

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Self-Complaint of
Suburban Natural Gas Company
Concerning its Existing Tariff
Provisions.

Case No. 11-5846-GA-SLF

**INITIAL POST-HEARING BRIEF
SUBMITTED BY THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Mike DeWine
Attorney General

William L. Wright
Section Chief

Thomas G. Lindgren
Assistant Attorney General
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
T: (614) 466-4395
F: (614) 644-8764
thomas.lindgren@puc.state.oh.us

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I. PROCEDURAL HISTORY

On December 1, 2011, Suburban Natural Gas Company (Suburban) filed a self-complaint alleging that its existing tariffs were unjust and unreasonable because they lacked a demand-side management (DSM) rider to permit recovery of costs incurred through assistance to builders in the construction of energy-efficient buildings. A proposed DSM rider was attached to the complaint as Exhibit A.

By entry dated March 7, 2012, the Commission directed the Attorney Examiner to schedule this matter for an evidentiary hearing. By entry dated April 23, 2012, the Attorney Examiner ordered that the hearing be held on June 12, 2012. The hearing was then held on that date. On June 13, 2012, Suburban filed a motion requesting permission to file post-hearing briefs. By entry dated June 20, 2012, the Attorney Examiner directed that post-hearing briefs should be filed within ten days after the filing of the hearing transcript. This initial post-hearing brief is timely submitted on behalf of the Commission Staff.

II. ARGUMENT

A. The Commission should reject the proposed rider.

Suburban filed its complaint pursuant to R.C. 4905.26. As the complainant, Suburban had the burden of proving its allegations. *Luntz Corp. v. Pub. Util. Comm'n*, 79 Ohio St. 3d 509, 684 N.E.2d 43 (1997); *Grossman v. Pub. Util. Comm'n*, 5 Ohio St. 2d 189, 214 N.E.2d 666 (1966). Suburban has failed to meet its burden of proof.

Suburban has proposed a rider to permit the recovery of costs associated with providing assistance to homebuilders in the construction of energy-efficient homes. According to Suburban's complaint, this financial assistance would be offered only in those situations where a builder has received an offer from another natural gas company to provide service at the same location. Suburban alleges that this rider is necessary in order for it to compete effectively.

As demonstrated by the Staff, Suburban's proposal is not just and reasonable. Staff presented testimony by Stephen E. Puican, the Co-Chief of the Commission's Rates and Tariffs/Energy and Water Division. Staff Ex. 1 at 2. In this capacity, Mr. Puican has had extensive experience in the regulation of the natural gas industry. *Id.* Significantly for this proceeding, he has overseen Staff review of utilities' DSM programs. *Id.*

According to the testimony of Suburban's President, David L. Pemberton, Columbia Gas of Ohio currently offers a DSM program to provide incentives to home builders. Suburban Ex. 1 at 3. Suburban asserts that it is at a disadvantage in competing with Columbia because it does not have a DSM rider.

As explained by Staff witness Puican, however, Suburban is not proposing a program that is comparable to Columbia's program. Columbia's new home construction program is one part of a comprehensive portfolio of DSM programs designed to encourage a wide spectrum of customers to invest in energy-efficiency. Staff Ex. 1 at 4. This portfolio of programs was designed with input from a stakeholder group.

Columbia's DSM portfolio was initially approved by the Commission in 2008. *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 (Finding and Order) (July 23, 2008). The approved portfolio included several programs for both residential and commercial customers. These programs are described in detail in Columbia's application filed in that docket on July 1, 2008. There were programs designed to benefit existing homeowners as well as new home builders. Owners of existing homes could obtain assistance with home energy audits and weatherization, for example. Included in the portfolio was a special program for low-income customers. Also, Columbia demonstrated the cost-effectiveness of each of these programs.

