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 violations of the Ohio Revised Code.	)	

OPINION AND ORDER

The Commission, coming now to consider the complaint filed August 29, 1986, the testimony presented at the public hearing held on May 7, 1987, the briefs filed June 12, 1987, July 7, 1987, July 17, 1987, and July 22, 1987, and waiving the attorney examiner's report pursuant to Rule 4901-1-33, Administrative Code, hereby issues its Opinion and Order.

APPEARANCES:

Messrs. Muldoon, Pemberton & Ferris, by Mr. David L. Pemberton, 2733 West Dublin-Granville Road, Worthington, Ohio 43085, on behalf of the complainant.

Messrs. Thomas E. Morgan, Roger C. Post, and Kenneth W. Christman, 200 Civic Center Drive, P.O. Box 117, Columbus, Ohio 43216-0117, on behalf of the respondent.

Mr. William A. Spratley, Consumers' Counsel, by Ms. Margaret Ann Samuels and Ms. Evelyn Robinson, Associate Consumers' Counsel, 137 East State Street, Columbus, Ohio 43266-0550, on behalf of the residential customers of Suburban Fuel Gas, Inc., and Columbia Gas of Ohio, Inc.

HISTORY OF THE PROCEEDINGS:

The Suburban Fuel Gas, Inc. (Suburban, complainant) filed this complaint against Columbia Gas of Ohio, Inc. (Columbia) on August 29, 1986. On September 23, 1986, Columbia filed a motion to dismiss the complaint because Columbia believed that Suburban did not have standing to bring the complaint and that Suburban had not stated reasonable grounds for complaint. On October 9, 1986, the attorney examiner ordered Suburban to file a more definite statement alleging the facts which were the basis of Suburban's complaint.

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On October 22, 1986, Suburban filed an amended complaint. The amended complaint stated that Columbia and Suburban are competitors, particularly in Wood County, Ohio. Suburban alleged that Columbia was offering general service customers within Wood County lower rates than Columbia's general service rates on file with the Commission. Suburban alleged that the lower rates were being charged on a discriminatory basis without regard to the requirements of customers similarly situated and for the purpose of destroying competition. In addition, Suburban alleged that Columbia was violating its tariffs on file with the Commission by providing customers with service lines free of charge. Suburban alleged that the free service lines were offered on a discriminatory basis and for the purpose of destroying competition. Another allegation by Suburban was that Columbia was violating its tariffs by providing distribution main line extensions for commercial or industrial customers without requiring a deposit from those customers. Suburban alleged that the waiving of deposits was done on a discriminatory basis and for the purpose of destroying competition. Suburban alleged that Columbia's actions in these matters were violations of Sections 4905.30, 4905.32, 4905.33, and 4905.35, Revised Code.

On November 12, 1986, Columbia filed a motion to dismiss the amended complaint and argued again that Suburban had no standing to bring the complaint and that Suburban had not stated reasonable grounds for complaint. By Entry dated January 6, 1987, the Commission denied the motion of Columbia to dismiss the complaint and ordered Columbia to answer the complaint. The Commission found that Suburban had standing to bring this complaint under Section 4905.26, Revised Code. However, in the January 6, 1987 Entry the Commission reiterated its position that the Commission's function is not to administer anti-trust laws but rather to protect utility consumers from unjustly discriminatory rates and charges. The Commission's primary interest is in securing the best possible service for the public under just and reasonable rates and not in refereeing a contest between competitors. The Commission stated that the Commission is interested in this matter only to the extent that Suburban's allegations against Columbia affect service to the public.

On January 27, 1987, Columbia answered the complaint. Columbia denied that Columbia had provided service in a manner which violated its tariffs and contracts or state statutes, that Columbia had charged unlawfully discriminatory rates, and that Columbia had charged rates or performed services for the purpose of destroying competition. Columbia denied all the substantive allegations of the complaint.

On February 2, 1987, the attorney examiner scheduled this matter for hearing and ordered notice of the hearing to be published in accordance with Section 4905.26, Revised Code. On April 1, 1987, the legal director granted a continuance and

rescheduled the hearing to May 7, 1987. On April 16, 1987, the Office of Consumers' Counsel, State of Ohio (OCC), moved to intervene in this proceeding. OCC stated that if the allegations of the complaint were true, the result might be an increase in costs to residential ratepayers. On April 22, 1987, the examiner asked OCC to inform the Commission as to its specific grounds for intervention. On May 1, 1987, OCC responded that competition between gas distribution companies could have an adverse impact on residential customers and that discriminatory rates are unfair to customers who pay full rates. OCC also asserted that residential customers have an interest to ensure that utilities do not engage in predatory practices. On May 14, 1987, the examiner found that although OCC's grounds for intervention remained vague, the motion of CCC to intervene should be granted.

The hearing in this matter was held on May 7, 1987. Notice of the hearing was published in the Daily Sentinel-Tribune, a newspaper of general circulation in Wood County, Ohio. At the hearing, the complainant called Mr. Ronald G. Parshall, Columbia's area manager for several communities in Wood County, Ohio, and Mr. Michael Law, an industrial marketing engineer employed by Columbia at its Findlay, Ohio office. Columbia called Mr. Thomas F. Devers, vice president of rates and depreciation at Columbia, and Mr. A. Scott Rothey, executive vice president of Suburban. At the close of the hearing a briefing schedule was arranged. Subsequently, continuances to the briefing schedule were granted. Suburban filed its initial brief on June 12, 1987, Columbia and OCC filed briefs on July 7, 1987, Suburban and Columbia filed reply briefs on July 17, 1987, and OCC filed its reply brief on July 22, 1987.

SUMMARY OF THE EVIDENCE:

Suburban has presented various examples of Columbia's alleged unfair competitive practices. To summarize the evidence, the facts regarding each of these examples will be discussed.

