

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

PUCO

2018 DEC -3 PM 2:22

RECEIVED-SOCKETING DIV

KNOX ENERGY COOPERATIVE ASSOCIATION, INC.
MEMORANDUM CONTRA APPLICATION FOR REHEARING

Although, as discussed below, it does not appear from a review of the application for rehearing that complainant is challenging the dismissal of the complaint as against Knox, because the complaint itself defined the term “Respondents” as referring, collectively, to all four

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named respondents,¹ Knox, out of what may be an abundance of caution, believes it important to register its opposition to the application for rehearing to the extent it could be construed as asking the Commission to grant rehearing with respect to the findings in the Order relating to Knox.

As explained in Knox's November 15, 2017 motion to sever, complainant's claim against Knox was based on a factual allegation and legal theory that were entirely different from the basis of the charges levelled against the other named respondents.² The complaint alleged that the four named respondents, either individually or in concert with one another, are operating as public utilities as defined by R.C. 4905.02 in connection with the provision of electric, gas, water, and sewage disposal service to complainant by engaging in an impermissible resale of utility services. However, the Commission agreed with Knox that these charges could not conceivably apply to Knox because Knox, which is a non-profit, member-owned cooperative, provides natural gas service directly to tenant premises at the Creekside apartment complex via its own distribution facilities, bills the tenants directly for natural gas service in its own name based on the tenant's consumption as measured by Knox-owned meters, and charges the Creekside tenants the same rates it charges all its Ohio residential member-customers.³ Specifically, the Commission found as follows.

The Complainant has failed to dispute Knox's assertions or provide other evidence. Therefore, we conclude that there is no resale or redistribution of natural gas by the Creekside Landlord since Knox is directly providing natural gas service to Ms. Wingo's apartment, and directly billing the Complainant. Accordingly, we find that no resale or redistribution of natural gas service has occurred under

¹ Complaint, ¶ 7.

² See Knox Memorandum in Support of Motion to Sever, 1-7.

³ Knox's rates and charges for natural gas service are established by its member-elected board of trustees.

the facts in this case and, thus, there is no need to apply the Shroyer Test to determine our jurisdiction over natural gas service at the Complainant's Creekside Apartment.⁴

Although complainant mentions this finding in a footnote in its application for rehearing, wherein it faults the Commission for failing to explain how the service provided by respondent NEP is different from the service provided by Knox,⁵ complainant does not dispute the Commission's determination that Knox is not engaging in the resale or redistribution of natural gas service in providing service to tenants at the Creekside apartment complex. Thus, despite the ambiguity created by the complaint's definition of the term "Respondents" as encompassing all four named respondents, complainant has not assigned as error the Commission's finding that Knox is not implicated by the allegations against the other three named respondents.

This leaves the allegation of the complaint that does relate to Knox, the claim that Knox does not qualify for the R.C. 4905.02(A)(2) exception to the R.C. 4905.02(A) definition of a public utility for non-profit cooperatives providing service only to their members because Ms. Wingo is not a Knox member.⁶ As explained in its answer, and as documented by the membership application attached thereto, Ms. Wingo is, in fact, a Knox member.⁷ However, the Commission, after recounting Knox's explanation, dismissed the complaint against Knox *sua sponte* based on its determination that "as a non-profit cooperative, Knox is not subject to our jurisdiction under R.C. 4905.02(A)(2). Therefore, we are unable to address any dispute

⁴ Order, ¶ 56.

⁵ See Application for Rehearing, 14, n. 24.

⁶ See Complaint, ¶ 60.

⁷ See Knox Answer, ¶ 60; Knox Answer, Exhibit A.

regarding whether Complainant is, or is not, a member of Knox.”⁸ Complainant did not mention, let alone dispute this finding in its application for rehearing.

Rule 4901-1-35(A), OAC, requires that an application for rehearing must set forth “the specific ground or grounds upon which the applicant considers the commission order to be unreasonable or unlawful,” and “must be accompanied by a memorandum in support, which sets forth an explanation of the basis for each ground for rehearing identified in the application for rehearing.” Complainant has failed to raise the Commission’s dismissal of the complaint as against Knox as a ground for rehearing. Accordingly, the application for rehearing, to the extent it could be construed as applying to this determination, must be denied.

Respectfully submitted,



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⁸ Order, ¶ 56.

Certificate of Service

I hereby certify that a copy of the foregoing was served upon the following parties by electronic mail this 3rd day of November 2018.


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