

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of
Suburban Natural Gas Company for
Authority to Abandon Service Pursuant
to Ohio Revised Code Sections 4905.20
and 4905.21.

Case No. 08-947-GA-ABN

MOTION TO INTERVENE
OF
KNG ENERGY, INC.

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By the above-styled application filed herein on August 1, 2008, Suburban Natural Gas Company seeks authority to abandon natural gas service to the villages of Deshler, Hamler, Holgate, Hoytville, and Malinta, Ohio. As more fully discussed in the accompanying memorandum, KNG Energy, Inc. ("KNG") has a real and substantial interest in this proceeding, and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest. Further, KNG's interest in this proceeding is not represented by any existing party, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues involved without unduly delaying the proceeding or unjustly prejudicing any existing party. Accordingly, KNG hereby moves to intervene in this proceeding pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code.

WHEREFORE, KNG respectfully requests that the Commission grant its motion to intervene.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'B. Royer', with a long horizontal flourish extending to the right.

Barth E. Royer
BELL &, ROYER CO., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
(614) 228-0704 – Phone
(614) 228-0201 – Fax
BarthRoyer@aol.com – Email

Attorney for KNG Energy, Inc.

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MEMORANDUM IN SUPPORT
OF
MOTION TO INTERVENE
OF
KNG ENERGY, INC.

As described in its application, Suburban Natural Gas Company ("Suburban") has, for many years, provided natural gas service to the villages of Deshler, Hamler, Holgate, Hoytville, and Malinta, Ohio (collectively, the "Villages") through a transmission and distribution system (the "System") owned by the Villages and leased to Suburban pursuant to separate fifty-year lease agreements between Suburban's predecessor, Suburban Fuel Gas, Inc., and each of the Villages.¹ Although each village owns an undivided interest in the System, and, thus, is entitled to a designated portion of the total System capacity, each village is responsible for the maintenance and expansion of only those System distribution facilities that serve its own geographic area. With the exception of the Malinta lease, which expires in 2012, the leases will expire in October of 2009.²

Suburban states that, despite its good-faith efforts, it has been unable to negotiate a renewal or extension of its lease agreements with the two largest villages, Deshler and Holgate,

¹ Application, 1.

² Application, 1-2; *see also* Application Appendices A, B, C, D, and E.

which account for more than two-thirds of the customers on the System.³ According to Suburban, because of the integrated nature of the System, which is served through a single interstate pipeline interconnection, it is not practical or cost effective for Suburban to operate the System without having lease agreements in place with all the Villages.⁴ Thus, Suburban seeks authority to abandon service to the Villages upon expiration of the existing leases, or at such other time as the Commission may deem appropriate.⁵

In its application, Suburban warrants that, if its application is approved, it will assist the Villages in transferring management and control of the System to the Villages or another operator so as to avoid interruption of service or inconvenience to customers served through the System.⁶ In this context, Suburban specifically identifies KNG Energy, Inc. ("KNG") as a potential operator of the System, and states elsewhere in the application that, upon information and belief, Deshler and Holgate have contracted with, or intend to contract with, KNG to manage the portions of the System they own.⁷

Like Suburban, KNG is a public utility and natural gas company within the definitions of Sections 4905.02 and 4905.03(A)(6), Revised Code, and, as such, is subject to the jurisdiction of this Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code. KNG provides natural gas service in the village of Kalida, Ohio and in the adjacent unincorporated area in Putnam County. KNG also provides natural gas service to customers located in certain unincorporated areas of Hancock, Seneca, and Wood Counties. In addition, KNG provides transportation service and operation and maintenance services for the municipal natural gas utility owned by the village of McComb, Ohio, and, pursuant to a McComb ordinance, provides

³ Application, 2.

⁴ *Id.*

⁵ Application, 3.

⁶ *Id.*

⁷ Application, 2.

certain services to a large consumer of natural gas located within the village. McComb is also an owner of a portion of the System, but, although it once had a long-term lease agreement with Suburban similar to those of the Villages, that agreement has since been terminated. Although McComb's municipal gas utility utilizes the McComb's portion of the System distribution facilities, the McComb distribution system is now supplied through a separate pipeline that is not part of the System.