A plant of Equity Group-Ohio Division (Equity) is located on Grant Road in the unincorporated area of Wood County. In mid-1985, at the time that a part of Equity's plant was served by Columbia LNG, Suburban offered and began service to Equity (Tr. 208). Apparently, another part of the plant continued to be served by Columbia, and at some point Suburban offered to serve the entire plant and take this service from Columbia. This solicitation by Suburban of the portion of the plant served by Columbia was, according to Columbia, the event that gave rise to Columbia's "flex" rate program. In July 1986, Equity entered into an agreement for gas service with Columbia in which Equity stated that Equity had received a bona fide offer from Suburban which was lower than Columbia's general service rate, which was applicable to the Equity plant (Complainant's Ex. 12). Columbia agreed to provide gas to Equity at $5.05 per mcf plus a $4.20

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customer service charge. The rate would fluctuate quarterly with Columbia's gas cost recovery (GCR) rate and the base rate of Suburban, but the rate would not be lower than Columbia's GCR rate plus the applicable customer charge and excise taxes. If Equity received a bona fide offer from a competing utility at a total rate less than Columbia's total "flex" rate, Columbia could, at its option, match the offer of the competing utility. Equity would submit an affidavit regarding the offer, and Columbia reserved the right to determine if the offer was bona fide. Gas service under the agreement was to begin on May 21, 1986, and either party could terminate the agreement after one year. This agreement was submitted to the Commission for approval on July 25, 1986 in In the matter of the application of Columbia Gas of Ohio, Inc. for filing a contract with Equity Group-Chio Division involving the sale of gas pursuant to Section 4905.31, Revised Code, Case No. 86-1491-GA-AEC, but the application was withdrawn by Columbia, and the arrangement was never approved. The rates set forth in the agreement in Case No. 86-1491-GA-AEC were the same as Suburban's rates (Tr. 103).

On August 18, 1986, a vice president of Equity signed a Columbia customer affidavit in which he swore that Equity had received a bona fide offer from Suburban to provide natural gas at $5.0168 per mcf plus a $4.00 customer service charge per month (Complainant's Ex. 14). On the same day, Equity entered into a general service agency purchase and transportation agreement with Columbia in which Columbia agreed to purchase and deliver gas to Equity at $4.6194 per mcf and a monthly service charge of $5.25. The rates charged under the contract could, at Columbia's option, be decreased in accordance with fluctuations in the cost of alternate energy resources available from competing utilities or suppliers provided that the rate would not exceed Columbia's applicable general service rate. In the Equity agreement, Columbia could only decrease the rate to Equity. Mr. Law believed that Columbia agreed not to increase the rate offered to Equity because of Columbia's policy to beat the competition posed by Suburban (Tr. 105). Equity could terminate the agreement within fifteen days if Columbia declined to meet a bona fide offer of a competing utility or supplier, after Equity signed an affidavit regarding the competing offer, and after Columbia determined the validity of the competing offer. The agreement was to take effect August 20, 1986 and continue for one year. Columbia filed this agreement with the Commission on September 5, 1986 in In the matter of the application of Columbia Gas of Ohio, Inc. for approval of an arrangement with Equity Group-Ohio Division involving the purchase and transportation of natural gas, Case No. 86-1781-GA-AEC, which was approved by the Commission on September 30, 1986.

The Woodland Mall is a new shopping center north of Bowling Green in Wood County, Ohio. Suburban and Columbia were in competition to serve the mall. At some point, Suburban submitted

a proposal to Brisa Builders, Inc., the developers of the Woodland Mall to provide gas service to the mall tenants (Tr. 42). On August 19, 1986, Columbia's Mr. Law wrote a letter to Mr. Larry Jarrett, owner of Brisa Builders, Inc., and made an offer to serve the Woodland Mall that Mr. Jarrett could not refuse (Complainant's Ex. 6). Columbia offered:

1. To pay for the service lines to the base of the two end stores and core area.

2. To pay 100 percent of the house piping, engineering, and difference in equipment cost between gas and electric for the Elder-Beerman store.

3. To provide gas to all customers at $4.62 per mcf for a primary term of twelve months.

The letter assured Mr. Jarrett that "Columbia Gas has the ability to be competitive with any energy supplier with new programs." (Complainant's Ex. 6). On October 22, 1986, Mr. Jarrett wrote to Mr. Parshall of Columbia to accept the August 19, 1986 offer. In addition, Mr. Jarrett respectfully requested that Columbia immediately proceed with the installation of the necessary transmission lines (Complainant's Ex. 7).

Mr. Law testified that he believed it was necessary for Columbia to make the August 19, 1986 offer in order to beat out the competition from Suburban and from the electric energy supplier (Tr. 139). According to Mr. Law, Columbia had to offer the customer service lines in order to compete with electricity. Under P.U.C.O. No. 1, Original Sheet No. 6, Section 22(b) of Columbia's tariffs, the customer shall install and maintain at his own expense customer service lines. In addition, Columbia provided free house piping to the Elder-Beerman store and paid the difference in equipment cost between gas and electric appliances in order to induce Elder-Beerman to switch from electric to natural gas, but Columbia did not make a similar offer to the other large store, J.C. Penney, which paid for its own house piping because J.C. Penney had designated natural gas heat from the beginning (Tr. 39). Under Columbia's tariff, P.U.C.O. No. 1, Second Replacement Sheet No. 7, Section 28, the customer shall install and maintain all appliances at the customer's expense. The offer of $4.62 per mcf for twelve months was made because Columbia figured that Suburban would match the first two items of Columbia's offer, and Columbia knew that the rate would beat Suburban's rate (Tr. 138). In addition to the August 19, 1986 offer, Columbia agreed to extend its main distribution lines to the meters and the stores of the two principal mall tenants (Tr. 43). Columbia also agreed to install the customer service lines for the smaller stores of the mall (Tr. 43). Apparently, no other mall in the area has been offered

a fixed rate by Columbia nor has any other mall received similar free lines or piping. In addition, there have been no similar offers by Columbia to reimburse a customer the difference between gas and electric appliances (Tr. 43-44).

