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Case Number: 03-1021-GA-CSS

Date: 11/21/2007

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

Volunteer Energy Services, Inc. 800 Cross Pointe Road Suite D Gahanna, OH 43230 Complainant, vs. Columbia Gas of Ohio, Inc. 200 Civic Center Drive P O Box 117 Columbus, OH 43216-0117 and Nisource Corporation 200 Civic Center Drive P O Box 117 Columbus, OH 43216-0117 Respondents.	Case No. 03-1621-GA-CSS **COMPLAINT** **FILED UNDER SEAL** **CONFIDENTIAL**

Volunteer Energy Services, Inc., an Ohio corporation ("VESI" or "Complainant"), by and through its counsel Hahn Loeser & Parks LLP, hereby files this Complaint pursuant to Section 4905.26 Ohio Rev. Code against Columbia Gas of Ohio and Nisource Corporation (collectively referred to as "Columbia", "COH" or "Respondents"), pursuant to Sections 4905.22, 4905.26, 4905.32, 4905.33, 4905.35, 4905.37, 4905.54, 4909.16, 4909.17, 4909.18 and 4929.02 Ohio Rev. Code and Sections 4901:1-29-13 and 4901:1-27-08 Ohio Administrative Code, and states as follows:

I. INTRODUCTION

This is an action seeking relief from the onerous security requirements imposed on competitive retail gas suppliers generally and VESI specifically, as a prerequisite to providing service to General Transportation Service ("GTS") customers in COH's Service Territory. The formula used by the Respondents which has not been tariffed or approved by the Public Utilities Commission of Ohio ("PUCO" or "Commission"), bears no rational relationship to the actual risk, which Respondents incur by virtue of VESI serving GTS customers. Moreover, the amount of security calculated pursuant to the formula is so exorbitant that based solely on that reason, VESI in February 2003 was unable to consummate a deal with Nicor Energy, Inc. to acquire its Ohio GTS customer book of business. The formula imposed by Respondents, which requires close to $1.00 of security for every mcf, creates unreasonable barriers for VESI to continue to grow its business and provide Ohio customers with additional supply choices.

VESI has been providing reliable, cost-effective services to customers since after its incorporation on March 2, 2001, and has never been in default with either Respondents or any of VESI's customers. However, through the application of its formula, Respondents have forced VESI to encumber substantial sums of capital that would otherwise be used for purchasing wholesale commodity natural gas and expanding its business. VESI therefore seeks a ruling by the Commission that the Respondents' untariffed formula is unlawful and unreasonable. VESI further seeks the Commission to direct Respondents to file a tariff for its security requirements for natural gas suppliers serving GTS customers with specific instructions as to the content of that tariff which should significantly reduce the amount of security currently required. Without these findings, VESI may be unable to serve new customers and offer Ohioans more alternatives to reduce their energy costs. VESI further seeks a finding that Respondents' current practices

have caused injury to VESI. Finally, through a separate motion filed simultaneously with this complaint, VESI seeks emergency relief pursuant to Section 4909.16 Ohio Rev. Code, which authorizes the Commission, when it deems it necessary to prevent injury to the business or interests of the public, to temporarily alter or amend existing rates. VESI requests that the Commission substantially reduce VESI's existing credit requirements imposed by Respondents until the final resolution of this Complaint. This will allow VESI to continue to expand its business until such time as this Complaint is resolved. Without this relief, Respondents' credit requirements will remain onerous and will continue to act as an unjust and unreasonable barrier to competition.

BACKGROUND

1. Complainant, Volunteer Energy Services, Inc., is a Certified Retail Natural Gas Supplier ("CRNGS") pursuant to Sec. 4929.20 Ohio Rev. Code and conducts business in COH's service territory offering competitive natural gas service to non-mercantile customers under the Choice Program and to mercantile customers as defined in Section 4929.01(C) Ohio Rev. Code, under Respondents' GTS tariff.

2. Respondent, Columbia Gas of Ohio, Inc., is a public utility as defined under Section 4905.02 Ohio Rev. Code and a natural gas company under Section 4905.03 Ohio Rev. Code and, as such, is subject to the jurisdiction of the PUCO. Respondent Nisource Corporation is the parent company of Respondent.

3. Pursuant to House Bill 9 and the laws promulgated there under in Chapter 4929 Ohio Rev. Code, COH's non-mercantile, residential customers may procure natural gas from CRNGS through Columbia's Choice Program. VESI participates in this program.

