

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

- (1) On August 1, 2008, as supplemented on November 24, 2010, Suburban Natural Gas Company (Suburban) filed an application in Case No. 08-947-GA-ABN (08-947) to abandon natural gas service to customers within the villages of Hoytville, Deshler, Hamler, Malinta, and Holgate, Ohio (collectively referred to as the villages), and to certain customers located in the unincorporated areas in the vicinity of the villages. Suburban has been providing gas service to the villages through a transmission and distribution system, owned collectively by the villages and leased to Suburban, pursuant to 50-year lease agreements between Suburban and the villages. All of the leases, except for the Malinta lease, have expired; therefore, Suburban, has been providing service to Deshler, Hamler, Holgate, and Hoytville pursuant to temporary ordinances.
- (2) According to Suburban, Deshler and Holgate represent more than two-thirds of the total number of customers serviced by the transmission system as a whole and these two villages have rejected Suburban's attempts to extend or renew their leases with Suburban for the operation of the village systems. As a result, Suburban argues that it is not practical for it to operate the system that serves the villages efficiently or cost effectively without having lease agreements in place with all of the subject villages; therefore, Suburban sought to abandon service to all of the villages.
- (3) On June 13, 2011, KNG Energy, Inc. (KNG), Ohio Gas Company (Ohio Gas), and Deshler filed a joint motion for an order approving a substitution of service. According to the joint motion, Deshler established a municipal gas utility and

entered into a service agreement with KNG, which will operate and maintain the Deshler system for the municipal utility. In addition, the movants state that Hamler, Holgate, and Malinta have entered into agreements with Ohio Gas, in which Ohio Gas will purchase their respective distribution and transmission facilities, subject to the Commission's approval of Suburban's application in this case, and Ohio Gas will provide service through a combination of its tariff and individual municipal rate ordinances.¹ According to the joint motion, these transactions are scheduled to close on July 1, 2011, and will insure that there will be no interruption of service to customers in Deshler, Hamler, Holgate, and Malinta, as well as to unincorporated area customers located west of Deshler and on the Deshler pipeline. The joint motion also includes a transition plan to effectuate the substitution of service from Suburban to Ohio Gas, KNG, and Deshler.

- (4) With respect to Hoytville, the joint motion explains that Hoytville leased its distribution system to Ohio Intrastate Energy, LLC (OIE), an entity not yet approved by the Commission to provide natural gas service.² In addition, McComb elected to sell the McComb-Hoytville pipeline to OIE. The parties to the joint motion also point out that it is unknown if or when OIE will be prepared to commence service to these customers. As a result, the parties to the joint motion acknowledge that approval of Suburban's application would not relieve Suburban of its obligation to serve these remaining customers in and around Hoytville and those located on the McComb-Hoytville pipeline. Furthermore, KNG affirmed in the joint motion that it is willing to serve these customers until such time as OIE is prepared to commence service in order to accommodate a global resolution of Suburban's abandonment application; this will permit KNG, Ohio Gas, and the Deshler municipal gas utility to move forward so that they can commence service to their respective new customers. The parties request that the Commission find that approving the substitution of service, as proposed in the joint motion, would

¹ KNG and Ohio Gas have entered into an agreement that permits Ohio Gas to transport gas over KNG's pipeline to serve Hamler, Holgate, and Malinta. This agreement was approved by the Commission in Case No. 11-1115-GA-ATR (Stipulation page 9).

² OIE has a pending request to be authorized to provide gas service (Case No. 11-3171-GA-ATA).

not result in an abandonment of service but rather would terminate Suburban's obligation to serve all of the villages and associated customers.