C & C Fabrication, Inc. (C & C) was a new customer for whose business Columbia and Suburban were competing (Tr. 46). C & C had requested natural gas service from both Columbia and Suburban. At approximately 750 mcf per year, C & C's annual natural gas usage would not warrant a special contract rate with Columbia (Tr. 47). However, Columbia beat the competition posed by Suburban by offering C & C a general service agency purchase and transportation agreement. On November 13, 1986, a representative of C & C completed a customer affidavit in which he swore that C & C had received a bona fide offer from Suburban for natural gas at $5.0457 per mcf plus a $4.00 customer service charge (Complainant's Ex. 9). Thereupon, on the same day, November 13, 1986, C & C signed a general service agency purchase and transportation agreement with Columbia by which Columbia would provide natural gas service to C & C at $4.6494 per mcf plus a customer charge of $5.25 per month for twelve months. The rate charged could be increased or decreased in accordance with fluctuations in the cost of alternative energy resources available from competing utilities or suppliers but the rate could not exceed Columbia's applicable general service rate. The customer could terminate the agreement within fifteen days if Columbia declined to match a bona fide offer from a competing utility or supplier. Columbia had the right to determine whether the competing offer stated in the customer affidavit was valid. The agreement was to take effect on November 14, 1986 (Complainant's Ex. 8). Columbia's vice president did not sign the agreement until January 9, 19 because the contract was lost by Columbia (Tr. 117). Columbia not file an application with the Commission for approval of ontract with C & C until March 26, 1987 because of an ht (Tr. 154). Mr. Devers testified that Columbia began bi g C & C under the agreement in January 1987 (Tr. 154).

The general service agency purchase and transportation agreement was not the only inducement that Columbia used to win C & C as a customer. Columbia agreed to provide a main line extension of approximately 800 feet to C & C without requiring a deposit from C & C for the line extension. The cost of the line extension would be about $5 per foot. Under Columbia's tariff P.U.C.O. No. 1, Original Sheet No. 8, Section 34, where a main extension is requested for service for commercial purposes and the main extension is determined by the company to be economically feasible, the applicant for an extension may enter into a line extension agreement and shall deposit with the company the estimated cost of the extension. Mr. Law testified that he had performed a maximum allowable investment calculation for Columbia that determined that the extension was economically justified

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(Tr. 204). Finally, in addition to the decision to waive the line extension deposit, Columbia also provided C & C with material in the form of a pipe and riser for the customer service line (Tr. 107).

The Bowling Green Church of God (BGCG) is located on Mercer Road in the unincorporated area of Wood County. BGCG uses about 100 mcf of natural gas annually (Tr. 25). Prior to March 1986, BGCG was a customer of neither Suburban nor Columbia, and there was competition between Suburban and Columbia for this service. BGCG was to be served directly off a tap from the transmission line of Columbia Gas Transmission Corporation (TCO). Suburban had initially tapped into TCO's line in order to serve BGCG. On February 10, 1986, Columbia filed an application with TCO to obtain a tap off the transmission line to serve BGCG. At about that time, Columbia was aware that Suburban had already obtained a tap from TCO (Tr. 27). Columbia began to serve BGCG as a general service commercial customer in March 1986. Columbia called Suburban and told Suburban to remove its regulators and meter settings which were already in place (Tr. 79).

In order to serve BGCG, a suitable regulator for reducing pressure off the transmission line was required. Although Suburban was offering to serve BGCG at a rate $0.83 per mcf lower than Columbia's general service rate plus Suburban's $4.00 customer charge per month, BGCG chose Columbia. According to Suburban, Columbia provided BGCG with a free regulator in order to beat out Suburban (Tr. 23). Under P.U.C.O. No. 1, Section 23, Original Sheet No. 6, of Columbia's tariffs, the customer shall install and maintain at his expense a suitable regulator or regulators for reducing pressure from a high pressure transmission line.

The Dayspring Assembly of God Church (DAGC) is located on North Dixie Highway in the unincorporated area of Wood County and uses about 800 mcf of natural gas annually. Prior to March 1987, neither Columbia nor Suburban served DAGC, and both were in competition to serve DAGC. Columbia knew that Suburban had a line across the road from DAGC (Tr. 32-33). However, it was Columbia that began service to DAGC in March 1987. Because of DAGC's usage pattern, DAGC would normally be classified under Columbia's tariffs as a general service customer for rate purposes, and DAGC would not qualify for a special contract with Columbia. On March 11, 1987, a general service agency and transportation agreement between DAGC and Columbia was signed (Complainant's Ex. 10). The customer affidavit stated that DAGC had received a bona fide offer from Suburban to provide natural gas at $5.1128 per mcf plus a $4.00 customer charge per month. The customer affidavit was signed by the pastor of DAGC. The agreement between Columbia and DAGC was that Columbia would purchase gas as an agent for DAGC and deliver the gas to DAGC for $4.6494 per mcf plus a $5.25 per month customer charge. The rate

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charged under the agreement could, at Columbia's option, be increased or decreased in accordance with fluctuations in the cost of alternate energy resources available from competing utilities or suppliers, provided however that the rate would not exceed Columbia's applicable general service rate and that the customer could terminate the agreement within fifteen days notice if Columbia declined to match the delivery price of a bona fide offer from a competing utility or supplier. The customer was to submit an affidavit regarding the competing offer, and Columbia reserved the right to determine the validity of the competing offer. Although the agreement was signed March 11, 1987, it was to take effect on February 19, 1987 and continue in effect for one year. On April 2, 1987, the contract was filed with the Commission pursuant to In the matter of the application of Columbia Gas of Ohio, Inc. and Madison County Hospital, Inc. for approval by the Public Utilities Commission of Ohio for a reasonable arrangement for transporting gas pursuant to Revised Code Section 4905.31, Case No. 87-159-GA-AEC, Finding and Order, March 17, 1987.

In Case No. 87-159-GA-AEC, Columbia received what Columbia refers to as "blanket approval" for its CTAPA agreements, an acronym for Competitive Transportation and Agency Purchase Agreement. Under the CTAPA agreements, Columbia sells and delivers gas to end users from a pool of incremental purchases not needed for system supply. The rates to be charged are flexible in order to prevent the loss of load. According to the Finding and Order in Case No. 87-159-GA-AEC, Columbia anticipated that there would be a series of requests by customers other than Madison County Hospital for CTAPA agreements, and Columbia believed that maximum benefits from the program would be derived if CTAPA volumes were permitted to flow on the basis of pre-granted approval from the Commission. Columbia stated that similar CTAPA agreements would be filed with summary reference to the Madison County Hospital application in Case No. 87-159-GA-AEC. The Commission ordered in the March 17, 1987 Finding and Order that all future similar contracts would be considered approved by the Commission upon filing by Columbia subject to future Commission rulings within thirty days of the filing. Columbia filed the CTAPA contract between Columbia and DAGC on April 2, 1987, and the contract was considered approved by the Commission on that date subject to Commission action within thirty days.

