

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition of Ohio )  
Schools Council, Bay Area Council of )  
Governments, and Lake Erie Regional ) Case No. 00-762-GA-UNC  
Council of Governments for the )  
Commission to Require a Merger Filing )  
and to Investigate the Merger of Columbia )  
Energy Group and NiSource, Inc. )

In the Matter of the Establishment of a )  
Commission Docket to Archive ) Case No. 93-6000-GA-FAD  
Commission Gas Related Documents that )  
are Submitted on a Federal Level. )

ENTRY

The Commission finds:

- (1) On May 2, 2000, Ohio Schools Council, Bay Area Council of Governments, and Lake Erie Regional Council of Governments (collectively, Ohio Schools) filed a petition with the Commission. Ohio Schools request that the Commission require a merger filing, assert jurisdiction over, and investigate the merger of Columbia Energy Group (CEG) and NiSource, Inc. (NiSource). As a result of that merger, CEG will become fully owned by NiSource and, thus, the ownership of Columbia Gas of Ohio Inc. (COH), a regulated Ohio public utility, will change. Ohio Schools argue that the Commission should investigate the merger for several reasons:
  - (a) There are no demonstrable or measurable benefits accruing from the merger to Ohio jurisdictional ratepayers;
  - (b) NiSource's Indiana public utility subsidiary has a problematic service record;
  - (c) The announcement of the merger has caused CEG's credit rating to drop;
  - (d) NiSource will be highly leveraged after the merger, which could affect NiSource's credit rating, lead to disposition of assets, or other money-raising efforts that may adversely affect Ohio jurisdictional ratepayers; and

- (e) There is no information as to whether employees, offices, or facilities will be reduced or maintained in Ohio.

Ohio Schools contend that the Commission has consistently asserted jurisdiction over these types of transactions, even those taking place at the holding company level. Ohio Schools argue that they have presented compelling reasons why the Commission should formally open a proceeding, compile a full record, and evaluate whether the merger will affect COH's capabilities and the public interest.

- (2) On that same day, the Commission approved and the chairman then signed a letter addressed to the Securities and Exchange Commission (SEC) regarding the merger of CEG and NiSource. In the letter, the chairman noted that the Commission is satisfied that, in light of the commitments expressed by CEG and NiSource (following negotiations with the Commission staff), the merger will not adversely affect Ohio's interests. Moreover, the chairman stated that the Commission believes that the merger will have no detrimental effect on the its jurisdiction or its ability to act to protect Ohio ratepayers.
- (3) Ohio Schools filed a letter with the Commission on May 3, 2000, asking the Commission, in light of the petition, to reconsider the conclusions contained in the letter to the SEC and withdraw it. Ohio Schools further state that the change of control of Ohio's largest gas distribution utility is an important regulatory event, for which the Commission should take a more deliberative approach.
- (4) On May 4, 2000, the city of Toledo (Toledo) filed a memorandum in support of the Ohio Schools' petition. Toledo states that not all mergers create beneficial change (for example, employment reductions and loss of local control). In Toledo's view, the same considerations are present with the CEG/NiSource merger. Moreover, Toledo states that, since the merger started out as a hostile takeover, the ultimate agreement to merge was likely because of the value offered to CEG shareholders, rather than the synergies between the two companies. Additionally, Toledo argues that the amount of debt now carried by NiSource should be a "warning flag" that significant changes in operations will

be needed to keep the company afloat. Taken together, Toledo believes that these considerations warrant this Commission's formal review the transaction.

- (5) On May 8, 2000, COH filed a response to the Ohio Schools' petition, the Ohio Schools' May 3 letter, and Toledo's memorandum. COH states that the commitments made by CEG and NiSource already fully address the concerns listed by Ohio Schools and Toledo relative to community presence and maintenance of employees and offices. Moreover, COH contends that there will be no significant operational level savings resulting from the merger in which Ohio Schools is entitled to share. To the extent any savings do result from the merger, COH alleges that they will be considered in the context of future rate reviews and, thus, COH believes that Ohio Schools' argument for more formal review on this point is without merit. Finally, COH states that Ohio Schools' petition ignores the fact that the Commission has reviewed the merger, received commitments from COH and the merging parent companies, and has found that the merger will have no adverse impact on the Commission's jurisdiction. COH states that is sufficient and the petition and later filings do not warrant further formal action by the Commission.
- (6) On May 11, 2000, Ohio Schools filed a response to COH's letter, taking issue with several of the statements therein. Next, Ohio Schools filed supplemental information with the Commission on May 22, 2000. That supplemental information was NiSource's May 17, 2000 Form U-1 filing with the SEC. Ohio Schools argue that SEC filing further demonstrates that transaction is not necessarily in the public interest financially or structurally. Ohio Schools state that the issues raised by the transaction have not been considered by the Commission in a deliberate manner affording interested and affected persons due process of law.
- (7) Next, Ohio Schools and Toledo filed pleadings in the Commission's archive docket for gas matters that are filed on a federal level (Case No. 93-6000-GA-FAD). Ohio Schools filed an application for leave to file an application for rehearing.<sup>1</sup> Included in that pleading was the rehearing

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<sup>1</sup> Ohio Schools stated that it must seek leave for rehearing in 93-6000-GA-FAD because they were precluded from making an appearance earlier as the Commission had no formal merger approval application pending before it. However, Ohio Schools state that the application for rehearing is

application. Ohio Schools argues that the "Commission's order approving the merger of [CEG] and NiSource" is unlawful and unreasonable for three reasons:

- (a) The Commission's determination that the merger was in the public interest was an adjudicative action that required a merger approval application, along with notice and an opportunity to be heard under Sections 4905.04 and 4905.06, Revised Code.
- (b) The Commission abused its discretion by rendering an order without record support, as required by Section 4903.09, Revised Code.
- (c) The Commission's failure to require a merger approval application is an unlawful departure from precedent.

