

Confidential Release

Case Number:

90-1825-GA-COI

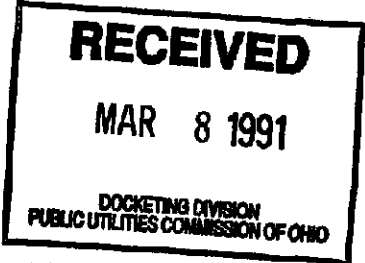
90-785-GA-ATA

Date of Confidential Document:

MARCH 8, 1991

Today's Date:

July 28, 2009



BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

[FILED UNDER SEAL]

In the Matter of the Commission :
Investigation of the Suburban : Case No. 90-1825-GA-COI
Fuel Gas, Inc. Relating to the :
Establishment of Rates. :

In the Matter of the Application :
of the Suburban Fuel Gas, Inc. to :
Establish Initial Rates and :
Charges for Customers Served from : Case No. 90-785-GA-ATA
Municipally-Owned Transmission and :
Distribution Lines Operated Under :
Long-Term Leases by the Applicant. :

MOTION TO USE DEPOSITION
AS EVIDENCE

Now comes Suburban Fuel Gas, Inc. (hereafter Suburban), and moves the presiding attorney examiner for an order permitting the use of the deposition of Norman Rood to be used as evidence at the hearing in Suburban's Motion to Disqualify scheduled for March 19, 1991, due to Mr. Rood's unavailability on March 19, 1991 for the reasons set forth in the following Memorandum In Support.

Respectfully submitted,

John W. Bentine, Trial Attorney
CHESTER, HOFFMAN, WILLCOX & SAXBE
17 South High Street, Suite 900
Columbus, Ohio 43215
(614) 221-4000

Attorney for Suburban Fuel Gas, Inc.

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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MEMORANDUM IN SUPPORT OF
MOTION TO USE DEPOSITION
AS EVIDENCE

The hearing on the Motion to Disqualify portion of this proceeding was previously scheduled for February 25, 1991. As a result of scheduling conflicts, counsel for Suburban was unable to take the deposition of Mr. Randazzo until February 25, 1991 and the February 25 hearing was continued until March 4, 1991. During Mr. Randazzo's deposition, information produced for the first time caused counsel for Suburban to re-evaluate the witnesses needed to support the motion. The information related to certain differences in the recollections and testimony of Mr. Randazzo and Mr. Pemberton concerning their conversations as well as the revelation that Mr. Randazzo also represented the Village of McComb. One of the additional witnesses counsel for Suburban determined was necessary was Mr. Norman Rood, Chairman of Suburban's Board of

Directors. Mr. Rood is domiciled in Florida during the winter.

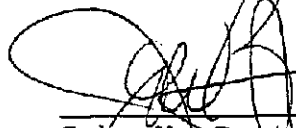
On Friday, March 1, 1991, counsel for Suburban finally determined that additional witnesses would indeed be required and contacted Emens, Hurd, Kegler & Ritter to request a continuance of the March 4 hearing, to which Emens, Hurd, Kegler & Ritter agreed. Counsel for Suburban requested the continuance because it was felt that Mr. Rood could not be in Columbus and be prepared to testify on such short notice and because arrangements needed to be completed with a second witness who would need time to become prepared. Subsequently, the date of March 19, 1991 was agreed upon by the parties for the continued hearing. Counsel for Suburban was mistakenly under the impression that Mr. Rood would, in fact, be available to travel to Columbus for the hearing on March 19, 1991 when that date was set. However, due to prior commitments, Mr Rood is unavailable from March 16th to March 23rd, 1991, which commitments cannot be rescheduled without severe financial hardship. He simply cannot appear at the hearing on the Motion to Disqualify as now scheduled.

On March 5, 1991, counsel for Suburban contacted Emens, Hurd, Kegler & Ritter and requested agreement to depose Mr. Rood for use at the hearing due to his unavailability. On March 6, 1991, counsel for Suburban again contacted Emens, Hurd, Kegler & Ritter to determine if said agreement was forthcoming. Counsel was informed that Emens, Hurd, Kegler & Ritter would agree to a further continuance to allow Mr. Rood to testify but would not agree to have his testimony and cross-examination taken by deposition and

submitted at hearing. Suburban believes that a further continuance is unnecessary and would unduly further delay the proceeding. Under the circumstances, Suburban believes that we need to proceed with this hearing in order to get this matter resolved and that there is no difference in having Mr. Rood testify in person or by deposition. This is an administrative proceeding and it is therefore unimportant for a witness to actually be present in order to have a jury observe the witness's demeanor. Mr. Rood's deposition for such purpose has now been noticed for 1:00 p.m., Tuesday, March 12, 1991.

Accordingly, Suburban requests the Attorney-Examiner, pursuant to Ohio Rule of Civil Procedure 32 (A) (3) (g) and Rule 4901-1-21 (N) O.A.C., to order that Mr. Rood's testimony be accepted as evidence by deposition at the hearing.

Respectfully submitted,

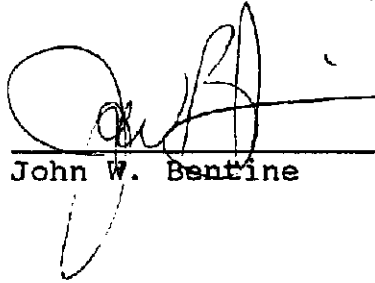


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Attorney for Suburban Fuel Gas, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing was served upon John C. McDonald, Esq., at EMENS, HURD, KEGLER & RITTER, Capitol Square, Suite 1800, 65 East State Street, Columbus, Ohio 43215, by hand delivery, this 5th day of March, 1991.



John W. Bentine

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