Columbia provides service to DAGC on the CTAPA program at a lower rate than Columbia's general service tariff rate and at a lower rate than Suburban's rate. Columbia offered DAGC the CTAPA rate because Columbia was in direct competition with Suburban for DAGC's service (Tr. 32). Of course, Columbia had also been in direct competition with Suburban for service to BGCG, but BGCG received only a free regulator from Columbia and remains a general service tariff customer of Columbia. BGCG has not been

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offered the lower CTAPA rate (Tr. 147, 158). According to Mr. Devers, "If the competitive situation would have warranted utilizing a transportation arrangement, I'm sure that Columbia would have approached the customer (BGCG) with that. In this particular instance for the Bowling Green Church of God apparently the Columbia tariff rate was enough for the customer to take service from our company instead of Suburban" (Tr. 157-158). At this point, DAGC is the only church in the area on the CTAPA rate, but Mr. Law stated that Columbia would offer the CTAPA rate to any church in the area "if necessary" to beat out the competition (Tr. 97, 137).

In addition, not only did DAGC receive the CTAPA rate from Columbia, but also DAGC received a free customer service line (Tr. 35). The DAGC customer service line ran approximately 100 to 150 feet at approximately $5 a foot (Tr. 35-36). Under Columbia's tariff, P.U.C.O. No. 1, Original Sheet No. 6, Section 22(b), the installation and maintenance associated with customer service lines are to be at the customer's expense.

The Wood County Children's Resource Center (WCCRC), a day care center, is located within the corporate limits of Bowling Green and would be subject to Columbia's ordinance contract with the city of Bowling Green. WCCRC's estimated annual consumption is approximately 400 mcf annually. Suburban offered service to WCCRC and offered to extend its main distribution line to the property line of WCCRC, an extension of more than one hundred feet (Tr. 212). Suburban did not ask WCCRC for a deposit to extend the line although Suburban's tariffs require such a deposit (Tr. 212). Columbia offered to install WCCRC's customer service line. For Columbia, this was an extension of 415 feet at $5 per foot. Although it would take Columbia approximately four years to recover the cost of the customer service line under its base rates, Columbia extended the line because of the competitive situation (Tr. 58).

Columbia and Suburban are also in competition to serve Norbalt Rubber Company (Norbalt) of North Baltimore, Ohio and to make Norbalt a consumer of natural gas instead of fuel oil. On June 23, 1986, Mr. Law wrote to Norbalt to offer a firm burner-tip price of $2.48 per mcf for a term comparable to any other supplier's offer (Complainant's Ex. 15). Mr. Law stated to Norbalt officials that Columbia intended to keep Suburban out of North Baltimore (Tr. 121). Mr. Law also recalled Columbia's representatives stating at a North Baltimore village council meeting that "Columbia would do whatever it had to do to keep Suburban Gas out of North Baltimore, Ohio" (Tr. 121-123). On July 11, 1986, Mr. Harold Rowe, Columbia's division manager at the Findlay office, wrote to D.S. Brown Company of North Baltimore and offered D.S. Brown a firm natural gas price to match D.S. Brown's current fuel oil cost. The offer was good for twenty-four months (Complainant's Ex. 16). In addition, Columbia

told D.S. Brown that, due to changes in federal transportation policies, Columbia was able to match any bona fide offer from any competing natural gas supplier. However, Suburban began service to D.S. Brown in January 1987 in spite of the fact that Columbia already had a meter at the site (Tr. 208).

Residential consumers may also begin to become a focus of the competition between Columbia and Suburban. According to Mr. Devers, Columbia is considering offering Mr. Vincent Messenger, a residential customer, the CTAPA rate, because Columbia finds itself in a competitive situation with Suburban to serve this residential customer (Tr. 161). Mr. Messenger's home is near the Woodland Mall (Tr. 197). Mr. Devers testified that this residential consumer is the only residential consumer in the Woodland Mall area and the only residential consumer to whom Columbia is considering offering the CTAPA rate (Tr. 198). In addition, Columbia installed the customer service line for Mr. Messenger (Tr. 133). Columbia has also waived deposits on main line extensions for residential customers in the Findlay area (Tr. 76, 134).

Columbia's witness Mr. Devers testified that while Columbia is aggressively competing with Suburban, Columbia would not do anything unlawful to meet competition from Suburban (Tr. 153). Mr. Devers also testified that Columbia would not violate sound business judgment (Tr. 153). Mr. Devers acknowledged that the CTAPA rate is not available to all of Columbia's customers but only to those in competitive situations where the load would not otherwise be served by Columbia. He argued that the CTAPA rate allows Columbia to retain existing load and to compete vigorously, but fairly, for new markets (Columbia Ex. 1, at 5). According to Mr. Devers, there is no adverse impact upon gas costs under the CTAPA program because the gas supplies for CTAPA customers are obtained through incremental purchases which are not needed for Columbia's system supply. In addition, according to Mr. Devers, the non-excise tax portion of the agency fee and supplemental charge is credited to Columbia's GCR rate and lowers the cost of gas to GCR customers. Mr. Devers also testified that CTAPA customers contribute to fixed costs (Columbia Ex. 1, at 5).

Mr. Devers stated that Equity was the first customer to be offered the "flex" rate because Equity informed Columbia that it would purchase its gas requirements from Suburban (Columbia Ex. 1, at 5). Subsequently, Columbia determined that it would be preferable to meet competition with transportation arrangements rather than sales arrangements, and the CTAPA program was developed. The "flex" rate sales contracts were withdrawn, and customers were offered CTAPA agreements. Mr. Devers stated that CTAPA rates are designed to recover the cost of providing service and that CTAPA customers are not served at less than cost. Mr. Devers stated that both the "flex" rate of 1986 and the present CTAPA rates allow Columbia to recover its incremental costs

(Columbia Ex. 1, at 6). The purchase price of the pool of gas used for the CTAPA program was about $2.21 per mcf (Tr. 182).

