

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

4
RECEIVED-DOCKETING DIV.
2018 NOV 24 PM 1:43
PUCO

In the Matter of the Application of Suburban)
Natural Gas Company for Authority to) Case No. 08-947-GA-ABN
Abandon Service Pursuant to Ohio Revised)
Code Sections 4905.20 and 4905.21)
)

**SUBURBAN NATURAL GAS COMPANY'S
STATEMENT REGARDING THE RELIEF TO BE
GRANTED IN THIS PROCEEDING AND
REQUEST FOR PROCEDURAL SCHEDULE**

The instant proceeding was initiated by the filing of an application for authority to abandon service to five municipalities ("Abandonment Application") served by Suburban Natural Gas Company ("Suburban") pursuant to long-term leases which, with one exception¹, have since expired, and is governed by Sections 4905.20 and 4905.21 of the Ohio Revised Code, commonly referred to as the Miller Act. This Act requires a public utility or a political subdivision, in the termination, abandonment, or withdrawal of public utility services, to apply to the Public Utilities Commission of Ohio ("Commission") for authority to do so. See State, ex rel. Klapp v. DP&L (1967), 10 Ohio St. 2d 14, Syllabus ¶2. And this is true even if a service contract has expired, as in the instant case. See Cleveland v. East Ohio Gas Co. (1929), 34 Ohio App. 97 at 110-111. However, in exercising its authority under the Act, the Commission may not disregard or abrogate the terms of an existing contract by, for example, ordering the continuation of service pursuant to a contract which has expired. Cf. Ohio Power Co. v. PUC (1931), 123 Ohio St. 275, Syllabus, and New Bremen v. PUC (1921), 103 Ohio St. 23 at 31-32. In such a case, the Commission's role appears to consist in assuring that the abandonment or withdrawal of service will not create an undue burden or hardship on the public.

Suburban filed the Abandonment Application on August 1, 2008, more than two years ago and more than a year before any of the long-term leases involved were due to expire. Moreover, Suburban had initiated discussions designed to determine whether the leases were to

¹ The Malinta lease expires in September, 2012.

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.
Technician SMS Date Processed 11/24/10

terminate or be extended prior to their expiration nearly ten years ago—again, long before any of the involved leases were due to expire. After the Abandonment Application was filed, representatives of various stakeholders, including the Villages and potential alternative suppliers, have been meeting informally with Suburban and the Commission Staff to discuss an orderly transition to other natural gas supply arrangements to conclude this case. The last such meeting was on November 19, 2010. Nevertheless, as far as Suburban is aware, the affected Villages have yet to finalize alternative arrangements for natural gas service. As of the date of this filing, the Villages of Holgate, Hamler, and Malinta have, apparently, reached some sort of accommodation with Ohio Gas Company for service; and the Village of Deshler has, apparently, reached some sort of accommodation with KNG Energy, Inc. At this point, there appears to be no arrangement for service to the Village of Hoytville and when the other Villages' arrangements will be finalized is unknown.

As set forth in its Abandonment Application, Suburban has maintained that the leases and related indentures created an integrated system with interrelated obligations and cannot be “parceled” without accounting for *all* the Villages and their respective customers on that integrated system. Consistent therewith, the Village of Hoytville is contractually entitled, in perpetuity, to receive natural gas via the Village of Deshler’s system. Therefore, regardless of what the Commission orders in this proceeding, Hoytville is inextricably tied to Deshler insofar as the operation of its system is concerned. It has no other source of supply. It would seem evident, therefore, that the Village of Deshler, or its agent/operator, KNG Energy, should assure this Commission of its or their willingness to meet that obligation as a condition to permitting any accommodation sought by Deshler and KNG Energy in this case and to provide, if necessary, such additional support as might be required by Hoytville to operate its own system. Neither Deshler nor KNG Energy can assume operating control of the Village of Deshler’s system without the Commission granting approval for the relief sought in this case, and the Commission’s order can be so conditioned. Should Deshler and/or KNG Energy refuse to accept such a condition, then any proposal submitted by Deshler or KNG Energy as a part of resolving this case should be denied; and Suburban will continue to provide service to Deshler and Hoytville until an acceptable alternative is presented to the Commission.

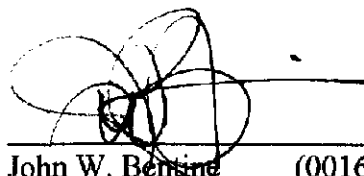
Suburban’s obligations to the Villages and their customers terminated upon the expiration of the leases, and those customers are now the responsibility of the Villages - not Suburban,

which has continued to serve them solely as an accommodation to the Villages and will continue to do so only until the Commission concludes this case. Suburban gave the Villages more than adequate notice of its intention to withdraw service and should be relieved of any responsibility to the Villages or their customers at the conclusion of the current winter period. Any suggestion that Suburban would have responsibility for the continuation of service to some leftover "island" of customers on this integrated system is contrary to law, fact and equity. That responsibility is squarely upon the Villages who own the system.

Finally, to make one point perfectly clear, Suburban has stood ready to provide gas supply into this system, or portions thereof, to one or more of the Villages' respective systems through transportation arrangements under its tariff. No application for such service has been submitted to Suburban.

The continued delay and equivocation in this matter is clearly contrary to Suburban's interests and, more importantly, the public interest. The Commission should immediately issue an Entry containing a procedural schedule and set this matter for hearing. That procedural schedule should include, among other things, a deadline for intervention in this proceeding within fifteen days of such Entry as well as a requirement that each of the affected Villages, their chosen supplier and any other intervener, clearly state in such intervention, or in a separate filing if an intervention was previously filed, their position regarding resolving this matter.

Respectfully submitted,



John W. Bentine (0016388)

Email: jbentine@cwslaw.com

Direct: (614) 334-6121

Matthew S. White (0082859)

Email: mwhite@cwslaw.com

Direct: (614) 334-6172

CHESTER WILLCOX & SAXBE LLP

65 East State Street, Suite 1000

Columbus, Ohio 43215

Telephone: (614) 221-4000

Facsimile: (614) 221-4012

Attorneys for Suburban Natural Gas Company

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Statement Regarding the Relief to be Granted in this Proceeding* was served upon the following persons listed below by electronic mail and regular U.S. Mail, postage prepaid, this 24th day of November, 2010.

David Busick
Legal Advisor
Village of Deshler
5671 Road 9
Liberty Center, OH 43532
dmb@henry-net.com

Village Clerk
Village of Hamler
240 Church St.
Hamler, OH 43524

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

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

Barth Royer
Bell & Royer Co., LPA
33 South Grant Ave.
Columbus, OH 43215
barthroyer@aol.com
Attorney for KNKS Energy, Inc.

Village Clerk
Village of Holgate
P.O. Box 323
416 Smith St.
Holgate, OH 43527

Steve Callejas
441 Frazee Ave., Suite B
Bowling Green, OH 43402
Solicitor for Village of Hoytville



John W. Bentine