- (5) On June 15, 2011, OIE filed a reply memorandum to the joint motion, a motion to intervene, and a request for a technical conference. OIE states that it was the successful bidder for the purchase from McComb of the transmission pipeline between Hoytville and McComb. OIE notes that it is negotiating with another natural gas company to provide operational services and that, it is also currently negotiating for billing services with another firm, as well as attempting to finalize its supply arrangements. OIE requests that a technical conference be held to discuss details of the transition plan outlined in the joint motion, including the establishment of a timeline for the contractual arrangement for gate access through the KNG/Ohio Gas interconnect, clarification of any transfer from KNG to OIE, final meter readings performed by Suburban, and compensation between KNG and Ohio Gas to Suburban. OIE states that it supports the temporary service proposal for customers in and around Hoytville, as well as and those located on the McComb-Hoytville pipeline, in substitution of service by Suburban.
- (6) On June 20, 2011, KNG filed a response to OIE's reply memorandum. KNG contends that the issues OIE is attempting to raise in this proceeding through a technical conference have no bearing on the resolution of Suburban's abandonment application. KNG also argues that consideration of these issues by the Commission at this point in time would be premature, as OIE is not authorized by the Commission to provide natural gas service.
- (7) By entry of June 20, 2011, the attorney examiner granted the motions to intervene filed by KNG, Ohio Gas, Deshler, and OIE. The June 20, 2011 entry also scheduled a prehearing conference and a hearing on June 23, 2011.
- (8) On June 17, 2011, as revised on June 23, 2011, Suburban, KNG, Ohio Gas, Deshler, and staff filed a stipulation and recommendation (hereinafter referred to as the stipulation) which they claim resolves all of the issues raised by Suburban's

application and by the joint motion.³ The following is a summary of the stipulation and is not intended to supplant the provisions set forth in the stipulation. Pursuant to the stipulation:

- (a) Ohio Gas, KNG, and Deshler assure that all customers from Deshler, and those west of Deshler, as well as those served directly from the Deshler pipeline, will continue to receive natural gas service through the facilities formerly leased by Suburban.
- (b) Deshler has established a municipal gas utility and has entered into a service agreement with KNG, whereby KNG will operate and maintain the Deshler municipal system upon resolution of this proceeding.
- (c) Ohio Gas will purchase the distribution and transmission systems of Hamler, Holgate, and Malinta; and will provide service through a combination of its Commission-approved tariff and individual municipal rate ordinances; and will serve unincorporated area customers pursuant to contracts that will mirror the provisions of the rate ordinances.
- (d) For those customers in and around Hoytville and those located on the McComb-Hoytville pipeline, KNG agrees to provide service to these remaining customers until OIE is ready to commence operations.
- (e) KNG will assume Suburban's responsibility for routine maintenance and repairs of the Hoytville and McComb facilities used to serve these customers and will charge these customers the

³ The revisions to the stipulation include: the deletion of a repetitive sentence on page 21; the inclusion of the acronym "MCF" in the discussion of the payment of line-pack gas on page 23; the authorization from Deshler by adding the signature of David Busick on page 25; and a revised Exhibit B.

same rates charged to KNG's other unincorporated area customers.⁴

- (f) The stipulation provides for the transition from Suburban to KNG and Ohio Gas and all necessary construction of facilities to ensure gas service.
- (g) Suburban agrees to provide to Ohio Gas, KNG, and Deshler the property, maintenance, and customer account information and other associated records.
- (h) Within seven business days of the receipt of the customer information from Suburban, Ohio Gas and KNG shall notify affected customers by special mailing that Ohio Gas or KNG will become the provider of natural gas service effective on the transfer date and that Suburban will no longer provide such service.
- (i) Suburban agrees to conduct final meter readings of the affected customers' meters on the day before the transfer date and shall provide the meter registration to Ohio Gas, KNG, and Deshler. The stipulation also provides for final bills and the purchase of accounts receivable.
- (j) KNG and Ohio Gas agree to pay Suburban for line-pack gas in the portion of the system that will be acquired by Ohio Gas and KNG.
- (k) Customers transferred to Ohio Gas that are currently enrolled in the Percentage of Income Payment Plan (PIPP) program shall continue as PIPP customers of Ohio Gas, so long as they comply with the PIPP eligibility recertification requirements and make the required PIPP installment payments. Under the stipulation, it is noted that KNG and Deshler do not offer PIPP; however, all Suburban PIPP customers

⁴ As noted in the stipulation, although KNG has a bundled rate, whereas Suburban has a base distribution rate, a gas cost recovery rate, and various riders, KNG's total charges are currently less than Suburban's total charges for the same usage.

transferred will begin with a zero arrearage balance and Suburban will be compensated for PIPP arrearages through its PIPP rider.

