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Before
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
the Ohio Bell Telephone Company for) Case No. 93-487-TP-ALT
Approval of an Alternative Form of)
Regulation.)

In the Matter of the Complaint of)
the Office of the Consumers')
Counsel,)

Complainant,)

v.)

Case No. 93-576-TP-CSS

Ohio Bell Telephone Company,)

Respondent,)

Relative to the Alleged Unjust and)
Unreasonable Rates and Charges.)

MEMORANDUM IN SUPPORT OF
AMERITECH OHIO'S MOTION TO STRIKE
THE COMPLAINT TESTIMONY OF OCC WITNESS PULTZ

Mr. Pultz's testimony contains his estimate of the Company's
current cost of capital, not the Company's cost of capital during
any time within the test period contemplated by Section 4909.15,
Revised Code, and ordered by the Commission. As such, Mr.
Pultz's testimony has no relevance in the complaint case and
should be stricken.

The Office of the Consumers' Counsel (OCC) filed its complaint in this case, pursuant to Section 4905.26, Revised Code, alleging that Ameritech Ohio's rates and charges are excessive under the ratemaking formula set forth in Section 4909.15, Revised Code.

THE STATUTORY FRAMEWORK

Generally speaking, Section 4909.15, et seq. Revised Code, prescribes a rate base/rate of return form of rate regulation. Essentially, rates are set on the basis of the cost to the utility in providing the service. The cost of providing service can be grouped into four basic categories:

- (1) operations and maintenance;
- (2) depreciation;
- (3) taxes (including income tax); and
- (4) capital costs (i.e., rate of return requirements)

The total of these costs produces the test period cost of service which equals the revenue requirements upon which rates are designed in a traditional rate case, or upon which rates are evaluated for purposes of an over-earnings case as has been filed by OCC. The statutory framework should not be subject to "ad hoc tinkering" Columbus Southern Power v. PUCO (1993), 67 Ohio St. 3d. 535, 539.

Specifically, Section 4909.15, Revised Code, requires the Commission, inter alia, to determine:

(A)(1) The valuation as of the date certain of the property of the public utility used and useful in rendering the public utility service for which rates are to be fixed and determined. ...

(2) A fair and reasonable rate of return to the utility on the valuation as determined in division (A)(1) of this section;

(3) The dollar annual return to which the utility is entitled by applying the fair and reasonable rate of return as determined under division (A)(2) of this section to the valuation of the utility determined under division (A)(1) of this section; and

(4) The cost to the utility of rendering the public utility service for the test period less [certain amounts not relevant here]

(emphasis added). As the complainant in a case based on Section 4909.15, Revised Code, OCC carries (1) the burden of offering evidence upon which the Commission can make these determinations, and (2) the burden of ultimate proof of its complaint.

THE FACTS

The sine qua non of OCC's complaint is found in paragraph 29:

29. Ohio Bell's current rates to jurisdictional customers generate annual revenues which exceed the reasonable annual cost to the Company of rendering service to those customers and result in a rate of return on the valuation of property used and useful in rendering service to those customers which exceeds a fair and reasonable rate of return.

(emphasis added).

In its September 2, 1993 Entry denying the Company's motion to dismiss, the Commission ordered that:

[t]he scope of review for OCC's complaint shall be limited to a review of the 12 months ending September 30, 1993, as the test period. The date certain for the valuation of property shall be December 31, 1992.

Mr. Chan presented accounting testimony on behalf of OCC which procedurally coincides with this Commission order, i.e. for the 12 months ending September 30, 1993. However, the rate of return testimony offered by Mr. Pultz is not related to the test period at all. Instead, Mr. Pultz estimates the Company's current cost of capital. Mr. Pultz, therefore, has failed to conform to the relevant statute and this Commission's order establishing the test year.

THE ARGUMENT

Division (A)(5) of Section 4905.15, Revised Code, requires that "[t]he revenues and expenses of the utility shall be determined during the test period." Yet, Mr. Pultz has not offered any testimony on the Company's capital costs during the test period. Because Mr. Pultz estimates the Company's current cost of capital without reference to the Company's cost of capital during any portion of the test period which the Commission ordered in this case, his estimate of the Company's capital costs has no relevance to the Company's revenue

requirements during the test period. His testimony, therefore, must be stricken.

The Commission has held in the past that there must be a symmetrical relationship between the rate of return and the base against which the rate is applied pursuant to the statute:

The dollar annual return is the product of the rate base and the fair rate of return. Thus, if either the rate base or the rate of return is changed, the product will be changed. What might be a fair rate of return applied to one rate base could be an unreasonable rate of return if applied to a different rate base. The nature and composition of the rate base to which the rate of return is to be applied must be considered in determining the fair rate of return.

Re Ohio Valley Gas Company, 73 PUR 3d 90 (1968). Thus, a rate of return for one period has no necessary applicability to a rate base for a different period. Because Mr. Pultz's estimate of the Company's current capital costs has no bearing on the test year the Commission ordered in this case, it is irrelevant.

Admittedly, the Commission can exercise discretion when it comes to determining a rate of return. However, when rules for determining that rate are prescribed by statute, the Commission must follow those rules. In this case, the Commission established a test year; Mr. Pultz ignored it when estimating his rate of return. Accordingly, Mr. Pultz's testimony should not be admitted as evidence.

The Commission has, in the past, refused to admit testimony because of failure of the testimony to conform to the rules and has been affirmed on appeal. See e.g., Landskroner v. PUCO (1983), 5 Ohio St. 3d 96. That result is appropriate here.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of Memorandum in Support of Ameritech Ohio's Motion to Strike the Complaint Testimony of OCC Witness Pultz has been served upon counsel for all parties as shown on the attached service list by either hand delivery at the hearing in this matter or by regular U.S. mail, postage prepaid, this 22nd day of June, 1994.

Michael J. Karson/msc
Michael J. Karson

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CASE NO. 93-487-TP-ALT

CASE NO. 93-576-TP-CSS

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