Mr. Devers further testified that Columbia does not believe that Columbia's tariff is violated when Columbia extends its distribution mains to serve new customers without requiring the customer to deposit the full cost of the extension. He testified that if Columbia determines that the investment is economically justified, Columbia will extend the main without requiring a deposit. If the extension cannot be justified economically, Columbia may still extend the main because of competition from other suppliers (Columbia Ex. 1, at 6). According to Mr. Devers, requiring a deposit equal to the full cost of a main extension would adversely affect Columbia's ability to attract new business into Columbia's service territory.

Mr. Devers also testified that Columbia had installed on certain occasions customer service lines in order to meet competition. Mr. Devers stated that the cost of customer service lines would not be passed on to Columbia's customers through Columbia's base rates but would be charged to a marketing account (Columbia Ex. 1, at 7). Mr. Parshall testified that the costs associated with the provision of customer service lines, line extensions, regulators, and the waivers of deposits and the reimbursement of cost differentials of appliances were not being recovered by the company through base rates but rather were absorbed by the stockholders (Tr. 61). However, Mr. Law testified that none of these incentives were offered before Columbia's present general service rates became effective on July 2, 1985 (Tr. 130-131).

Mr. Devers testified that there have been instances in which Columbia has begun to bill customers under the CTAPA rate prior to Commission approval (Tr. 154). He stated that Columbia did this because of commitments made to customers in light of the competitive situation (Tr. 154).

Finally, Mr. Rothey testified that Suburban is a gas distribution company subject to Commission regulation but has no general service rates established by the Commission and no GCR rate. In addition, Suburban has only two special contracts on file with the Commission (Tr. 210). However, Suburban does have tariffs for the provision of service on file with the Commission. Suburban's tariffs are modeled after Columbia's tariffs. Suburban is serving some 200 to 250 customers inside the corporate limits of Bowling Green but does not have a franchise to serve Bowling Green. The rates charged these customers are established by ordinances of villages which own the lines. Mr. Rothey stated that he was advised by the mayor of Bowling Green that he did not need a franchise to operate in the city, apparently because Suburban was serving these areas when they were annexed to the city of Bowling Green (Tr. 218).

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DISCUSSION:

Suburban argues that Columbia's actions have violated Sections 4905.30, 4905.32, 4905.33, and 4905.35, Revised Code. Section 4905.30, Revised Code, provides in pertinent part:

> Every public utility shall print and file with the public utilities commission schedules showing all rates, joint rates, rentals, tolls, classifications, and charges for service of every kind furnished by it, and all rules and regulations affecting them. Such schedules shall be plainly printed and kept open to public inspection.

Section 4905.32, Revised Code, provides:

> No public utility shall charge, demand, exact, receive, or collect a different rate, rental, toll, or charge for any service rendered, or to be rendered, than that applicable to such service as specified in its schedule filed with the public utilities commission which is in effect at the time.
>
> No public utility shall refund or remit directly or indirectly, any rate, rental, toll, or charge so specified, or any part thereof, or extend to any person, firm, or corporation, any rule, 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, provides:

> No public utility shall directly or indirectly, or by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person, firm, or corporation a greater or lesser compensation for any service rendered, or to be rendered, except as provided in Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and 4925. of the Revised Code, than it charges, demands, collects, or receives 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.

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Section 4905.35, Revised Code, provides:

> 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 reasonable prejudice or disadvantage.

Suburban charges that Columbia provided free customer service lines to DAGC, the Woodland Mall's two major tenants, and WCCRC in violation of Columbia's tariffs and Sections 4905.30 and 4905.32, Revised Code; that Columbia provided C & C with the pipe and riser for its customer service line in violation of Columbia's tariffs and Sections 4905.30 and 4905.32, Revised Code; that Columbia's provision of a free regulator to BGCG violated Columbia's tariffs and Sections 4905.30 and 4905.32, Revised Code; that Columbia violated its tariffs and Sections 4905.30 and 4905.32, Revised Code, by providing the Elder-Beerman store with house piping and the reimbursement for the difference between the cost of electric and the cost of gas appliances; and that Columbia violated its tariffs and Sections 4905.30 and 4905.32, Revised Code, by failing to require deposits from C & C, the Woodland Mall, and other customers for the cost of main line extensions. Suburban points out that all the general service agency purchase and transportation agreements discussed in this proceeding incorporated Columbia's tariffs on file with the Commission into the agreements and that Columbia therefore bound itself to adhere to its tariffs in regard to these customers. In addition, the ordinance of the city of Bowling Green incorporates Columbia's tariffs on file with the Commission. Suburban also charges that Columbia violated Sections 4905.30 and 4905.32, Revised Code, by charging DAGC and C & C the general service agency purchase and transportation rates prior to Commission approval. In addition, Suburban charges that Columbia violated Section 4905.33, Revised Code, by offering to some but not to all of its customers free customer service lines, free regulators, and similar incentives. Suburban charges that Columbia violated Sections 4905.32, 4905.33, and 4905.35 Revised Code, by offering some of its general service customers the general service agency purchase and transportation rates and not offering the same rates to other similarly situated general service customers. Suburban also charges that Columbia violated Section 4905.35, Revised Code, by making DAGC the only church in Columbia's service area on the CTAPA rate, by agreeing that the Woodland Mall would have the only arrangement with a fixed rate for twelve months, by making the Woodland Mall the only mall in Columbia's service area on the general service agency purchase and transportation program, by giving Equity the only agreement in which rates can only be decreased, by offering D.S. Brown a firm burner-tip price for two years, and by offering Norbalt an indeterminate agreement period. Finally, Suburban believes that the CTAPA rate violates Section 4905.35, Revised Code, in that a rate designed to flex

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downward to meet a competitor's cost inherently is designed to permit the provision of service at less than its actual cost for the purpose of destroying competition.