Certain modifications to Columbia's programs were approved by the Commission in Case No. 10-2480-GA-UNC. Subsequently, Columbia proposed an expansion of its existing programs as well as new programs such as high-efficiency heating system rebates. The Commission approved this expanded portfolio as recommended by a unanimous stipulation signed by all parties. *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of Demand-Side Management Programs for its Residential and Commercial Customers*, Case No. 11-5028-GA-UNC (Finding and Order) (December 14, 2011). As approved by the Commission, Columbia has a diverse portfolio of programs intended to benefit a wide range of customers.

As pointed out by Mr. Puican in his testimony, Suburban's proposed program is not comparable to Columbia's. Staff Ex. 1 at 4. Suburban's proposed program is a stand-alone program that would only benefit a limited number of customers. Suburban has not proposed any programs, such as energy audits or rebates on high-efficiency furnaces, that would be available to owners of existing homes. While all of Suburban's customers would be obliged to pay for the program through the rider, very few would directly benefit. *Id.* While Mr. Pemberton asserted in his testimony that all customers would eventually benefit if Suburban's sales volumes increased as a result of having a DSM rider, these potential benefits would only be realized by the customers when Suburban chose to file a rate case. This is far different from having programs immediately available to a wide range of customers. In sum, an examination of Suburban's proposal with Columbia's DSM portfolio shows that they are not substantially similar. This is not an apples-to-apples comparison.

While labeled as a DSM program, Suburban's proposal is in reality a competitive response program, as Mr. Puican explains in his testimony. Staff Ex. 1 at 5. It is strictly intended to help Suburban compete with Columbia for new load. Staff is unaware of any case in which the Commission approved such a proposal. Approval of Suburban's proposal would set a precedent and open the door for other proposals of this type. *Id.* at 6. The majority of natural gas customers would then end up paying for benefits to a select group of customers who are targeted for marketing. Further, Mr. Pemberton acknowledged under questioning by the Attorney Examiner that Suburban has not been

directly approached to provide these demand-side services but only that they “anticipate” such requests in the future. Hearing Tr. at 19, lines 22-25. Suburban’s anticipation of a potential problem in the future is hardly justification for the Commission to set a new precedent by approving this competitive response rider.

While Suburban asserts that its proposal is consistent with Ohio’s policy to encourage energy efficiency and energy conservation, that does not mean that the Commission should approve every proposal that purports to promote energy efficiency. As Mr. Puican explained under cross examination, it is important to evaluate each proposal to make sure that is cost-effective and makes sense for all customers. Hearing Tr. at 60. The same is true of Suburban’s assertion that its proposal will promote competition in alignment with state policy. Again, the fact that a proposal might have an impact on competition does not in itself require that the Commission approve the proposal. As the Ohio Supreme Court has explained, statutory policy statements are guidelines for the Commission to consider in evaluating utility proposals, and the Commission has discretion as to how best to implement the policies. *In re Application of Columbus Southern Power Co.*, 128 Ohio St. 3d 512, 947 N.E. 2d 655 (2011). When viewed as a whole, Suburban’s proposal is not just and reasonable.

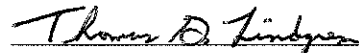
III. CONCLUSION

For the foregoing reasons, the Staff recommends that the Commission not approve Suburban’s proposed rider.

Respectfully submitted,

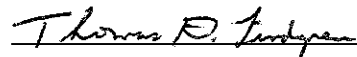
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thomas.lindgren@puc.state.oh.us

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **Post-Hearing Brief** submitted by the Staff of the Public Utilities of Ohio was sent by electronic mail to the parties listed on July 9, 2012.


Thomas Lindgren
Assistant Attorney General

PARTIES OF RECORD:

William J. Michael
Suburban Natural Gas Co.
2626 Lewis Center Road
Lewis Center, Ohio 43035

Mark S. Yurick
Taft Stettinius & Hollister LLP
65 East State Street
Suite 1000
Columbus, Ohio 43215

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Summary: Brief Initial Post Hearing Brief electronically filed by Mrs. Tonnetta Y Scott on behalf of PUCO