4. Pursuant to tariffs approved by the Commission, VESI offers service to mercantile customers under Columbia's General Service Transportation Tariff.

5. On November 20, 2001, the Commission issued a Finding and Order, in *In the Matter of the Commission's Promulgation of Rules for Competitive Retail Natural Gas Service and its Providers Pursuant to Chapter 4929 Revised Code,* PUCO Case No. 01-1371-GA-ORD, in which the Commission ordered natural gas companies to file tariff language addressing financial security which includes both the calculation used to determine the amount of the financial security and a statement that financial security can only be requested when a CRNGS fails to demonstrate creditworthy status. Id. at 8.

6. Upon information and belief, and in accordance with information provided by Respondents, Respondents utilize the following formula for determining the credit requirements for competitive suppliers serving Choice Customers:

Residential [2 months x 11 mcf (average monthly residential use = 22]
[total number of residential x 22 x Weighted Average Cost of Gas (WACOG) = Security Requirement];

Commercial [2 months x 27 mcf (average monthly commercial use) = 54]
[total number of commercial customers x 54 x WACOG = Security Requirement].

7. The Respondents utilize the following formula for determining the credit requirements for competitive suppliers serving GTS customer:

[Two months average use (2/12) = 17%];
[Aggregated Annual Volumes x 17% x WACOG = Security Requirement]

8. The formulas for calculating the credit requirements are not included in the tariffs on file with the Commission and have not been approved by the Commission.

9. Based on information and belief and in accordance with information provided by Respondents, the Respondents also require security to cover the financial exposure resulting from VESI's purchase of marketed capacity costs and balancing fees. This formula is:

[total customers x 2 months average consumption x applicable balancing fee.]

10. Respondents recalculate the credit requirements on a monthly basis and on occasion, more frequently.

11. Based on information provided to Respondents by VESI, Respondents have agreed to an amount of $100,000 in unsecured credit, which is applied towards the total credit requirements for service to Choice and GTS customers as well as marketed capacity.

12. On occasion after reviewing pending enrollments, Respondents have notified VESI that it will not process GTS contracts unless additional security is promptly received. Some of the VESI accounts that were threatened to be held up had financial hedges and needed to commence on the dates set forth in the contracts. For example, on August 21, 2002, VESI received an e-mail from Respondents indicating that it had "nearly exceeded" its approved credit level and that a Letter of Credit ("LC") must be provided to continue to add customers. Failure to flow gas on the first day of the subsequent month would put VESI in default of a contract with a customer. The notifications leave VESI with no option but to post excessive credit or else be in default with its new customers. The posting of this credit is causing financial injury to VESI.

13. According to Respondents, utilizing their formula, as of September 19, 2002 VESI's total exposure was $139,146. With the application of the $100,000 unsecured credit, that left an exposure of $39,146, for which Respondents requested and received a $100,000 LC to cover for additional growth, and in order to assure its new accounts were processed.

14. By October 18, 2002, the credit exposure was calculated as $161,326, which was covered by the LC.

15. On January 29, 2003, Respondents notified VESI that its credit exposure was now $435,000. Taking into account the $100,000 unsecured credit, the Respondents increased the security requirement to $335,000 as a result of VESI adding more GTS customers. An LC covering this amount was provided by VESI to Respondents.

16. On or about February 26, 2003, VESI reached an agreement with Nicor Energy ("Nicor") under which Nicor would transfer its GTS customers in Ohio to VESI in a three party agreement, which included Columbia. This agreement was supposed to be finalized on February 28, 2003 (the "Nicor Agreement").

17. On February 27, 2003 VESI received an e-mail from Respondents indicating Columbia could not execute the Assignment Letter until the Purchaser (VESI) met the creditworthiness standards and had provided collateral for the additional exposure. Respondents indicated that unless they received an amendment to the existing LC increasing it an additional $1,000,000 for a total of $1,335,000, Columbia would not execute the three-party Assignment Letter. Included within this $1,000,000 of additional collateral was an increase of $142,093 to purportedly cover VESI's existing customers. The "new" collateral required by Respondents for the Nicor account was $885,456.

18. Upon information and belief, Nicor, a subsidiary of the financially failing Dynegy Corporation had not been required to post any security for these same GTS customer accounts.

19. For its approximate two years in business, VESI has never been in default nor has a claim been made to commence any kind of default proceedings.

20. After discussions between VESI and Respondents, Respondents agreed to reduce the security requirements to $500,000 additional collateral of which $410,000 was for the new Nicor business and $90,000 was for the existing GTS customers. Respondents required an LC in place by March 31, 2003 to flow gas on April 1, 2003. This agreement allowed for a pledge of the Nicor receivables for April 2003 but also required another re-evaluation of these requirements by Respondents on April 15, 2003.

