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July 25, 2012

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TO: The Public Utilities Commission of Ohio
ATTN: IAD
180 E. Broad St.
Columbus, OH 43215-3793

12-2207-GA-CSS

RE: Complaint against:
Petro Evaluation Services, Inc.
3927 Cleveland Road
Wooster, OH 44691

BY: American Augers, Inc.
135 U.S. Route 42
West Salem, OH 44287
Contact: Brad Dolan, Controller
PH: (419) 869-1877
FX: (419) 869-1977
bdolan@Americanaugers.com

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PUCO

TYPE OF SERVICE: NATURAL GAS

COMPLAINT:

Facts

American Augers, Inc. ("Augers") is a company that designs, manufactures, sells and delivers boring and drilling equipment and is located in West Salem, Ohio. Augers employs approximately 205 individuals full time.

Petro Evaluation Service, Inc.'s ("Petro") business dealings in the oil and natural gas industry are vast. Petro evaluates land for the presence of oil and natural gas, drills wells on land, builds pipelines to transport oil or gas, supervises the transportation of oil and natural gas, negotiates contracts for the sale/purchase of oil and natural gas, plugs wells and advises clients regarding these activities. Petro has drilled hundreds of wells primarily in Ohio and Pennsylvania and placed hundreds of miles of natural gas pipeline throughout Ohio and Pennsylvania, including around and under public roadways.

In or around the summer of 1999, Petro approached Augers and offered to provide Augers with a source of natural gas. Augers had been fueling its operations through a natural gas well on its property and with propane.

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Petro installed a gas pipeline to Auger's property, which tied into a gas collection system apparently owned by Gatherco, Inc., located off of Auger's property. Petro purchased gas from Gatherco, Inc. and resold it to Augers at a profit from September, 1999 through September, 2010 based on the terms of a "Natural Gas Sales Agreement" written and provided to Augers by Petro. The Agreement provided that Augers would pay to Petro the Appalachian Index Price plus \$2.00 per Dth. Augers later learned that Petro did not file the Agreement with the PUCO nor did it seek relief from the PUCO's jurisdiction regarding the Agreement. Additionally, Petro provided Augers with a Memorandum of Understanding regarding the duration of the Agreement but later changed the duration term from five years to perpetual duration in the Natural Gas Sales Agreement without informing Augers that it had done so. In March 2008, Petro also unilaterally raised the price term of the Natural Gas Sales Agreement to the Appalachian Index Price plus \$2.80 without seeking PUCO approval of the price increase. In August, 2009, Petro again changed the price term to the Appalachian Index Price plus \$2.50. Petro also did not seek the PUCO's approval of either of the rate modifications.

Also contrary to the PUCO's requirement and guidelines, Augers was never provided with information about complaint procedures, rate information, gas choice, actual meter readings, privacy rights or standards involving creditworthiness, deposits, bases for denial or disconnection, notice requirements or reconnection information. Petro did not have an emergency 24-hour number in the local phone directory.

From 2008 to 2009, Augers expanded its facility and began having problems with natural gas volume. The volume of natural gas provided to the facility was not sufficient to run its operations. Particularly, in order to paint its drilling machinery, Augers built paint booths which must be kept at a threshold temperature in order for the paint to dry and cure properly. Augers was not able to keep the paint booths at the required temperature because of insufficient volume of gas and also could not operate more than one paint booth at a time. Augers was required to give a credit and/or perform warranty work for at least one customer whose drill's paint flaked off because it was not properly cured due to low temperature. Augers' business offices were also not sufficiently heated, making it very uncomfortable for employees during cold months. Petro was unable to fix the problem or provide sufficient gas volume to Augers, so Augers began looking for other sources of natural gas.

Augers would later join Consumer Gas Cooperative, which Augers understands is PUCO compliant and which built a new line from the Gatherco line to the Auger's facility. In March, 2011, Petro sued Augers, Gatherco, Inc. and Consumer Gas Cooperative in the Wayne County, Ohio Court of Common Pleas, Case Number 11-CIV-0143. Petro sued Augers for breach of the Natural Gas Agreement, alleging that Augers was required to purchase natural gas from Petro exclusively for as long as Petro's system is capable of delivering gas to Augers, as determined in Petro's sole discretion. Petro claimed that its system was capable of delivering sufficient gas to Augers, but Petro's representative testified that the volume was not sufficient and the problem was never fixed.