In 2007, KNG constructed an 8-inch, 12-mile pipeline from an interconnection at the Crossroads pipeline north of the village of Deshler to the village of Leipsic, Ohio (the "KNG Pipeline") in order to provide transportation service to a new ethanol plant in Leipsic.⁸ The route of the new KNG Pipeline brings it in close proximity to the System distribution facilities serving Deshler, and crosses the segment of System transmission line connecting Deshler and Holgate. Thus, both Deshler and Holgate approached KNG regarding the possibility of an interconnection with the System that would permit KNG to serve those villages. KNG indicated its willingness to discuss such an arrangement, but cautioned that an agreement would have to be reached with Suburban regarding the monthly balancing issues that would arise if both Suburban and KNG were introducing gas into the System.

KNG was aware that there was a disagreement among the Villages as to whether to renew or extend the lease agreements with Suburban. It was KNG's understanding that, although Deshler and Holgate had declined to enter into new lease agreements with Suburban, the smaller villages favored maintaining the Suburban lease arrangement. Upon information and belief, Hamler and Hoytville have, in fact, entered into new leases with Suburban. KNG believed that, under these circumstances, it would be to Suburban's advantage to permit the interconnection so as to provide it with an additional delivery point and thereby increase the

⁸ See Case Nos. 07-13-GA-AIS and 07-424-GA-AEC.

supply options available to the villages it would continue to serve. However, KNG did move forward with discussions with Deshler officials, who indicated that Deshler, which already has its own municipal electric utility, was contemplating establishing a municipal gas utility, and was interested in entering into arrangement with KNG similar to the McComb-KNG arrangement, whereby KNG would provide operation and maintenance services to the Deshler municipal gas utility. As a part of the proposed arrangement, KNG would also provide transportation service to Deshler by directly connecting the KNG Pipeline to the Deshler distribution system, regardless whether agreement could be reached with Suburban with respect to an interconnection with the Deshler-Holgate segment of the System transmission system.

Discussions were also held with Holgate officials, who continued to express the desire that KNG take over responsibility for natural gas service in the village, either through a McComb-type arrangement or by simply becoming the retail supplier to customers in Holgate. However, the Holgate situation is complicated by the distance between Holgate and the KNG Pipeline. Unlike the Deshler distribution facilities, which are within a quarter mile of the KNG Pipeline, the Holgate distribution facilities are some eleven miles away. Thus, from KNG's perspective, the only feasible way to serve Holgate would be to utilize the existing System transmission line by interconnecting with the System at the point where the KNG Pipeline crosses the Deshler-Holgate transmission segment.

As indicated above, although Deshler and Holgate wish to establish arrangements whereby KNG would take over the operation of their respective portions of the System, none of the smaller villages have expressed a similar desire. Moreover, in view of the relatively small number of customers involved, KNG is certain that none of these other villages would have any interest in establishing their own municipal gas utilities. Thus, leaving aside that Hamler,

Hoytville, and Malinta have not expressed interest in a relationship with KNG, because the McComb model simply will not work for these villages, the only arrangement that would permit KNG to step in as the operator would be for KNG to lease their respective portions of the System and provide service as under the current Suburban arrangement. In view of the age and condition of the System facilities, KNG would be extremely reluctant to enter into such an arrangement if, for no other reason, the potential liability to which it would be exposed.

In addition to the matters discussed above, Suburban's proposal to abandon service to the Villages raises several other significant issues. First, although Suburban has expressed its willingness to assist in the transfer of management and control of the System to the Villages or some other operator, no mention is made in the application as to the disposition of the meter/regulation station at the single interconnection point that serves the System. If, as alleged in the application, Suburban is the owner of these facilities, the question of whether Suburban would continue to own and operate these facilities after it abandons service to the Villages must be addressed. Second, if KNG is correct that Suburban has, in fact, already entered into new leases with at least two of the villages, Suburban's legal ability to rescind or assign those leases so as to effectuate the proposed abandonment must be examined. Third, notwithstanding Suburban's claim that the System was designed as an integrated transmission system and is most effectively and efficiently operated as a whole, Suburban has not identified any physical constraints that would prevent it from continuing to operate only the portions of the System that remain subject to its lease agreements. This, too, must be explored. Finally, there may be an underlying legal issue with respect to whether this application is properly before the Commission under Sections 4905.20 and 4905.21, Revised Code, in that those statutes speak to the

abandonment, closing, or withdrawal of facilities rather than to the transfer of the service obligation to another entity.