- (l) Suburban currently serves one customer located on the Deshler pipeline pursuant to a Commission-approved competitive response contract and this contract will be assigned to KNG, which will accept such assignment and fulfill Suburban's obligations under the contract.
- (9) The parties to the stipulation state that the stipulation is the product of serious bargaining among capable knowledgeable parties with diverse interests and the staff. The parties claim that the stipulation benefits customers and the public interest, by assisting the affected villages in transferring management and control of the natural gas transmission and distribution systems serving the villages and avoid any interruption of service or inconvenience to customers served through the system. The parties also believe that the stipulation does not violate any regulatory principle or practice.
- (10) On June 21, 2011, OIE filed a reply memorandum to the stipulation. OIE states that it has no objection to the institution of temporary service by KNG pending a finding and order by the Commission on OIE's application in Case No. 11-3171-GA-ATA. However, OIE does not believe that adoption of the stipulation should prejudice it as to finalization of its supply arrangement or its access to information and documentation that will be important to its operation of the Hoytville system and Hoytville-McComb transmission line. OIE requests that the Commission address the following issues in its consideration of the stipulation: (1) that the customer information Suburban agrees to submit to KNG, Ohio Gas, and Deshler should contemporaneously be made available to OIE; (2) that the Commission direct KNG and OIE to submit a joint application for substitution of service containing a transition plan to effectuate the transfer of customers; (3) that KNG be directed by the Commission to cooperate with OIE in designing the customer notification materials for those customers that KNG is serving temporarily; (4) that Suburban provide OIE the property maintenance and customer records provided to Ohio Gas, KNG, and Deshler; and (5) that Suburban provide

estimates of the line-pack for the facilities associated with Hoytville and McComb. On June 20, 2011, KNG filed a response to OIE's reply memorandum.

- (11) At the hearing held on June 23, 2011, OIE stated that it did not object or oppose the stipulation. OIE also stated that, with respect to the issues raised in its memoranda to the joint motion and to the stipulation, those issues do not require any postponement of the stipulation. Steve Puican, on behalf of staff, testified that Suburban will transfer 885 customers to Ohio Gas and approximately 600 to 700 customers to KNG and that, of those customers, there are 28 Suburban PIPP customers who will be transferred to Ohio Gas and 29 Suburban PIPP customers who will be transferred to KNG and the Deshler. Mr. Puican also indicated that there were extensive discussions among the parties and that the stipulation represents a comprehensive settlement of a wide range of issues, both technical and logistical, and that the stipulation represents a fair and reasonable result. Mr. Puican also stated that the stipulation ensures that all customers in the five villages, as well as the mainline customers, will continue to receive uninterrupted gas service without a rate increase. Finally, Mr. Puican indicated that he believes the stipulation represents a fair and reasonable compromise of diverse interests and provides a fair result for customers.
- (12) Also, by affidavit submitted as an exhibit at the hearing, Ms. Sandra Roller, president of KNG, affirmed that KNG understands that, under the stipulation, it has the obligation to provide service to the customers in and around Hoytville and unincorporated area customers located on a pipeline between Hoytville and McComb. According to Ms. Roller, KNG will continue to serve those customers until it is relieved of such obligation by a subsequent order of the Commission approving a substitution of service to said customers. Ms. Roller also stated that KNG commits that it will discuss the issues identified in OIE's response at an appropriate time and in good faith, including the terms and pricing under which KNG will provide transportation service to OIE. She also indicated that KNG will cooperate with OIE in attempting to develop a mutually acceptable transition plan to be incorporated in a joint application by KNG and OIE for approval of a substitution of

service to be filed once OIE is authorized and ready to commence service to the affected customers.