Suburban argues that Columbia's failure to follow its tariffs and the Ohio Revised Code are particularly damaging given the competitive environment. According to Suburban, competition should require more disclosure of the terms and conditions of utility rates and services and stricter compliance with the tariffs and statutes. Suburban argues that customers need to know what rates and services are available to them and points to the disparate treatment of J.C. Penney and Elder-Beerman and BGCG and DAGC as examples. Suburban argues that it is unfair that everyone in Columbia's service territory does not know that if competition from Suburban exists that lower rates, free customer service lines, free house piping, free regulators, waivers of main line extension deposits, reimbursement of the differential of the cost of gas appliances, and other such incentives from Columbia could be available. Without such knowledge, according to Suburban, there will be discrimination among similarly-situated customers of Columbia.

In addition to these specific charges, Suburban argues that Columbia has transformed the general service agency purchase and transportation agreements from a defensive program that was designed to help Columbia maintain its existing load to an offensive weapon that is being used by Columbia to destroy competitors such as Suburban. Suburban states that DAGC, C & C, and the Woodland Mall were all new customers, none of whom were previously served by either Suburban or Columbia. At the time Suburban offered to serve these customers, none of them were customers of Columbia. In addition, D.S. Brown and Norbalt were using fuel oil at the time Suburban offered them service. Suburban argues that these customers were subject to open competition between Suburban and Columbia and that Suburban was not raiding established customers of Columbia.

Suburban argues that Columbia's use of the CTAPA program will be detrimental to customers. Suburban believes that similarly-situated public utility customers are entitled to the same rates and privileges and are subject to the same rules and regulations. Suburban believes that because Columbia's actions will effectively destroy competition, such activities will ultimately mean higher rates. Suburban states that Suburban did not succeed in obtaining a single general service account in circumstances where Suburban was in competition with Columbia even though Suburban's general service rates are lower than Columbia's. Suburban argues that Columbia has totally lost sight of its legal and regulatory responsibilities as a public utility in its "over-aggressiveness" toward Suburban. Suburban argues that Columbia cannot rely upon the new competitive environment to justify the specific statutory violations alleged in this case.

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OCC agrees with Suburban that the record in this procceding shows numerous instances in which Columbia has violated Section 4905.32, Revised Code, by offering service at a rate different from the rate provided for in Columbia's tariffs. OCC also agrees with Suburban that Columbia's failure to adhere to the terms of Columbia's tariffs is a violation of Section 4905.33, Revised Code, which prohibits discriminatory rates. OCC asserts that the charging of discriminatory rates causes general service customers and especially residential customers to bear the burden of Columbia's generosity. OCC asserts that the charging of discriminatory rates is unfair to customers who pay full rates.

OCC points to the record that indicates that Columbia began charging C & C the general service agency purchase and transportation rate with December 1986 usage, although the agreement between Columbia and C & C was not finally made until January 9, 1987 and Columbia did not file the agreement with the Commission for approval until March 26, 1987 (Tr. 65-66). OCC states that Columbia began charging DAGC the CTAPA rate on February 19, 1987 but did not file the agreement with the Commission until April 2, 1987. In addition, OCC argues that the CTAPA agreements are discriminatory because they have not been extended to all customers in a similar manner as required by Section 4905.33, Revised Code. OCC also argues that because customers on CTAPA rates are not billed for any excise tax charges on the gas cost portion of their gas bills, either the company or other remaining customers must bear the excise tax charges associated with these customers.

OCC also argues that the record shows that Columbia has violated P.U.C.O. No. 1, Original Sheet No. 6, Section 22(b) of Columbia's tariffs which states that the customer is to bear the expense of installing and maintaining customer service lines because Columbia provided free customer service lines to DAGC, Elder-Beerman, J.C. Penney's and WCCRC and free equipment to C & C. OCC argues that Columbia also violated its tariff which requires the customer to install and maintain appliances at the customer's own expense when Columbia reimbursed Elder-Beerman for the difference in cost between electric and gas appliances. OCC argues that the provision of a free regulator to BGCG violated P.U.C.O. No. 1, Original Sheet No. 6, Section 23 of Columbia's tariffs which provides that the customer must install and maintain a regulator. OCC believes that competition from Suburban or other fuel sources does not justify Columbia's tariff violations.

OCC recommends that the Commission reconsider Columbia's CTAPA program and that the Commission find the CTAPA program to be discriminatory. OCC further recommends that the Commission order Columbia to cease its application of the general service purchase agency and transportation rate or the CTAPA rate to C & C, DAGC, Equity, and any other customers on such rates. In the

alternative, OCC argues that the Commission should require Columbia to present evidence that all costs associated with the general service purchase agency and transportation agreements or the CTAPA agreements as well as the provision of free services are borne by Columbia's shareholders and not ratepayers.

Columbia argues that Columbia has violated neither its tariffs nor the statutes and that Columbia's rates, charges, and practices have been fully consistent with its obligations as a public utility. First, Columbia argues that this case must be viewed within the broader context of the sweeping changes in the natural gas industry. According to Columbia, as a result of regulatory changes and market forces, local gas distribution companies face intense competition from alternate fuels, unregulated gas producers, and other regulated gas distribution companies. The Federal Energy Regulatory Commission has authorized selective discounting of interstate transportation rates in competitive situations, and the Public Utilities Commission of Ohio has approved a number of innovative arrangements including sales and transportation rates based upon the price of competing alternate fuels. Columbia believes that only such innovative arrangements will allow Ohio's gas utilities to cope with the demands of the changing marketplace.

Columbia argues that Columbia is aggressively pursuing new markets but is not duplicating the facilities of other utilities which are already in place. Columbia argues that Suburban attempted to raid from Columbia a part of the Equity plant that Columbia was serving. Columbia claims that Columbia maintained that portion of the Equity load by offering Equity a "flex" rate. Columbia also states that Columbia was prepared to serve D.S. Brown when Suburban offered D.S. Brown service. Columbia argues that Columbia was providing natural gas service to North Baltimore when Suburban sought an ordinance to serve portions of the village. In short, Columbia charges that Suburban was attempting to raid its established markets.

Columbia admits that Columbia entered into agreements with Equity, C & C, DAGC, and the tenants of the Woodland Mall in order to meet competition posed by Suburban. Columbia states that such agreements have already been approved by the Commission. Columbia argues that because the Commission granted "blanket approval" in Madison County Hospital, Case No. 87-159-GA-AEC, the need for further applications has been eliminated.

