019. Unique means, for example, that if the customer received both a smart thermostat and an energy efficient showerhead under the Simple Energy Solutions program, that customer would be counted once, not twice.

**RESPONSE:**

Columbia does not collect customer account or premise numbers for Residential Energy Efficiency Education for Students or the Online Energy Audit programs. The number below is the total number of student kits distributed and online audits taken.

<b>PROGRAM</b>	<b>NUMBER OF PARTICIPATING CUSTOMERS</b>
HOME PERFORMANCE SOLUTIONS	4,797
SIMPLE ENERGY SOLUTIONS	15,791
NEW HOME SOLUTIONS	3,163
RESIDENTIAL ENERGY EFFICIENCY EDUCATION FOR STUDENTS	23,393
ENERGY DESIGN SOLUTIONS	19
INNOVATIVE ENERGY SOLUTIONS	117
HOME ENERGY REPORT PROGRAM	613,655
HIGH EFFICIENCY HEATING SYSTEM REBATE	6,745
EPA PORTFOLIO MANAGER	126
ONLINE ENERGY AUDIT	6,131
WARMCHOICE	1,938

**Exhibit  
G**

PUCO Case No. 19-1940-GA-RDR  
Staff DSM Data Request No. 12  
Respondent: Andrew Metz

**COLUMBIA GAS OF OHIO, INC.  
RESPONSE TO STAFF'S DSM DATA REQUEST  
DATED DECEMBER 23, 2019**

**Data Request No. DSM-12:**

Please provide a data dump of all programs costs for DSM programs from January 1, 2019, through September, 2019.

**Response:**

Please see "19-1940-GA-RDR Staff DSM DR Set 1 No 12 Attachment A.xlsx".

Columbia Gas of Ohio  
Case No. 19-1940-GA-RDR  
Staff Data Request Set 1, No. 12  
Attachment A

DSM Rider Program Expenses

Program	January	February	March	April	May	June	July	August	September	2019 Total
Energy Design Solutions	\$ 2,925.29	\$ 15,422.15	\$ 42,544.64	\$ 6,372.25	\$ 30,950.65	\$ 60,264.99	\$ 1,849.00	\$ 83,779.13	\$ 54,938.84	\$ 299,046.94
EPA Portfolio Manager	\$ 6,718.75	\$ 6,718.75	\$ 6,718.75	\$ 6,718.75	\$ 6,790.80	\$ 6,718.75	\$ 6,718.75	\$ 6,718.75	\$ 6,718.75	\$ 60,540.80
High Efficiency Heating System Rebate	\$ (159,139.39)	\$ 389,265.93	\$ 585,134.40	\$ (292,229.74)	\$ 527,101.88	\$ 368,152.50	\$ (7,886.47)	\$ 198,621.02	\$ 415,987.66	\$ 2,025,007.79
Home Energy Report Program	\$ 287,492.15	\$ 23,569.83	\$ 286,280.62	\$ 23,766.86	\$ 1,883.91	\$ 2,489.61	\$ 3,621.61	\$ 2,305.59	\$ 6,405.49	\$ 637,815.67
Home Performance Solutions	\$ (322,080.57)	\$ 17,997.36	\$ 1,226,175.61	\$ (481,861.96)	\$ 1,681,933.06	\$ 1,068,229.46	\$ (12,618.91)	\$ 427,727.32	\$ 1,016,921.26	\$ 4,622,422.63
Innovative Energy Solutions	\$ 40,561.82	\$ 77,168.63	\$ 204,821.61	\$ 67,100.27	\$ 85,042.77	\$ 113,427.73	\$ 55,599.43	\$ 112,787.02	\$ 190,364.73	\$ 946,874.01
New Home Solutions	\$ 401,932.14	\$ 165,843.33	\$ 519,113.08	\$ (64,580.20)	\$ 371,178.57	\$ 307,356.05	\$ 117,520.68	\$ 206,782.49	\$ 458,021.42	\$ 2,483,167.56
Online Energy Audit	\$ 33,118.15	\$ 1,520.27	\$ 1,220.41	\$ 33,484.17	\$ 1,919.31	\$ 1,848.53	\$ 1,622.11	\$ 1,702.31	\$ 25,699.10	\$ 102,134.36
Program Administration	\$ 27,863.47	\$ 37,063.72	\$ 48,472.20	\$ 90,549.56	\$ 56,282.94	\$ 153,311.67	\$ (29,734.00)	\$ 50,227.39	\$ 56,377.64	\$ 490,414.59
Residential Energy Efficiency Education for Students	\$ 9,042.33	\$ 9,161.81	\$ 37,062.92	\$ 9,320.68	\$ 9,120.28	\$ 13,056.70	\$ 207,408.41	\$ 10,339.27	\$ 10,331.27	\$ 314,843.67
Simple Energy Solutions	\$ (58,500.39)	\$ 180,868.20	\$ 224,484.87	\$ (61,085.28)	\$ 125,119.42	\$ 152,760.46	\$ 4,092.34	\$ 255,435.64	\$ 267,055.86	\$ 1,090,231.12
WarmChoice	\$ 11,052.56	\$ 13,617.27	\$ 64,788.77	\$ 2,572.06	\$ 4,794.88	\$ 6,562.91	\$ 429,984.07	\$ 776,752.09	\$ 774,870.15	\$ 2,086,994.76
Grand Total	\$ 280,986.31	\$ 940,217.25	\$ 3,246,817.88	\$ (659,872.58)	\$ 2,902,118.47	\$ 2,254,179.36	\$ 778,177.02	\$ 2,133,178.02	\$ 3,283,692.17	\$ 15,159,493.90

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**4/20/2020 5:11:50 PM**

**in**

**Case No(s). 19-1940-GA-RDR**

Summary: Testimony of David L. Pemberton, Sr. on Behalf of Suburban Natural Gas Company electronically filed by Mrs. Kimberly W. Bojko on behalf of Suburban Natural Gas Company