- (13) The Commission has reviewed the application, the joint motion, and the stipulation, and the evidence at the hearing, and finds that Suburban, KNG, and Ohio Gas are public utilities and natural gas companies pursuant to Sections 4905.02 and 4905.03, Revised Code, and, as such, are subject to the Commission's jurisdiction. We further find that Suburban, KNG and Ohio Gas are subject to Chapters 4901., 4903., 4905., 4907., 4909., 4923., and 4925., Revised Code. Therefore, the Commission will consider this case under Sections 4905.05 and 4905.06, Revised Code.
- (14) Under similar circumstances, the Commission has found that the cessation of service by the regulated utility, accompanied by uninterrupted and satisfactory service by another regulated entity is not tantamount to an abandonment of service under Section 4905.05 and 4905.06, Revised Code. In this case, the customers of Suburban are being transferred to Ohio Gas, KNG, and Deshler. In such instances, the Commission has found it appropriate to exercise its authority pursuant to Sections 4905.20 and 4905.21, Revised Code, to ensure that the proposed transfer results in uninterrupted and adequate service to the utility's existing customers. See, *In the Matter of the Joint Application of Public Utility Service Corporation and the Board of Commissioners of Fairfield County to Remove Public Service Corporation from the Roll of Public Utilities Regulated by this Commission*, Case No. 87-1320-ST-UNC (September 9, 1987); *In the Matter of the Commission Investigation into the Operations and Service of Lake Erie Utilities Company*, Case No. 86-1561-WS-COI (October 18, 1988); *In the Matter of the Application of Aqua Ohio, Inc. for Approval of the Sale of Certain Water Supply Facilities and Associated Operations to the City of Geneva Ohio, Modification of its Tariff and Certificate of Public Convenience and Necessity and other Appropriate Relief and Approvals*, Case No. 04-1685-WW-UNC (December 8, 2004). Accordingly, in order to protect the public interest, the Commission will exert jurisdiction to this extent over the transaction proposed in this case.
- (15) Rule 4901-1-30, O.A.C., authorizes parties to Commission proceedings to execute stipulations. Although not binding upon the Commission, stipulations are given careful scrutiny

and consideration. See, *In the Matter of the Application of The Cincinnati Gas and Electric Company to Increase Rates*, Case No. 76-302-EL-AIR (May 4, 1977). The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. See, e.g., *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (March 30, 1004); *Ohio Edison Co.*, Case No. 91-698-EL-FOR et al. (December 30, 1993); *Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (November 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principle or practice?

The Ohio Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 547 (1994) (citing *Consumers' Counsel*, supra, at 126). The court stated in that case that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission (*Id.*).

- (16) Upon review of the stipulation, and the evidence presented at the hearing, we conclude that the terms and conditions contained therein represent a reasonable resolution of the issues in this case. We find that the stipulation is the product of serious bargaining among capable knowledgeable parties with diverse interests, as well as the staff. We believe that the stipulation benefits customers and the public interest, by assisting the affected villages in transferring management and

control of the natural gas transmission and distribution systems serving the villages and avoids interruption of service or inconvenience to customers served through the system. Finally, we find that the stipulation does not violate any regulatory principle or practice.

- (17) As to the issues raised by OIE in this proceeding, we agree with the parties to the stipulation that OIE is not, at present, authorized to provide natural gas service in Ohio and the issues raised by OIE are irrelevant to Suburban's application. Further, any transfer of service from KNG to OIE would be subject to the terms and conditions of any agreement that those two entities enter into in the future and subject to the approval of the Commission. Further, to direct Suburban to provide to OIE information relative to customers it may never serve would be imprudent. The issues OIE is attempting to raise in this proceeding, through a technical conference, have no bearing on the resolution of Suburban's abandonment application. Accordingly, OIE's request that we consider the issues raised in its pleadings should be denied.
- (18) We find that, notwithstanding that Suburban initiated this proceeding by filing an application for abandonment of service, as a result of the arrangements entered into in the stipulation, there will be no abandonment with respect to the affected customers. We find the proposed transfer to be reasonable and in the public interest. The Commission has reviewed the stipulation and finds the proposed substitution of Ohio Gas and KNG for Suburban to be a reasonable accommodation of all affected customers. None of the customers will see any degradation in service and the proposed transfer is reasonable and advantageous to all parties and the involved customers. In addition, we find that Ohio Gas and KNG have the technical, financial, and managerial expertise to provide natural gas service to the customers that will be transferred by Suburban.
- (19) Further, Ohio Gas and KNG should submit a proposed customer notice to the Commission's Service Monitoring and Enforcement Department for review and approval. Upon approval from staff, Ohio Gas, and KNG shall notify their respective customers as set forth in the stipulation. The Commission is mindful of the fact that, while Ohio Gas has a PIPP program, KNG does not. Accordingly, we believe that