Columbia admits that customers with general service agency purchase and transportation agreements are billed under those rates pending formal approval by the Commission but argues that rapid response is essential given the competitive situation. Columbia argues that if Columbia had been required to wait for formal Commission approval, the customer would have been lost.

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Columbia argues that where an arrangement is consistent with the Commission's transportation guidelines, there is nothing to prohibit Columbia from temporarily offering the service pending Commission approval. Columbia further argues that the only penalty for failure to file contracts with the Commission is that the contracts are not lawful, and the only consequence is that the contracts are not enforceable in a court of law. In any event, according to Columbia, because the agreements at issue in this proceeding have now been approved by the Commission, this issue is moot.

Columbia further argues that the CTAPA program does not violate Sections 4905.30 and 4905.32, Revised Code, which require utilities to adhere to rates and charges set forth in their tariffs, because CTAPA customers are not served under a tariff but under special arrangements filed and approved under Section 4905.31, Revised Code. According to Columbia, special arrangements are permissible under Section 4905.31(D), Revised Code, if a classification of service based upon any reasonable consideration is established. Under the CTAPA or general service agency purchase and transportation arrangement programs, the classification is based upon the existence of competition for a customer's service. Columbia argues that a classification based upon competitive conditions is reasonable. According to Columbia, a utility should be able to charge different rates in specific areas to particular customers without being guilty of undue discrimination if such rates are necessary to meet competition. Columbia argues that the Commission has authorized "downwardly flexible" intrastate transportation rates in Investigation of Gas Transportation, Case No. 85-800-GA-COI, August 13, 1986. According to Columbia, the Commission's approval of "downwardly flexible" intrastate transportation rates constituted an implicit finding that such rates are not unduly discriminatory. Columbia states that Columbia offers the CTAPA rate to customers who have received an offer from a competitor and which offer the customer was prepared to accept. Without the CTAPA rate, Columbia would not have the load. Columbia argues that the Commission did not mean to allow the use of the CTAPA program only in a situation where existing load would be "lost", because new load, as well as existing load, can be "lost" to competing suppliers. As for the variations in the CTAPA agreements offered by Columbia, Columbia states that the variations were necessary in the competitive situation. According to Columbia, the need for variation is one of the reasons that CTAPA customers are served under special arrangements rather than a tariff.

Columbia also argues that the CTAPA program does not constitute unlawful or undue discrimination. According to Columbia the statutory prohibitions against discrimination do not apply to special contracts. In addition, Columbia argues that Section 4905.35, Revised Code, forbids only "undue" or "unreasonable"

preferences or advantages, while Section 4905.33, Revised Code, prohibits only the receipt of different compensation for "like and contemporaneous service under substantially the same circumstances and conditions". Section 4905.32, Revised Code, bars utilities from granting refunds, privileges, or facilities unless they are extended to all customers under like circumstances for like or substantially similar service. In other words, according to Columbia, Ohio law requires similar treatment only where the customers are similarly situated, and Columbia believes that because of the competitive offers received by its customers with general service agency purchase and transportation agreements, these customers were not similarly situated to Columbia's other customers not on such agreements.

Columbia further argues that the CTAPA agreements do not violate the Section 4905.33, Revised Code, prohibition against furnishing service for less than actual cost for the purpose of destroying competition because the CTAPA rates are based upon the full cost of service. Columbia argues that nothing in the record supports the contention that the CTAPA program involves service at less than actual cost. Columbia states that the state excise tax on the cost of gas is always excluded from transportation rates because the excise tax does not apply to transportation volumes. In addition, the CTAPA agreements require the customer to reimburse Columbia for any tax liability that Columbia may have on the volumes. Columbia admits that under the CTAPA program Columbia may flex the CTAPA rates downward so that there is a potential that service may occur at less than cost in order for Columbia to retain the load. Columbia argues that if this situation were to occur, the pricing at less than cost would not be for the purpose of destroying competition but rather to meet competition from alternate suppliers. However, according to Mr. Devers, under the CTAPA program, Columbia would not charge less than a floor rate which would include the cost of gas, the agency fee, and an amount sufficient to cover the variable costs of providing the service.

As for the question of Columbia's failure to follow its tariff by waiving deposits for main extensions for its tariff customers, Columbia believes that the tariff gives Columbia discretion to require deposits, and Columbia argues that Columbia's level of investment in new facilities is a management decision subject to review in rate proceedings. In addition, Columbia argues that while Columbia and Suburban have identical tariffs on main extensions, Suburban offered to extend its main to WCCRC without asking for a deposit. According to Columbia, it would be detrimental to business in Ohio to collect a deposit equal to the full cost of every main extension needed to serve a new industrial or commercial customer.

In addition, Columbia argues that the incentives offered such as free customer service lines and regulators, the

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reimbursement of certain equipment costs, and the waiver of deposits are used only in situations where Columbia believes that the load would not otherwise be served by Columbia. Columbia argues that new loads increase contributions to fixed costs which benefit all customers. Furthermore, according to Columbia, the cost of these incentives are fully absorbed by Columbia's shareholders. Columbia also argues that these incentives do not violate Sections 4905.32, 4905.33, and 4905.35, Revised Code, because marketing incentives are not public utility services. Columbia argues that customer service lines and reimbursements for appliances, like telephone directories, fall outside the scope of regulation. At the same time, Columbia argues that the tariffs serve only to absolve Columbia from the obligation to provide customer service lines and regulators but do not prohibit Columbia from furnishing additional assistance above and beyond Columbia's obligations. Columbia argues that variations in incentives offered were the result of the competitive situation. In addition, if incentives were offered at less than cost, the incentives were offered to meet, and not to destroy, competition.