21. On or about March 6, 2003, VESI informed Columbia that it was not going to proceed with the Nicor Agreement because Respondents' credit requirements were too burdensome and could not be met. Solely on the basis of Respondents' credit requirements, VESI was unable to consummate the Agreement with Nicor, causing VESI substantial injury. Had the acquisition taken place, it would have prevented the unwanted result of the customers defaulting to Columbia's system and becoming Columbia customers. Nicor customers lost the advantage of having the terms of their contract honored in a seamless transition to VESI. For its part, Nicor is faced with making restitution on the difference between its contracts and the rates charged by Columbia.

22. At the same time, on March 6, 2003, Respondents agreed to accept VESI's Choice Receivables in exchange for the $90,000 they claimed was owed for VESI's existing GTS customers.

23. On March 12, 2003, less than one week after agreeing to post its Choice Receivables to cover the Respondents' claim as to the appropriate collateral, VESI received an email from Columbia indicating that it was under-collateralized. In addition, the email stated its knowledge that an agent from VESI had been individually soliciting the soon to be former Nicor

customers and that unless sufficient collateral was received, Columbia would be unable to process additional contracts to add accounts to VESI.

24. On the same day, VESI responded that it had not yet received any accounts from its agent and suggested waiting until the April 15 date to assess any additional collateral requirements. In a later response, the Respondents acknowledged the April 15 date, discussed at Paragraph 20 herein, as the date to reassess the $90,000 collateral.

25. Between March 13, 2003 and March 19, 2003 several emails were exchanged between the Respondents and VESI regarding credit requirements. VESI questioned the formula used, requested a reduction and further expressed its expectation that its accounts would be processed. On March 25, 2003, VESI sent a follow-up reminder to Respondents requesting a response to its March 19 email so that VESI could make its gas nominations. On March 26, Columbia responded and indicated that since VESI was attempting to add accounts that had a total annual volume of 694,477 mcf, the incremental exposure was $635,000. This equated to approximately $1.00 of credit per mcf. Columbia, however, agreed to accept credit in the amount of $317,500 and to revisit the issue on April 15. The total security pledged by VESI is $830,000. Columbia further indicated that it would not permit gas to flow to these new customers unless VESI met its requirements, putting VESI at risk of a default situation with its customers.

26. Discussions and negotiations ensued between Columbia and VESI and late in the day on Friday, March 27, 2003, an agreement was reached between Complainant and Respondents under which VESI agreed to secure an LC for $300,000 no later than March 31, 2003 and to pledge its receivables as a cash deposit for its choice customers for February through May, 2003. Columbia agreed not to re-adjust the security requirements until June 2003. Given

the need for VESI to hedge its gas supplies and to have Columbia process its new accounts and issue customer flow letters, it had no choice but to agree to these terms, regardless of the severe economic impact on VESI.

COUNT I

(Formula for Assessing Security Requirements is Unlawful)

27. VESI restates, alleges and incorporates each of the allegations contained in Paragraphs 1 through 26 of this Complaint.

28. On information and belief, Respondents do not maintain PUCO filed and approved tariffs containing the formula for security requirements that are being imposed by Respondents on Complainant and perhaps others.

29. Sec. 4909.17 Ohio Rev. Code states that no rate, classification or charge shall become effective until the Public Utilities Commission by order, determines it to be just and reasonable. No such determination was made with respect to the formula used as a basis for the charges imposed on Complainant and other marketers for security credit.

30. Sec. 4909.18 Ohio Rev. Code requires any public utility desiring to establish any rate, classification or charge to file an application with the Commission seeking its approval. Respondents violated the law by failing to do so.

31. Sec. 4905.22 Ohio Rev. Code prohibits a public utility from charging any rate that has not been approved by the Commission.

32. Sec. 4901:1-27-08 Ohio Admin. Code, promulgated as part of House Bill 9, states that pursuant to a tariff filed with the Commission, a natural gas company, such as Columbia, may require CRNGS to issue and maintain a financial security. Sec. 4901:1-29-13 Ohio Admin.

Code requires natural gas companies to include in their tariffs, requirements for creditworthiness and default security.

