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CAMERA OPERATOR *Cheryl Williams* DATE PROCESSED *1-7-87*

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of)
The Suburban Fuel Gas, Inc.,)
Complainant,)
v.) Case No. 86-1747-GA-CSS
Columbia Gas of Ohio, Inc.,)
Respondent,)
Relative to various alleged viola-)
tions of the Ohio Revised Code.)

ENTRY

The Commission finds:

- 1) On August 29, 1986, The Suburban Fuel Gas, Inc. (Suburban) filed a complaint with the Commission against Columbia Gas of Ohio, Inc. (Columbia). The complaint quoted various sections of the Ohio Revised Code and alleged that Columbia had violated these sections. The complaint alleged no specific facts to support the complaint.
- 2) On September 23, 1986, Columbia filed a motion to dismiss the complaint. Columbia alleged that Suburban had no standing to bring the complaint and that Suburban had failed to state reasonable grounds for complaint. Columbia argued that under Section 4905.26, Revised Code, the Commission will order a hearing only if reasonable grounds for complaint have been stated. In addition, under Rule 4901-9-01, Ohio Administrative Code, a complaint shall contain a brief statement of the facts which constitute the basis of the complaint.
- 3) On October 9, 1986, the attorney examiner ordered that Suburban file a more definite statement alleging the facts that are the basis of the complaint against Columbia.
- 4) On October 12, 1986, Suburban filed an amended complaint. The amended complaint stated that Columbia and Suburban are competitors, particularly within Wood County, and its county seat, Bowling Green, Ohio.

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Suburban charged that Columbia is offering general service customers within Columbia's northwestern region, which includes parts of Wood County, lower rates than Columbia's general service rates on file with this Commission. Suburban states that the lower rates are being charged on a discriminatory basis without regard to the service characteristics or requirements of customers similarly situated and for the purpose of destroying competition. In some cases, Suburban continues, the lower rates are being charged without compliance by Columbia with statutory filing requirements. In addition to the lower rates, Suburban states that Columbia's tariffs and municipal rate contracts, including the municipal rate contracts in effect in Hancock, Henry, and Wood Counties, Ohio, provide that the customer's service line shall be installed and maintained at the customer's expense (P.U.C.O. No. 1, First Revised Sheet No. 5 and Original Sheet No. 6, Section 22). However, according to Suburban, Columbia has offered to provide and has provided customers service lines free of charge. Suburban complains that the free lines have been offered on a discriminatory basis and for the purpose of destroying competition. In addition, the tariff and municipal contracts provide that when a distribution main extension is requested for service for commercial or industrial purposes, the applicant shall deposit with Columbia the estimated cost of the extension (P.U.C.O. No. 1, Original Sheet No. 8, Section 34). However, Suburban charges that Columbia has offered and has provided commercial and/or industrial customers extensions without requiring deposits. Again, Suburban believes that the failure to require deposits is done on a discriminatory basis and for the purpose of destroying competition. Suburban asks that a hearing be set and also asks for an order, pending a hearing on the complaint, directing Columbia to cease any violations of the law alleged by Suburban. Suburban charges that Columbia's actions have violated Sections 4905.30, 4905.32, 4905.33, and 4905.35, Revised Code.

- 5) On November 12, 1986, Columbia filed a motion to dismiss the amended complaint. Columbia

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presented three arguments. The first is that Suburban is without standing to raise the issues presented by the complaint. Columbia argues that the Commission has long held that under Section 4905.26, Revised Code, a complainant must state reasonable grounds for complaint which a complainant cannot do if the complainant has no real interest in the subject matter of a proceeding. Columbia states that Suburban has not alleged any injury or any possible prospective injury. Suburban is not a customer of Columbia but a competing utility. Columbia argues that Suburban's standing can only be derived from its status as a competitor. Columbia believes that the Commission has not recognized a utility's standing to challenge a competitor's operations absent special circumstances. In addition, according to Columbia, Sections 4905.30, 4905.32, 4905.33, and 4905.35, Revised Code, are intended to protect utility customers from discrimination and unfair competition and not to protect utilities from competition with other utilities. Columbia argues that the General Assembly did not intend that the Commission balance the interests of two competing utilities in complaint cases. Columbia argues that Suburban cannot assert the rights of Columbia's customers against discriminatory rate practices. Therefore, Columbia argues that Suburban has no standing to bring this complaint.