Augers counterclaimed against Petro, stating that the Natural Gas Sales Agreement was unlawful and unenforceable and that Petro had improperly unilaterally raised the price term, among other claims.

Petro's founding member and shareholder, Jay Henthorne, admitted at his deposition that he agreed with Gatherco representatives' statements that the Natural Gas Sales Agreement was in violation of the PUCO's guidelines. Although he claimed to lack personal knowledge that Petro's sales of natural gas to American Augers were illegal, he accepted Gatherco's and Consumer Gas Cooperative's repeated statements that the sales were in fact illegal. Henthorne not only acknowledged that Petro's sales to American Augers were illegal, he took action to bring the sales into compliance with the PUCO. Mr. Henthorne admitted that around 2009 he called three "future agents" in an attempt to run his billing to American Augers through a PUCO-compliant entity in order to bring the sales in compliance with the PUCO. Henthorne also admitted that he previously obtained a variance from the PUCO in order to sell gas to a school in the Cleveland area.

Augers has demanded that Petro dismiss its Complaint against Augers. However, Petro has steadfastly refused to do so. According to Petro records, from September, 1999 through September, 2010, Petro purchased gas from Gatherco for \$581,199.44, which it resold to Augers for \$692,086.54. Petro therefore made a profit of \$110,887.10. Augers purchased between 5297 and 14895 Dth annually from 1999 through 2010.

Law

Special contracts establishing reasonable arrangements and/or pricing schedules between a public utility and customer may be lawful if approved and supervised by the PUCO. However, R.C. §4905.31 states that "No such schedule or arrangement is lawful unless it is filed with and approved by the commission pursuant to an application that is submitted by the public utility or the mercantile customer * * * and is posted on the commission's docketing information system and is accessible through the internet." Petro admittedly did not file for or get approval from the PUCO.

Petro unilaterally raised the price term in the Natural Gas Sales Agreement without approval of the PUCO. Per R.C. §4909.18, "Any public utility desiring to establish any rate, joint rate, toll, classification, charge, or rental, or to modify, amend, change, increase, or reduce any existing rate, joint rate, toll, classification, charge, or rental, or any regulation or practice affecting the same, shall file a written application with the public utilities commission." Petro increased the rate it charged Augers without filing a written application with the PUCO.

Petro was not able to provide a sufficient gas supply to Augers but tried to preclude Augers from purchasing gas from other (PUCO-compliant) utilities and has sued Augers even though Augers had no choice but to purchase gas elsewhere if it wanted to continue its operations, expand and/or hire more employees. Per R.C.

§4905.22, “Every public utility shall furnish necessary and adequate service and facilities and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.”

Additionally, Petro acted deceptively when it changed the duration term of the contract without informing Augers that it intended to change the term. Petro also did not provide written terms regarding Auger’s rights and obligations regarding its retail purchase of natural gas from Petro.

Petro was clearly acting as a public utility when it sold natural gas to an industrial consumer, American Augers. See, e.g. *Meek v. Gem Boat Service, Inc.* (1990), 69 Ohio App.3d 404, 405, 590 N.E.2d 1296, (Marina providing water and sewer services acts as a public utility). The PUCO has exclusive jurisdiction over services and rates. R.C. §4905.26; R.C. §4905.22. This matter concerns services (failure to provide sufficient natural gas to customer in violation of R.C. §4905.22) and rates (failure to obtain contractual rate approval in violation of R.C. §4905.31 and failure to apply for rate modifications in violation of §4909.18). The Courts have jurisdiction over other types of claims, including pure tort and contract claims. *Corrigan v. Illuminating Co.*, 122 Ohio St.3d 265; 2009 Ohio 2524; 910 N.E.2d 1009.

