

**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

**RESPONSE OF KNG ENERGY, INC.
TO
REPLY MEMORANDUM OF OHIO INTRASTATE ENERGY, LLC**

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By a joint motion filed herein on June 13, 2011 (“Joint Motion”), KNG Energy, Inc. (“KNG”), Ohio Gas Company (“Ohio Gas”), and the Village of Deshler, Ohio (“Deshler”) sought an order from this Commission approving a substitution of service that would resolve the above-captioned abandonment application of Suburban Natural Gas Company (“Suburban”) for authority to abandon service to customers served through an integrated transportation and distribution system (“System”) leased by Suburban from the villages of Deshler, Hamler, Holgate, Hoytville, and Malinta, Ohio.¹ As described in detail in the Joint Motion, Hamler, Holgate, and Malinta have entered into arrangements with Ohio Gas, Deshler has entered into arrangements with KNG, and Ohio Gas and KNG have entered into an arrangement with one another, which, taken together, assure that customers in and around these villages and those located on the segment of the System transmission from Deshler east (the “Deshler Pipeline”) will continue to receive uninterrupted natural gas service if Suburban is relieved of its obligations to these customers by order of the Commission in this proceeding.

¹ The history of these arrangements is and the factors that prompted Suburban's abandonment application are fully set out in the Joint Motion and will not be repeated here.

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The remaining customers affected by Suburban's application are located in and around the village of Hoytville and along a pipeline that runs south from Hoytville to the village of McComb (the "McComb-Hoytville Pipeline") owned by McComb. As explained in the Joint Motion, Hoytville has elected to lease its distribution system to Ohio Intrastate Energy, LLC ("OIE"), and McComb has elected to sell the McComb-Hoytville Pipeline to OIE. As indicated in OIE's application for approval of a tariff that would apply to the unincorporated area customers on the McComb-Hoytville Pipeline, OIE intends to serve Hoytville under a municipal ordinance and to serve the unincorporated area customers under a tariff that mirrors the Hoytville ordinance rates.² However, as noted in the Joint Motion, it appeared that OIE would not be in a position to commence service as of the July 1, 2011 projected in-service date of the KNG-Ohio gas interconnection approved by the Commission in Case No. 11-1115-GA-ATR that will allow service to commence to the other customers affected by Suburban's abandonment application. Because Suburban insisted on being relieved of all its obligations to customers served through the System simultaneously, the Joint Motion proposed that KNG would serve the Hoytville and McComb-Hoytville Pipeline customers on the same temporary basis that Suburban has served those customers subsequent to the expiration of the leases in October of 2009 until such time that OIE had received the requisite authority and was ready to commence operations.³

On June 17, 2011, Suburban, KNG, Ohio Gas, Deshler, and the Commission staff filed a joint stipulation and recommendation ("Stipulation") in this docket, which, if adopted by the Commission, will resolve all issues raised by the application and the Joint Motion. The Stipulation endorses the substitution of service as set out in the Joint Motion, including the

² See Case No. 11-3171 -GA-ATA.

³ In late 2009, Deshler, Hamler, Holgate, and Hoytville enacted ordinances that provided for an interim arrangement whereby Suburban would temporarily continue to provide service to the respective villages under its filed tariff until the villages had entered into new service arrangements and the abandonment application was resolved by a Commission order.

proposal that KNG serve Hoytville and customers on the McComb-Hoytville Pipeline on a temporary basis, but provides for certain modifications to the transition plan ("Transition Plan") originally proposed in the Joint Motion. As was the case with the Joint Motion, the Stipulation contemplates that, except for complying with certain elements of the Transition Plan, Suburban will be relieved of its public utility obligations to the customers served from the System on July 1, 2011, and that the affected customers will be transferred to the new service providers (*i.e.*, KNG, Ohio Gas, and the Deshler municipal gas utility) on that date.