33. In *In the Matter of the Commission's Promulgation of Rules for Competitive Retail Natural Gas Service and its Providers Pursuant to Chapter 4929, Revised Code*, Case No. 01-1371-GA-ORD, the Commission stated, "Each natural gas company shall file proposed tariff language addressing financial security within ninety days of the effective date of these rules. It is our expectation that the proposed tariff language will include both the calculation used to determine the financial security, and a statement that the natural gas company can only request a financial security, when a retail natural gas supplier fails to demonstrate creditworthy status." Finding and Order, November 20, 2001 at 8.

34. Respondents failure to file just and reasonable tariffs subject to Commission approval, as required by law has caused substantial injury to Complainant in that Complainant has been forced to produce excessive amounts of capital as security in order to assure that its customer accounts would be processed.

COUNT II

(Standards for Establishing Creditworthiness Are Arbitrary and Capricious)

35. VESI restates, alleges and incorporates each of the allegations contained in Paragraph 1 through 34 of this Complaint.

36. Upon information and belief, the Respondents have failed to make available detailed information explaining the basis for determining the creditworthiness of the CRNGS. Without this information, it is impossible for Complainant or any other CRNGS to ascertain the reasonableness of the determination by the Respondents as to the amount of unsecured credit to which a CRNGS is entitled.

37. Sec. 4905.32 Ohio Rev. Code prohibits a public utility from charging, demanding, exacting, receiving or collecting a different rate or charge for service rendered than as set forth in its filed schedules. It also prohibits any public utility from extending any privilege to any entity that is not regularly and uniformly extended to all persons under like circumstances for like or substantially similar service.

38. Sec. 4905.33 Ohio Rev. Code prohibits a public utility from directly or indirectly through any special rate or other device, collecting receiving or charging a greater or lesser compensation for any service rendered or to be rendered than it charges any other person or corporation for a like and contemporaneous service under substantially the same circumstances and conditions.

39. Sec. 4905.35 Ohio Rev. Code prohibits a public utility from giving any undue advantage or preference to any person or corporation or subject any person or corporation to any undue or unreasonable prejudice or disadvantage.

40. Upon information and belief, the methods by which Respondents make their determination as to the amount of unsecured credit a CRNGS must provide is subjective resulting in a lack of uniformity in application such that some suppliers may be required to provide a higher level of security than their similarly situated competitors. For example, and not by way of limitation, Nicor Energy, whose parent Dynegy was significantly downgraded and nearing bankruptcy was not required to post any security on the same customers base for which VESI was originally required to post $635,00, an amount that was later reduced through negotiations to $317,500.

41. By not treating all suppliers the same and by not having an established and transparent protocol to determine creditworthiness, the Respondents have violated Secs. 4905.32,

4905.33 and 4905.35 Ohio Rev. Code and have acted in an arbitrary and capricious manner to the detriment of the Complainant.

COUNT III

(Anti-Competitive Policy)

42. VESI restates, alleges and incorporates each of the allegations contained in Paragraphs 1 through 42 of this Complaint.

43. Sec. 4929.02 Ohio Rev. Code declares it to be the policy of the State of Ohio, throughout this State, to inter alia: promote the availability to consumers of adequate, reliable and reasonably priced natural gas services and goods; promote diversity of natural gas supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers; recognize the continuing emergence of competitive natural gas markets through the development and implementation of flexible regulatory treatment; and promote an expeditious transition to the provision of natural gas services and goods in a manner that achieves effective competition and transactions between willing buyers and willing sellers to reduce or eliminate the need for regulations of natural gas services and goods.

44. Respondents' policies with respect to its security requirements impedes the development of a competitive market because the cost to VESI of providing security is so unreasonably high when compared to the actual risk posed to COH that it creates an unnecessary barrier to competition. By requiring a security amount equal to almost $1.00 per mcf, VESI is unable to use its capital on the market to purchase more gas for new customers. Moreover, VESI is required to factor in to the decision to add new customers, the large sum of money it will have to post as credit that will no longer be available to VESI for working capital and business expansion.

45. Respondents' policies of refusing to process orders or to provide customer flow letters prior to receipt of an unreasonably large amount of security has required Complainant to provide security under duress. Complainant is left with no choice but to post amounts it believes are excessive in order to prevent the possibility of defaulting on new customers. Such a default would not only damage the Complainant by having to compensate customers for the difference between its contract price and the price charged by Respondent when the customer defaults, but it would also result in the loss of the customer. Further, the damage to VESI's unblemished reputation would be irreparable and substantially hinder the ability of Respondent to expand its business through the acquisition of new customers if it did not post the security.

46. VESI has already suffered damage by having to decline the opportunity to obtain Nicor's GTS customers, solely on the basis of the security demands made by Respondents.