both Ohio Gas and KNG should work with the staff to develop a second customer notice for Suburban's PIPP customers who will be transferred to both Ohio Gas and KNG. In addition, we note that all customers, including Suburban's PIPP customers who will be transferred to Ohio Gas and KNG, will be eligible for Ohio Gas's and KNG's budget billing options upon transfer from Suburban to Ohio Gas and KNG, and, therefore, must be provided the option of electing to participate in Ohio Gas's and KNG's budget billing programs. Therefore, the second customer notice should provide information on budget billing options, as well as information on and eligibility for the Home Energy Assistance Program (HEAP), and weatherization programs available to these affected customers.

Notwithstanding these customer notices, the Commission remains concerned that the Suburban PIPP program customers who will be transferred to KNG will no longer have the benefit of Suburban's PIPP program, and, as a result, they will be required to pay their total bill based on usage, instead of their income-based payment, as required under the PIPP program. Accordingly, KNG and OIE are directed to contact the Commission staff in advance of any disconnection of these customers during the 2011 and 2012 winter heating seasons. This will allow the staff to confirm that the customer has applied for and received HEAP and E-Heap payments, confirm with the Ohio Department of Development that the customer's home has been weatherized, and that KNG and OIE have offered the customer the option of electing to participate in the budget billing programs.

- (20) Finally, Suburban should file a revised tariff that removes from its service territory the villages of Hoytville, Deshler, Hamler, Malinta, and Holgate, Ohio, as well as the customers located in the unincorporated areas in the vicinity of the villages, as identified in the application filed in this case. In addition, Ohio Gas and KNG should file revised tariffs that incorporate those portions of Suburban's territory for which they will be providing service, as set forth in this case.

It is, therefore,

ORDERED, That the stipulation is adopted and approved. It is, further,

ORDERED, That Ohio Gas and KNG submit a proposed customer notice to the Commission's Service Monitoring and Enforcement Department for review and approval and that, upon approval, Ohio Gas and KNG notify their respective customers as set forth in the stipulation. It is, further,

ORDERED, That Suburban, Ohio Gas, KNG, and Deshler comply with the terms of the stipulation and the directives of this finding and order. It is, further,


ORDERED, That OIE's requests in its reply memoranda are denied. It is, further,

ORDERED, That Suburban, Ohio Gas, and KNG are authorized to file four complete copies of tariffs, in final form, consistent with this finding and order. Suburban, Ohio Gas, and KNG shall file one copy in this case docket and one copy in its TRF docket (or may file electronically as directed in Case No. 06-900-AU-WVR). The remaining two copies shall be designated for distribution to the Rates and Tariffs, Energy and Water Division of the Commission's Utilities Department. It is further,

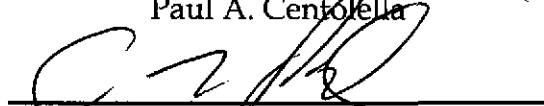
ORDERED, That nothing in this finding and order shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,


ORDERED, That a copy of this finding and order be served upon Suburban; KNG; Ohio Gas; OIE; the villages of Deshler, Holgate, Hamler, Malinta, Hoytville; and any other interested party of record.

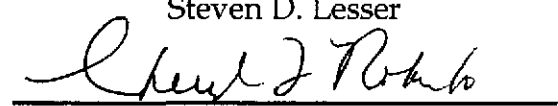
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