Columbia's second argument is its contention that Suburban has failed to state reasonable grounds for complaint under Section 4905.26, Revised Code. Columbia contends that the amended complaint is not stated with sufficient specificity of details as to the facts that are the basis of the complaint as required by Rule 4901-9-01, Ohio Administrative Code. Columbia argues that Suburban has listed various services provided unlawfully by Columbia but has omitted the names of the customers who were offered or provided the service, the precise locations of those services, and the dates the alleged actions occurred. According to Columbia, there are lawful methods to offer a "general service" customer a rate other than that set forth in the tariffs. A customer's load profile and other characteristics may qualify for a

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special industrial or commercial contract rate or for a transportation arrangement. A customer within a municipality may be entitled to a rate established by ordinance contract. Without specific allegations as to customers, Columbia argues it cannot respond to the complaint. In addition, according to Columbia, specifics are necessary in a discrimination charge because only undue or unreasonable preferences are forbidden under Section 4905.35, Revised Code, and a determination of unlawful discrimination will depend on the unique facts and circumstances of each case. Columbia argues that Suburban's complaint lacks the necessary detail to support an allegation of unlawful discriminatory conduct. In short, Columbia believes that Suburban has failed to state specific facts which allegedly constitute discrimination and tariff violations. Columbia argues that if Suburban had the information, Suburban should have provided it, and if Suburban did not have the information, this complainant "is nothing more than a fishing expedition".

The third argument of Columbia is that the amended complaint alleges an improper practice over which, according to Columbia, the Commission has no jurisdiction. Suburban complained that Columbia was violating its tariffs regarding the installation and maintenance of customer service line. Columbia argues that since its tariffs place the responsibility for installing and maintaining the lines upon the customer, Columbia has no public utility obligation or public duty to provide such service and if Columbia chooses to install or maintain the lines itself, it would be a private endeavor outside the jurisdiction of the Commission. Columbia believes that its tariff on service lines is not the sort that Columbia can "violate", because the tariff's sole function is to define the scope of the public utility obligation, and once the activity is outside the scope of public utility obligation, the Commission has no jurisdiction.

- 6) On December 8, 1986, Suburban filed its memorandum contra to Columbia's second motion to dismiss. Suburban believed that the standing issue and the reasonable grounds for

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complaint issue raised by Columbia's November 12, 1986 motion to dismiss had already been discussed adequately by Suburban in its October 22, 1986 memorandum contra to Columbia's first motion to dismiss. However, Suburban argued that it is indeed injured by Columbia's alleged violations of the statutes, code, and tariffs. Suburban alleges that while it serves less than 4,000 customers, Columbia, which serves over one million customers, is more able to absorb losses associated with the unlawful practices alleged in the complaint. Suburban argues that the alleged violations have a direct impact not only on Columbia's customers but on Suburban as well. Suburban also argues that Columbia is hypocritical in arguing that a utility may not use Section 4905.26, Revised Code, to confront a competitor when Columbia itself has filed a similar complaint with this Commission under Section 4905.26, Revised Code, alleging unlawful competition by the respondent in *hac* proceeding. *Columbia v. Atwood Resources, Inc.*, Case No. 86-2175-GA-CSS, filed November 17, 1986.

Suburban also replied to Columbia's contention that the Commission has no jurisdiction over the installation and maintenance of customer service lines. Suburban argues that Columbia's tariff specifically provides that "the customer shall be responsible for installing and maintaining such lines" and a departure from this is a violation of the tariff. Not only does Columbia violate this tariff when Columbia allegedly installs lines free of charge, Suburban argues, but also Columbia violates the statutes that prohibit special rates and other discriminatory tactics. Suburban argues that this Commission has jurisdiction over the issue whether Columbia is violating its tariffs by installing lines free of charge.

Finally, Suburban argues that its complaint states sufficient details to satisfy Commission rules and avoid summary dismissal. The Commission would make no determination on the merits of the complaint simply by ordering Columbia to answer the complaint or by setting an evidentiary hearing. Suburban argues that a Commission determination can be made only after a full hearing at which both

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the complainant and respondent would present evidence. The complainant will have the burden of proving the allegations of the complaint. However, Suburban argues that Columbia would require Suburban to meet its burden of proof in the filing of the complaint itself.

- 7) On December 18, 1986, Columbia filed its reply memorandum in response to the memorandum contra filed by Suburban on December 8, 1986. Columbia argued that it is insufficient for Suburban to contend that, as a competitor of Columbia, Suburban has alleged that there has been or will be an injury. Columbia argues that the economic injury resulting from lawful competition should be insufficient to confer standing to challenge the legality of a competitor's operations. Columbia also contends that the Atwood case is different from the instant case in that Columbia is contending that Atwood Resources, Inc. has not properly submitted itself to Commission jurisdiction, and Columbia has standing to challenge unregulated utilities. However, Columbia believes that Suburban has no standing to raise the issues contained in the instant complaint because Suburban is simply affected as a competitor.

In addition, Columbia again contends that Suburban's complaint is lacking in sufficient detail. Columbia would refer the Commission to its complaint in Atwood which Columbia believes contains the necessary degree of detail. Columbia again argues that it cannot possibly determine the terms under which a customer was served unless Columbia knows the name of the customer and the location where the service was provided. Columbia argues that the complaint is so vague that if Columbia were required to answer the complaint, Columbia could do little more than generally deny that its actions were unreasonable or unlawful.