Toledo filed an application for rehearing on May 2, 2000, also alleging that the order approving the merger is unlawful and unreasonable because it was done without record support, as required by Section 4903.09, Revised Code.

In particular, Ohio Schools argue that the Commission's approval of the letter constitutes an "order of the Commission", per Section 4901.08, Revised Code. Additionally, Ohio Schools state that the Commission relied upon unsworn and untested assertions and conclusions of its staff and the merging companies, which has been forbidden by the Ohio Supreme Court. *Tongren v. Pub. Util. Comm.* (1999), 85 Ohio St. 3d 87. In Ohio Schools' view, this is an adjudicatory proceeding that involves a determination of individual parties' rights and requires notice and an opportunity to be heard.

- (8) We will first address the pleadings filed by Ohio Schools and Toledo filed in 93-6000-GA-FAD on June 1, 2000.

Ohio Schools and, to a lesser extent, Toledo take great efforts to somehow transform this Commission's letter to the SEC into an "order of this Commission" from which rehearing may be sought. Ohio Schools contend that Section 4901.08, Revised Code, deems the letter to be an order of the

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timely because it was filed within 30 days after the order was entered on the Commission's journal, as required by Section 4903.10, Revised Code.

Commission. Section 4901.08, Revised Code, does not transform the letter to the SEC into an "order of the Commission." Rather, that section of the Revised Code simply states that a majority of the commissioners is needed to exercise the authority granted and the act of the majority is an act of the Commission. Nothing in that section indicates that letters to other governmental agencies constitute "Commission orders". Therefore, Section 4903.10, Revised Code, has not been triggered.

Moreover, the filing of the letter in 93-6000-GA-FAD, one of our federal filing repository dockets, did not transform the letter into a "Commission order". The repository dockets are solely a means by which this Commission can maintain a public record of the filings and submissions of the Commission with federal agencies. When we established 93-6000-GA-FAD (and the four other similar dockets) in May 1993, we expressly noted that purpose. Nothing has changed since that time. Additionally, we specifically noted in May 1993 that no outside entity is permitted to submit a document for filing in 93-6000-GA-FAD (and the four other similar dockets). It was improper for Ohio Schools and Toledo to even file their pleadings in 93-6000-GA-FAD. It was an error for our docketing division to accept those pleadings.

Not only do we believe that, for procedural reasons alone, Ohio Schools' and Toledo's June 1, 2000 pleadings should be denied, but we also disagree with the allegations of error raised therein. We disagree with the contention that the Commission was required to open a proceeding, receive comments and/or hold a hearing before we could submit the letter to the SEC about this merger. Nothing cited by either party, including the *Tongren* decision, supports such an argument. Additionally, it is within our discretion as to how to utilize our supervisory authority over the public utility under our jurisdiction given the transaction involved. For these reasons, we conclude that Ohio Schools' request for leave to file an application for rehearing should be denied and Toledo's application for rehearing should be denied.

- (9) We now turn to Ohio Schools' petition for a merger application filing and a Commission investigation of the CEG/NiSource merger. Ohio Schools and Toledo have

raised several arguments that, in their view, require the opening of a docket for examination of the transaction by this Commission. Neither has argued that the Commission is required by law to open a docket to examine the transaction. Rather, both parties would like the Commission do to so and point to the fact that the Commission has evaluated other transactions in Commission dockets. However, in those other situations, the Commission evaluation took place upon request of one or both of the parties to the transaction. In this situation, we have not received an application to formally review the transaction. We point this out, not to state that only upon request will this Commission consider merger transactions but, rather, to highlight the fact that the long list of transactions listed in the petition (and also in the motion for leave) were formally evaluated by the Commission because a party to the transaction requested such. That list does not support Ohio Schools' argument that the Commission is required to open a docket, require the filing of a merger approval application, and otherwise examine the CEG/NiSource transaction. For this reason, we do not believe that we are "completely departing from past precedent", as Ohio Schools and Toledo have alleged. As we noted above, it is within our discretion as to how to utilize our supervisory authority over the public utility under our jurisdiction given the transaction involved. Upon full consideration of the petition, as supplemented and supported, we are not convinced that we must grant Ohio Schools' petition and open a docket, require the filing of a merger approval application, and further examine the CEG/NiSource transaction.

Finally, both Ohio Schools and Toledo indicate that, if this Commission does not assume jurisdiction over the transaction, they will have no other forum in which to be heard. That statement is incorrect, particularly because other governmental agencies are formally evaluating the transaction. Based upon the above, we conclude that Ohio School's petition should be denied.

It is, therefore,

ORDERED, That Ohio Schools' request in 93-6000-GA-FAD for leave to file an application for rehearing is denied and Toledo's application for rehearing in 93-6000-GA-FAD is denied. It is, further,

ORDERED, That our docketing division not accept any filings from outside entities in 93-6000-GA-FAD (or in any of the four other similar dockets). It is, further,

ORDERED, That Ohio Schools' petition in 00-762-GA-UNC is denied. It is, further,

ORDERED, That Case No. 00-762-GA-UNC is closed of record. It is, further,

ORDERED, That a copy of this Entry be served upon all parties and interested persons of record.

## THE PUBLIC UTILITIES COMMISSION OF OHIO

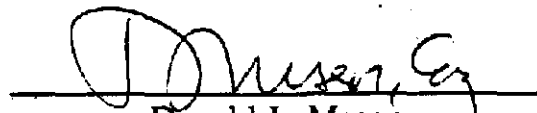


Alan R. Schriber, Chairman



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A True Copy

Gary E. Pigorito  
Secretary