47. The Respondents' unjust and unreasonable security requirements are preventing Complaint from expanding its business, and are thereby also depriving the citizens of the State of Ohio with the opportunity to choose from a wider array of suppliers, in violation of Sec. 4929.02 Ohio Rev. Code.

COUNT IV

(Unjust and Unreasonable Security Charges)

48. VESI restates, alleges and incorporates each of the allegations contained in Paragraphs 1 through 47 of this Complaint.

49. Sec. 4905.22 Ohio Rev. Code requires all charges made or demanded by a public utility to be just and reasonable and not more than that allowed by law or by order of the Commission.

50. The requirements levied by Respondents for security are unjust and unreasonable and far exceeds the amount necessary to cover their risk.

51. The requirement to post exorbitant amounts of security has caused injury to Complainant by requiring it, at significant cost, to encumber funds that could otherwise be used in the maintenance and growth of its business. The requirements have had the deleterious impact of preventing the expansion of new service offerings to customers.

52. Upon information and belief, the formula used by Respondents for both Choice customers and GTS customers are substantially the same from the standpoint that both formulas employ Columbia's weighted average cost of gas, multiplied by average monthly usage for two months. The only difference is that the Choice formula multiplies the number of customers by a fixed average usage with the GTS customers; the aggregated annual volumes are used.

53. Upon information and belief, with respect to Choice customers, should a CRNGS default, the customers return to the Gas Cost Recovery (GCR) rate and the only way the Respondents can recovery any potential costs resulting from the price of procurement exceeding the GCR for those customers is to seek it through the security requirement.

54. The formula for security for GTS customers requires the Supplier to provide coverage for sixty days of annual average. This exceeds the amount of exposure Respondents have in the case of an under-delivery which is cashed out at the end of the month.

55. Utilization of sixty days as a measurement for security is excessive because in the case of a total default and non-delivery, upon information and belief, Respondents would have knowledge of the default well in advance of the sixty days.

56. The security requirements exacted by Columbia are unjust and unreasonable, violate the law and do not bare a rationale nexus with the risk to Respondents.

WHEREFORE, VESI respectfully requests that this Commission:

1. Find that the Respondents are in violation of Secs. 4905.22, 4905.26, 4905.43, 4905.33, 4905.35, 4905.54, 4909.17, 4909.18, and 4929.02 Ohio Rev. Code, Secs. 4901:1-29-13 and 4901:1-27-08 Ohio Admin. Code and the Commission's Finding and Order in Case No. 01-1371-GA-ORD.

2. Find that the Respondents have failed to properly file its security requirements as a tariff subject to Commission approval.

3. Find that the current security requirements of the Respondents are null and void as a matter of law.

4. Find that the security requirements of the Respondents are unjust and unreasonable and bear no rationale nexus to the risk sought to be protected.

5. Find that the security requirements of the Respondents create barriers to competition and are anti-competitive.

6. Find that the Respondents' determination of creditworthiness are discriminatory and preferential.

7. Find that the Respondents' actions of refusing to process Complainants accounts unless Complainant agrees to its unreasonable security requirements is unlawful and reasonable.

8. Find that Respondents' actions in insisting on unreasonable security requirements in order for Complainants' former Nicor customer accounts to be processed caused injury to Complainant.

9. Order Respondents to comply with Secs. 4905.22, 4905.26, 4905.32, 4905.33, 4905.35, 4905.54, 4909.17, 4909.18 Ohio Rev. Code, Sec. 4901:1-29-13 and 4901:1-27-08 Ohio Admin. Code and the Commission's Finding and Order in Case No. 01-1371-GA-ORD.

10. Order the Respondents to file tariffs for Commission approval that set forth a reasonable formula for calculating security requirements.

11. Order that the security requirements be substantially modified to more accurately reflect the actual risk borne by the Respondents.

12. Order the Respondents to disclose in detail the methodology utilized to determine the amount of unsecured credit and to file this information in its tariff.

13. Order the Respondents to cease and desist from its discriminatory and arbitrary determinations of the amount of unsecured credit for suppliers.

14. Order Respondents to cease and desist from the practice of refusing to process customer accounts unless the Supplier agrees to onerous credit requirements.

15. Provide any such other relief as the Commission deems appropriate.

Respectfully submitted,

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CONFIDENTIAL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by first-class mail, postage prepaid to the following parties of record this 18th day of April, 2003.

John L. Einstein, IV

PARTIES OF RECORD

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