In raising these issues, it is not KNG's intent to be contentious. KNG certainly understands Suburban's business decision to attempt to extricate itself from this situation in view of the circumstances, and KNG does not doubt the sincerity of Suburban's commitment to facilitate the transfer of management and control of the System back to the Villages or to another entity in a manner that will that will assure uninterrupted service to the affected customers. For its part, KNG is more than willing to work with Suburban, the Villages, and the Commission and its staff to craft an arrangement that will preserve service to the customers involved while protecting the interests of all the stakeholders. However, if this application is to be granted, either in whole or in part, terms and conditions must be imposed that address the issues and concerns identified herein.

Section 4903.221, Revised Code, provides that any "person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding." For those reasons set forth above, KNG clearly may be adversely affected by the proposals contained in Suburban's application. Further, not only does KNG satisfy the underlying statutory intervention test, but it also satisfies the standards governing intervention set forth in the Commission's rules.

Rule 4901-1-11(A), Ohio Administrative Code ("OAC"), provides, in pertinent part, as follows:

(A) Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his ability

to protect that interest, unless the person's interest is adequately represented by existing parties.

As a potential operator of portions of the System, KNG plainly has a real and substantial interest in a proceeding in which the terms and conditions of Suburban's abandonment of service to the Villages will be determined. At this juncture, there are no parties to the proceeding other than Suburban. Thus, by definition, no existing parties adequately represent KNG's interest.

Although KNG does not believe this to be a close question, each of the specific considerations that the Commission may, by rule, take into account in applying the Rule 4901-1-11(A)(2), OAC, standard also fully support granting KNG's motion to intervene.

Rule 4901-1-11(B), OAC, provides as follows:

In deciding whether to permit intervention under paragraph (A)(2) of this rule, the commission, the legal director, the deputy legal director, or an attorney examiner case shall consider:

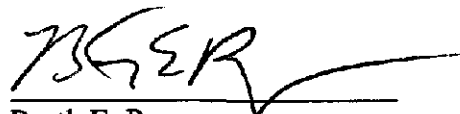
- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person's interest is represented by existing parties;

First, as previously explained, KNG's interest in this proceeding is obviously direct and substantial. Second, KNG's legal position – that the Commission must assure that terms and conditions under which Suburban would be permitted to abandon service to the Villages are fair, just, and reasonable – is at the very heart of this matter. Third, in view of the fact that the proceeding has just commenced, granting KNG's motion to intervene will not unduly delay or

prolong the proceeding. Fourth, KNG, as a provider of natural gas service and gas transportation service to customers in this state, and as the current operator of the portion of the System distribution facilities owned by the village of McComb, will bring substantial experience to bear on the issues raised. Finally, not only are there no existing parties that represent KNG's interest, but it would be inconsistent with the Commission's stated policy "to encourage the broadest possible participation in its proceedings" (*see, e.g., Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2) to apply the Rule 4901-1-11(B)(5) standard in a manner that would favor certain potential operators over others. Thus, granting KNG intervenor status is consistent with all the considerations set out in Rule 4901-1-11(B), OAC.

WHEREFORE, KNG respectfully requests that the Commission grant its motion to intervene.

Respectfully submitted,




Barth E. Royer
BELL & ROYER CO., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
(614) 228-0704 – Phone
(614) 228-0201 – Fax
BarthRoyer@aol.com – Email

Attorney for KNG Energy, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class mail, postage prepaid, this 21st day of August 2008.


Barth E. Royer

John W. Bentine
Mark S. Yurick
Matthew S. White
Chester, Willcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, Ohio 43215-4213

Village Clerk
Village of Deshler
101 East Main Street
Deshler, Ohio 43516

Village Clerk
Village of Hamler
240 Church Street
Hamler, Ohio 43524

Village Clerk
Village of Holgate
P.O. Box 323
416 Smith Street
Holgate, Ohio 43527

Village Clerk
Village of Hoytville
P.O. Box 135
Hoytville, Ohio 43529

Village Clerk
Village of Malinta
P.O. Box 69
Malinta, Ohio 43535