“R.C. §4905.22 specifies that ‘every public utility shall furnish necessary and adequate service * * *.’ But ‘*the commission has exclusive jurisdiction over various matters involving public utilities, such as rates and charges, classifications, and service, effectively denying to all Ohio courts (except this court) any jurisdiction over such matters.*’ (Emphasis added.) *State ex rel. Cleveland Elec. Illum Co. v. Cuyahoga Cty. Court of Common Pleas* (2000), 88 Ohio St.3d 447, 450, 2000 Ohio 379, 727 N.E.2d 900. R.C. §4905.26 confers exclusive jurisdiction on the commission to determine whether any service rendered by a public utility ‘is in any respect unjust, unreasonable, * * * or in violation of law.’ *State ex rel. Columbia Gas of Ohio v. Henson, Judge*, 102 Ohio St.3d 349; 2004 Ohio 3208; 810 N.E.2d 953, ¶16.

While the Wayne County Common Pleas Court may have jurisdiction over some claims surrounding the matter, the claims regarding rates and services are within the jurisdiction of the PUCO. See e.g. *DiFranco v. First Energy*, 2011 Ohio 5434 (discretionary appeal allowed by *DiFranco v. First Energy*, 2012 Ohio 896.) The Common Pleas Court additionally has no jurisdiction to award treble damages for R.C. §4905.61 until after a determination by the commission that a violation has taken place. *Cleveland Mobile Radio Sales, Inc. v. Verizon Wireless*, 113 Ohio St.3d 394; 2007 Ohio 2203; 865 N.E.2d 1275, ¶21, citing *Milligan v. Ohio Bell Tel. Co.* (1978), 56 Ohio St.2d 191; 383 N.E.2d 575, at paragraph one of the syllabus.

Additionally, Petro Evaluation Services, Inc.'s actions in attempting to constrain an industrial customer from purchasing natural gas from any entity other than it, even when it is incapable to providing sufficient natural gas to the customer, directly contradicts Ohio's State policies regarding natural gas services and goods, which policies include:

"Promot[ing] the availability to consumers of adequate, reliable, and reasonably priced natural gas services and goods." R.C. §4929.02(A)(1).

"Promot[ing] the availability of unbundled and comparable natural gas services and goods that provide wholesale and retail customers with the supplier, price, terms, conditions, and quality options they elect to meet their respective needs." R.C. §4929.02(A)(2).

"Promot[ing] diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers." R.C. §4929.02(A)(3).

"Encourag[ing] innovation and market access for cost-effective supply and demand-side natural gas services and goods." R.C. §4929.02(A)(4).

"Encourag[ing] cost-effective and efficient access to information regarding the operation and the distribution systems of natural gas companies in order to promote effective customer choice of natural gas services and goods." R.C. §4929.02(A)(5).

"Recogniz[ing] the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment." R.C. §4929.02(A)(6).

"Promot[ing] an expeditious transition to the provision of natural gas services and good in a manner that achieves effective competition and transactions between willing buys and willing sellers to reduce or eliminate the need for regulation of natural gas services and goods under Chapters 4905. and 4909. Of the Revised Code." R.C. §4929.02(A)(7).

Conclusion

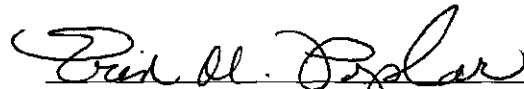
American Augers, Inc. requests that the PUCO review this matter to make a determination that Petro Evaluation Services, Inc.'s activities and facilities as described above are subject to PUCO regulation; and/or

American Augers, Inc. requests that the PUCO review this matter to make a determination that Petro Evaluation Services, Inc. has violated one or more of PUCO's laws, rules and/or regulations; and/or

American Augers, Inc. requests that the PUCO order an appropriate refund for funds unlawfully, unjustly and/or unreasonably charged to American Augers, Inc. by Petro Evaluation Services, Inc. for natural gas.

Submitted on behalf of American
Augers, Inc. by:

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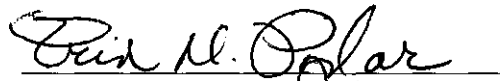
Copies of Complaint sent by regular mail and email on the 25th day of July, 2012 to:

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