

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
SUBURBAN NATURAL GAS COMPANY,**

COMPLAINANT,

v.

CASE No. 17-2168-GA-CSS

COLUMBIA GAS OF OHIO, INC.,

RESPONDENT.

ENTRY

Entered in the Journal on November 20, 2017

{¶ 1} Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

{¶ 2} Columbia Gas of Ohio, Inc. (Columbia) is a natural gas company and public utility as defined in R.C. 4905.03 and R.C. 4905.02, respectively. As such, Columbia is subject to the Commission's jurisdiction.

{¶ 3} On October 20, 2017, Suburban Natural Gas Company (Suburban) filed a verified complaint and request for emergency relief against Columbia.¹ In its complaint, Suburban alleges that, following complaint proceedings resulting in tariff changes and the transfer of certain customers and facilities between them, Suburban and Columbia filed a Second Amended Joint Petition, Application, and Stipulation in November 1995 (1995 Stipulation), which was approved by the Commission on January 18, 1996.² Suburban asserts that the 1995 Stipulation was intended to resolve all contested issues

¹ Suburban is also a natural gas company and public utility as defined in R.C. 4905.03 and R.C. 4905.02, respectively.

² *In re Columbia Gas of Ohio, Inc.*, Case No. 93-1569-GA-SLF, et al., Finding and Order (Jan. 18, 1996).

between the parties, including Columbia's use of financial incentives to builders and developers in competitive areas under certain programs. Suburban further contends that, under the 1995 Stipulation, it released all claims against Columbia arising from those programs with the expectation that Columbia would not later resurrect substantially similar programs in areas served by Suburban. Suburban also asserts that it expressly reserved the right to litigate any such renewed marketing by Columbia and that the Commission expressly reserved jurisdiction over the competitive issues raised in those proceedings.

{¶ 4} Against this backdrop, Suburban submits that Columbia is using its demand-side management (DSM) programs in a manner that violates the 1995 Stipulation and other Commission orders. Suburban states that, most recently, the Commission approved a stipulation that expanded Columbia's DSM program, including an Energy Efficient New Homes program that offers direct cash incentives to home builders meeting certain energy efficiency standards in or within its service territory. *In re Application of Columbia Gas of Ohio, Inc. for Approval of Demand-Side Management Programs for its Residential and Commercial Customers*, Case No. 16-1309-GA-UNC, Opinion and Order (Dec. 21, 2016). Suburban claims that Columbia is implementing its Energy Efficient New Homes program in a Delaware County, Ohio subdivision that is not within Columbia's service territory but, instead, is in Suburban's service territory; Suburban suspects that Columbia has recovered or intends to recover the cost of these financial incentives through its DSM Rider for the improper purpose of competing with Suburban. Suburban further claims that Columbia is extending or plans to extend its gas mains to serve the disputed areas in a manner that duplicates Suburban's existing distribution mains. Collectively, Suburban submits that it has been harmed by Columbia's actions, all of which constitute violations of (1) the 1995 Stipulation, (2) the Order approving Columbia's DSM program, (3) Columbia's DSM Rider, (4) Columbia's Main Extension Tariff, and (5) numerous statutory provisions. Finally, Suburban submits that its

allegations justify the immediate issuance of an emergency order directing Columbia to cease and desist, as well as to financially account for its unlawful actions.

{¶ 5} Also on October 20, 2017, Suburban filed a motion for interim emergency relief, for which it requested an expedited ruling under Ohio Adm.Code 4901-1-12(C). Suburban essentially reiterates the factual allegations found in its complaint and expounds on its demand for emergency relief by requesting an order directing Columbia to (1) immediately cease and desist from extending its duplicative distribution main east from Braumiller Road along Cheshire Road in Delaware County, Ohio; (2) immediately cease and desist from offering financial incentives to developers and builders in Suburban's operating area; (3) account for and suspend payment of any such financial incentives already offered or accepted; and (4) separately account for all construction costs incurred in extending distribution mains and facilities into Suburban's operating area, with such costs being subject to ratemaking disallowance pending the outcome of this proceeding. In support of its motion, Suburban cites the Commission's general power to investigate and its specific power to act without notice or hearing "to prevent injury to the business or interests of the public or of any public utility * * * in case of any emergency to be judged by the commission" by temporarily altering, amending, or suspending any rate, schedule, or order relating to or affecting any public utility. R.C. 4909.16. After setting forth the factors historically considered by the Commission when faced with similar motions, Suburban argues that its request for emergency interim relief should prevail. Suburban also submits that expedited treatment of its motion is warranted.

{¶ 6} On October 27, 2017, Columbia filed a memorandum contra Suburban's motion for interim emergency relief. In opposing the motion and expedited treatment of the same, Columbia asserts that Suburban misrepresents both the content and the intent of the 1995 Stipulation and, instead, is continuing its past practices of bringing baseless claims to enforce that stipulation and inappropriately attempting to restrict trade.

Columbia further asserts that Suburban is essentially asking for injunctive relief, which the Commission lacks jurisdiction to provide. And, to the extent that the Commission could order a public utility to change a rate or practice, Columbia maintains a hearing must first be conducted. Finally, Columbia submits that, even if the Commission could provide Suburban its requested relief, Suburban has failed to show that such relief is justified.

{¶ 7} A settlement conference was held on November 13, 2017, but the parties were unable to resolve their differences.

{¶ 8} Also on November 13, 2017, Columbia filed its answer to Suburban's complaint. In its answer, Columbia states that the language of the 1995 Stipulation speaks for itself; Columbia states the same regarding the record in those cases cited by Suburban that preceded, included, and succeeded the 1995 Stipulation. Columbia also disavows any knowledge of Suburban's expectations of the 1995 Stipulation. Columbia admits that it has obtained permits or other authorization to connect to the facilities west of Braumiller Road and to construct gas mains approximately one mile to the east, along Cheshire Road, in order to serve new construction in the areas described in Suburban's complaint. Columbia denies, however, that either party is entirely constrained to any operating area, that Columbia's DSM programs are limited to any Commission-prescribed service territory, or that it is forbidden to compete with Suburban for customers in southern Delaware County, Ohio. In short, Columbia denies any wrongdoing and asserts, as an affirmative defense, that Suburban has failed to state reasonable grounds for a complaint under R.C. 4905.26.

{¶ 9} Upon review of the pleadings, the attorney examiner finds that this matter should be scheduled for hearing on March 13, 2018, at 10:00 a.m., in Hearing Room 11-D, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio 43215-3793. Additionally, testimony should be filed no later than March 2, 2018, in order to allow sufficient time for review and depositions prior to the hearing.

{¶ 10} As is the case in all complaint proceedings before the Commission, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That testimony be filed no later than March 2, 2018. It is, further,

{¶ 13} ORDERED, That an evidentiary hearing be scheduled for March 13, 2018, as stated in Paragraph 9. It is, further,

{¶ 14} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Patricia Schabo

By: Patricia A. Schabo
Attorney Examiner

JRJ/sc

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in

Case No(s). 17-2168-GA-CSS

Summary: Attorney Examiner Entry directing testimony be filed no later than 03/02/2018 and scheduling evidentiary hearing for 03/13/2018 as stated in Paragraph 9. - electronically filed by Sandra Coffey on behalf of Patricia Schabo, Attorney Examiner, Public Utilities Commission of Ohio