On June 16, 2011, OIE filed a motion to intervene and a document styled as a reply memorandum ("Reply"). In its Reply, OIE states that it has no objection to KNG providing service to Hoytville and customers on the McComb on the temporary basis proposed in the Joint Motion.⁴ Although OIE takes exception to any implication in the Joint Motion that it "has lacked diligence in pursuit of finalized arrangements to commence service to jurisdictional customers now served by Suburban Natural Gas,"⁵ OIE does not dispute that it will not be ready to commence service on July 1, 2011, nor does OIE offer any estimate as to when it will be ready to commence such service.⁶ However, OIE's Reply includes a request that the Commission

⁴ OIE Reply, 3.

⁵ *Id.*

⁶ Apparently, OIE's business model entails farming out all the normal, necessary public utility functions to third parties on a contract basis, notwithstanding that there are only approximately 100 total customers in Hoytville and on the McComb-Hoytville line. *See* OIE Reply, 2. According to OIE, it is attempting to negotiate a contract with another natural gas company to provide operational services, a contract with an accounting firm to provide accounting services, and a contract with yet another firm to provide billing services. *Id.* However, as OIE candidly acknowledges, none of these arrangements are in place at this juncture. *Id.* In addition, although OIE filed a tariff to provide service as a Commission-regulated intrastate pipeline company in 2005 (*see* Case No. 05-468-PL-ATA), its annual reports to the Commission indicate that it never actually conducted operations as pipeline company, and it has no authority from the Commission to operate as a natural gas utility. As noted above, OIE has filed an application for approval of a tariff to provide natural gas distribution service to unincorporated area customers on the McComb-Hoytville Pipeline, but that application is still pending before the Commission, perhaps because the application reveals nothing regarding OIE's qualifications to operate as a natural gas company in terms of the managerial, financial, and technical capability to provide the service it intends to offer. In short, at this point, other than the Hoytville lease and its arrangement to purchase the McComb-Hoytville line, OIE is a paper company, with much to do before it can commence service to customers.

“immediately” convene a technical conference to address four specific issues.⁷ KNG respectfully submits that the issues OIE is attempting to inject into this proceeding have no bearing on the resolution of Suburban’s abandonment application proposed in the Stipulation, and that OIE’s standing to raise these issues is dubious, at best. Moreover, any consideration of these issues by the Commission at this juncture would plainly be premature. However, KNG would offer the following observations.

OIE asserts that the participants in the technical conference should establish a timeline for an arrangement for gate access and transportation service through the new KNG-Ohio Gas interconnection, and should require KNG to charge the same rate for transportation service that it will charge Ohio Gas Energy Services (“OGES”) upon approval of its pending application in Case No. 11-3152-GA-AEC. Several points bear mention. First, this is clearly a matter for KNG and OIE, not for the other parties to the Suburban abandonment proceeding. Second, although OIE attempts to suggest that KNG has deliberately dragged its feet in considering OIE’s request for a transportation arrangement,⁸ KNG cannot enter into a transportation agreement with OIE until OIE’s status as a natural gas utility is settled. Third, even if it were appropriate to address KNG’s pricing for transportation service in the context of this case – which it obviously is not – there is no basis for OIE’s claim that KNG should be required to offer transportation service to OIE at the same rate it will provide transportation service to OGES.

Although OIE professes concern that that the term and pricing provisions of the OGES contract were submitted under seal in Case No. 11-3152-GA-AEC, this measure was appropriate because, as discussed in the KNG’s motion for a protective order, this is competitively-sensitive information of the type typically accorded confidential treatment by the Commission. As

⁷ OIE Reply, 3-5.