As for the issue of whether or not the Commission has jurisdiction over customer service lines, Columbia argues that the Commission lacks jurisdiction over non-utility services such as the installation and maintenance of customer service lines. Columbia argues that if Columbia elects to

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provide those services, Columbia is subject
to the same rules as a private person.

Because Columbia believes that Suburban has
no standing, has not stated reasonable
grounds for complaint, and has alleged
matters outside Commission jurisdiction,
Columbia asks again that the complaint be
dismissed.

8) Portions of Section 4905.26, Revised
:

complaint in writing against
public utility ... that any
... or service ... charged ...
posed to be ... charged ...
any respect unjust, un-
able, unjustly discrimina-
justly preferential, or in
on of law ... and, upon
t of a public utility as to
er affecting its own
or service, if it appears
reasonable grounds for com-
e stated, the commission
a time for hearing ...
added).

is of Section 4905.30, Revised

c utility shall print
h the public utilities
chedules showing all
... and charges for service
of every kind furnished by it, and
all rules and regulations affecting
them.

Section 4905.32, Revised Code, reads in part:

No public utility shall charge ...
a different rate ... or charge for
any service rendered, or to be ren-
dered, than that applicable to such
service as specified in its sched-
ule filed with the ... commission
... . No public utility shall
refund ... directly or indirectly,
any rate ... or charge ... or any
part thereof, or extend to any
person, firm, or corporation any

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regulation, privilege, or facility except such as are specified in such schedule and regularly and uniformly extended to all persons, firms, and corporations under like circumstances for like or substantially similar, service.

Section 4905 33, Revised Code, reads in part:

No public utility shall directly or indirectly, or by any special rate ... or other device ... charge ... any person, firm, or corporation a greater or lesser compensation for any service rendered, or to be rendered, except as provided in ... the revised code, than it charges ... from any other person, firm, or corporation for doing a like and contemporaneous service under substantially the same circumstances and conditions. No public utility shall furnish free service or service for less than actual cost for the purpose of destroying competition.

Section 4905.35, Revised Code, reads:

No public utility shall make or give any undue or unreasonable preference or advantage to any person, firm, corporation, or locality, or subject any person, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage.

- 9) The question before us is whether Columbia's motions to dismiss Suburban's complaint should be granted. Columbia argues that Suburban has no standing to bring this complaint against Columbia, that Suburban has failed to state reasonable grounds for complaint, and that part of the complaint concerns matters outside the Commission's jurisdiction.

As for the standing issue, the Commission finds that Suburban does have standing to bring this complaint. Under Section 4905.26, Revised Code a utility may bring a complaint

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upon any matter affecting its own service. Suburban has clearly alleged that Columbia's actions affect Suburban's service. Whether or not injury or prospective injury is a requirement for a complaint under Section 4905.26, Revised Code, Suburban has also clearly alleged that Columbia's actions have caused Suburban injury. Whereas it may be true that the intent of Sections 4905.30, 4905.32, 4905.33, and 4905.35, Revised Code, was to protect utility customers, and not utility competitors, from unfair competition and discrimination, the statutes are written broadly enough to encompass the allegations of Suburban against Columbia. The Commission finds that Suburban has standing to bring this complaint against Columbia.

Secondly, the Commission finds that Suburban has stated reasonable grounds for complaint with sufficient specificity to avoid dismissal at this point in the proceeding. The Commission believes that Suburban's allegations are sufficient to allow Columbia to answer the complaint. Any greater degree of specificity can be obtained in the discovery process or at the evidentiary hearing on this matter.

Thirdly, the allegation that Columbia is violating its tariffs with regard to the installation and maintenance of customer service lines is a matter within the jurisdiction of the Commission. An allegation that a tariff provision is being applied to one party and not another by a utility is clearly proper grounds for complaint under Section 4905.26, Revised Code.

The Commission finds that this complaint should not be dismissed and orders Columbia to answer the complaint by January 26, 1987. Having allowed the complaint, the Commission makes it clear that no finding is made on the merits of the complaint at this time. It is clear to the Commission that Suburban may bring this complaint against Columbia. It is equally clear that in complaint cases, the complainant has the burden of proving the allegations of the complaint. In Solsound Industries v. The Ohio Bell Telephone Company, Case No. 76-86-TP-CSS, December 21, 1978, the Commission found that it was not

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in

Case No(s). 86-1747-GA-CSS

Summary: Entry Entry denying Columbia Gas of Ohio, Inc. 's motions to dismiss and requiring answer by 1/26/87. electronically filed by Docketing Staff on behalf of Docketing