⁸ See OIE Reply, 2.

evidenced by Ohio Gas's presentations in public meetings with certain of the villages prior to entering into the interconnection agreement with KNG, Ohio Gas clearly had other supply delivery options it could have pursued. Indeed, the KNG-OGES agreement was, in fact, a competitive-response agreement entered into by KNG in order to secure an additional revenue stream to support its investment in the KNG Pipeline that it otherwise would not have received. In addition, transportation service to OIE would require the use of not just the KNG Pipeline, but also the segment of the System transmission line between the KNG-Ohio gas interconnection and Deshler (the "KNG Segment") that KNG acquired from Ohio Gas as a term of the Commission-approved interconnection agreement, as well as the Deshler Pipeline itself, which KNG is acquiring from Deshler.⁹ Further, in proposing a transportation rate for OIE, KNG must also take into account the additional administrative burden that the use of multiple pipelines will impose. Finally, KNG must also consider the creditworthiness of the shipper, particularly because, in this instance, metering and regulation must be installed to isolate the pipelines OIE will utilize to serve customers from the Deshler Pipeline. Thus, there is no merit to OIE's suggestion that it would be discriminatory for KNG to charge a different transportation rate to OIE than that charged to OGES for service over the KNG Pipeline.¹⁰

To support its claim that is necessary to establish a timeline for KNG to enter into an arrangement with OIE for transportation service, OIE posits that KNG has "minimal incentive" to provide transportation service to OIE because it will continue to provide service to Hoytville and customers on the McComb-Hoytville Pipeline until OIE is able to commence operations.

⁹ This transaction will close no later than July 1, 2011.

¹⁰ In so stating, KNG is mindful of OIE's position that Hoytville has certain capacity rights on the Deshler Pipeline by virtue of the 1959 deed and indenture that created the System. See OIE Reply, 4. Although this is clearly not the place to resolve this issue, KNG would point out that Section 1 of the Hoytville ordinance that authorized the RFP for leasing or purchasing the Hoytville distribution system, like similar ordinances enacted by the other villages, specifically terminated Hoytville's interest in the contract with the other villages to operate and integrated natural gas transmission system.

This theory ignores the realities of the situation. First, KNG agreed to step in as the temporary service provider only after it became apparent that this was the only way the Suburban application, which has been pending before the Commission for almost three years, was going to get resolved before another heating season was upon us. It cannot be seriously argued that KNG subjected itself to the administrative headaches and operational burden associated with the stop-gap measure of providing service to 100 customers for a period of a few months out of a profit motive. Second, although this apparently did not occur at the pace OIE deems appropriate, as OIE acknowledges, KNG has provided an application to OIE for transportation service¹¹ and, in fact, is currently evaluating the information provided by OIE in its response. However, as discussed above, it is not KNG's failure to offer a transportation contract to OIE that is holding up OIE's commencement of service, and KNG will provide a formal proposal once these other issues are resolved.¹² In no event would it be appropriate to establish a timeline for transportation service to OIE in the context of this case or to turn this decision over to the other participants in this proceeding.

The next issue OIE seeks to have the participants in its proposed technical conference address relates to the statement in the Joint Motion – and in the Stipulation – that, once OIE is authorized and ready to commence service, KNG will transfer the affected customers to OIE “subject to terms similar to those set out in the Transition Plan proposed herein for the transfer of customers to KNG by Suburban.”¹³ OIE claims that it requires clarification of what is meant by “similar” terms before it can concur in the proposed transfer of customers at that time.¹⁴

¹¹ OIE recounts that, after its request for a proposal from Suburban was rejected, it asked for a proposal from KNG on May 27, 2011, then expresses dismay that KNG took until June 9, 2011 to provide an application to obtain the information it required to provide a proposal. OIE Reply, 2.

¹² In the meantime, KNG is certainly willing to discuss the arrangement informally with OIE, particularly since a meter and regulator station will have to be constructed to provide transportation service OIE.

¹³ OIE Reply, 4.

¹⁴ *Id.*

Although KNG cannot speak for the other signatories to the Stipulation, KNG's expectation was that, when OIE is ready to commence service, a joint KNG-OIE application for a substitution of service would be filed with the Commission, and that such application would contain a transition plan governing all the necessary steps to effectuate the transfer of customers without an interruption of service and in a manner that is as seamless as possible from the customers' standpoint. The word "similar" was used advisedly, because there will be some circumstances underlying the KNG-OIE transfer that are different than the circumstances underlying the Suburban-KNG transfer. The circumstance KNG had in mind at the time – and there may well be others – was that the term of the Transition Plan governing KNG's purchase of Suburban's accounts receivable would not be appropriate for OIE's purchase of KNG's receivables. Further, the intent of the reference to the terms of the Transition Plan applicable to the transfer of customer to KNG from Suburban was not intended to bind OIE – which the parties to the stipulation had no power to do – and the word "similar" was used to prevent such an interpretation. However, the important point for purposes at hand is that all this is premature. Again, there is no basis for addressing this issue in the context of this proceeding, and there is certainly no basis for having the other participants in this case establish the terms for the transfer of customers from KNG to OIE .

The third issue for OIE's proposed technical conference is its request for an agreement by the other parties that it be permitted to accompany Suburban personnel during the final Suburban meter reads.¹⁵ OIE suggests that this would provide OIE the opportunity to learn the location of the meters and to confirm the accuracy of the final readings, which OIE appears to believe will somehow be relevant to its purchase of KNG's accounts receivable when the customers are transferred from KNG to OIE. Frankly, KNG does not see the connection. KNG's accounts

¹⁵ OIE Reply, 4-5.

receivable at the time customers are transferred to OIE will be based on KNG's final meter reads. If OIE wishes to have a representative accompany KNG's meter reader during KNG's final meter reads, it is welcome to do so, but there is no basis for requiring Suburban to allow an OIE representative to tag along while Suburban performs its final meter reads, and there is certainly no need to convene a technical conference to address this issue.

Finally, OIE takes issue with the provision of the Transition Plan that requires KNG and Ohio Gas to compensate Suburban for line-pack gas and "seeks assurance of the other parties that it will not be responsible for Suburban's assigned value for line-pack gas."¹⁶ As noted in the Joint Motion, Ohio Gas and KNG did not necessarily agree that Suburban was legally entitled to compensation for line-pack gas, but included a provision whereby they would pay Suburban for the value of the line-pack gas in the system as of July 1, 2011 to expedite the proposed substitution of service. This provision ultimately became an agreed term of the Stipulation. Although it is nice to know that OIE does not believe that Suburban is entitled to compensation for line-pack gas, what this has to do with the need for a technical conference escapes us. Had OIE been ready to commence service, OIE could have fought this out with Suburban during the negotiations that produced the Stipulation, assumed the risk that litigating this issue would have significantly delayed the transfer of customers, and paid for litigating the issue at a cost that certainly would have far exceeded the paltry value of the line-pack gas in the Hoytville distribution system and the McComb-Hoytville Pipeline. However, OIE did not have this opportunity because it did not have its ducks in a row. Ohio Gas and KNG did what they had to do resolve Suburban's abandonment application without resorting to litigation that would have been in no one's interest, and it is galling that OIE now has the temerity to second-guess their decision to compromise on this issue. More to the point, an assurance by parties other than KNG

¹⁶ See OIE Reply, 5.

that that OIE will not be responsible for the value of line-pack gas would be meaningless.

Although OIE may eventually wish to raise this issue with KNG in the context of the transfer of customers from KNG to OIE,¹⁷ there can be no question that those discussions have no place in this proceeding.

For all the foregoing reasons, the Commission should reject OIE's request for a technical conference and should adopt the Stipulation as filed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "BER", with a long horizontal line extending to the right.

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¹⁷ OIE should be forewarned that KNG, having paid for the line-pack gas, will expect to be compensated for it, and will take the position that the argument that OIE advances in its Reply will no longer be relevant, but this is an issue for another day.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served upon the following persons listed below by electronic mail and by regular U.S. Mail, postage prepaid, this 20th day of June 2011.


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