The Commission believes that Columbia's general service agency purchase and transportation arrangements are proper under Section 4905.31(D), Revised Code, for Columbia to retain existing load and to obtain new load. The Commission finds that a reasonable classification of customers under Section 4905.31(D), Revised Code, would be a classification of customers who would not otherwise be served by Columbia in the absence of the special arrangement. In The Cleveland Electric Illuminating Company, Case No. 83-1342-EL-ATA and Case No. 83-1343-HT-ATA, Opinion and Order, May 8, 1984, the Commission suggested that the "reasonable arrangements" mechanism of Section 4905.31, Revised Code, would be the appropriate way to modify rates in order to meet competition to retain existing load and to obtain new load. The Commission sees no basis for a distinction between the retention of presently existing customers and the acquisition of new customers in regard to whether a reasonable classification exists to meet competition under Section 4905.31(D), Revised Code. Under both circumstances the utility is attempting to meet competition to serve a customer who would not otherwise be served if the rate were not offered. The Commission finds that Suburban has not met its burden of proving that the general service agency purchase and transportation agreements are unreasonable arrangements to allow Columbia to serve load that Columbia would not otherwise serve in the absence of such arrangements.

The Commission approved Columbia's general service agency purchase and transportation agreement with Equity in Case No. 86-1781-GA-AEC, September 5, 1986. The record indicates that Columbia offered the "flex" rate to Equity in order to retain Columbia's load that Suburban had offered to serve. The Commission believes that Equity was a proper customer to enter into a general service agency purchase and transportation

agreement with Columbia. As for the Equity agreement feature that the Equity rate could only be decreased, the Commission does not find that feature to violate Section 4905.33, Revised Code, which prohibits special rates offered one customer and not another and prohibits free service or service at less than cost for the purpose of destroying competition. First, there is nothing in the record to indicate that the rate was offered at less than cost, and in fact the record indicates that the rate adequately covers Columbia's costs. The problem that the rate could eventually flex so far downward so as not to cover Columbia's costs has not presented itself here. Second, as for Suburban's argument that the general service agency purchase and transportation rate offered to Equity was not offered to others, the Commission finds that under Section 4905.31, Revised Code, the arrangement between Equity and Columbia as presented in Case No. 86-1781-GA-AEC is a reasonable arrangement. The classification of customer represented by Equity is a general service customer of Columbia that Columbia would not have served had the arrangement not been available. Having determined that Equity was a proper customer to make a general service agency purchase and transportation agreement with Columbia, the Commission will not interfere with the bargain made between the two contracting parties once it appears to the Commission that the arrangement was reasonable and lawful. There is no requirement that all general service agency purchase and transportation agreements be alike.

In addition, the Commission approved C & C's general service agency purchase and transportation agreement with Columbia in Case No. 87-504-GA-AEC, on April 21, 1987. The application stated that the arrangement would benefit Columbia's customers because of increased fixed-cost contributions from a load that would otherwise be lost. The Commission approved this arrangement under Section 4905.31, Revised Code, as a reasonable arrangement, and Suburban has presented no evidence that would convince the Commission that the general service agency purchase and transportation agreement between Columbia and C & C was unreasonable.

Of the agreements discussed in this proceeding, only the general service agency purchase and transportation agreement between Columbia and DAGC was filed pursuant to the blanket approval granted in the Commission's Finding and Order in Madison County Hospital, Inc., Case No. 87-159-GA-AEC, March 17, 1987. The Commission found in Madison County Hospital that under Section 4905.31, Revised Code, reasonable arrangements between gas utilities and their customers may be authorized upon approval by the Commission. In the Finding and Order in Case No. 87-159-GA-AEC, the Commission found that "the rates to be charged under this arrangement provide for flexibility in order to prevent the loss of load." When Columbia filed on April 2, 1987 its agreement with DAGC, Columbia stated that the filing was

pursuant to Case No. 87-159-GA-AEC in which the Commission approved an identical general service agency purchase and transportation agreement and ordered that all future similar agreements be approved by the Commission upon filing by Columbia unless and subject to future rulings by the Commission within thirty days of the filing of such agreement (Columbia Ex. 3). The Commission did not make any subsequent findings within thirty days, and the arrangement remains approved. Suburban has presented no evidence to convince the Commission that the arrangement between Columbia and DAGC is unreasonable and should not be approved.

However, the Commission is concerned about the fact that the agreement between Columbia and Equity was to take effect on August 20, 1986 according to the agreement, but the agreement was not filed with the Commission until September 5, 1986, and was not approved by the Commission until September 30, 1986. Under Section 4905.31, Revised Code, the Commission is to approve such arrangements, and no arrangement is lawful unless it is filed with and approved by the Commission. Regardless of whether Columbia argues that the only consequence of unapproved arrangements is that the contracts are unenforceable, the Commission has long had the policy that any arrangements under Section 4905.31, Revised Code, must be reviewed and approved by the Commission before they become effective so as to ensure that they are just and reasonable and to ensure that they will not adversely affect the balance of the company's customers. Cleveland Electric Illuminating, supra, at 7. The Commission agrees with Suburban that it is improper for Columbia to allow gas to flow at a special contract rate prior to Commission approval of the special contract arrangement.

The delay in filing the special arrangements exists in the other cases under discussion here as well. The case of the C & C contract is especially disturbing as it appears that the agreement was to take effect on November 14, 1986 but was not filed with the Commission until March 26, 1987, and not approved until April 21, 1987. The Commission finds that Columbia's failure to file the contract in a timely fashion was improper as was the decision to allow gas to flow under the contract rate prior to Commission approval.

As for the DAGC arrangement, the Commission notes that it was to become effective as of February 19, 1987, but was not filed with the Commission until April 2, 1987. Given the fact that the Commission has taken the extraordinary step of allowing approval of these contracts upon their filing subject to Commission action within thirty days, the Commission can see no reason why these contracts would take effect prior to their filing. The Commission does not believe that the competitive threat justifies placing the rate in effect prior to Commission approval. The Commission finds it unreasonable for the general

service agency purchase and transportation rates to go into effect prior to their filing with the Commission.

The Commission also notes that Columbia has already reached an agreement with the Woodland Mall to charge the Woodland Mall at a particular special rate without filing such agreement with the Commission for approval. Apparently, no gas has flowed under this arrangement at this time; however, the Commission can see no reason why Columbia has not filed this arrangement under the Case No. 87-159-GA-AEC blanket approval provisions. The Commission would not foreclose the approval of the general service agency purchase and transportation arrangement between the mall and its tenants and Columbia simply because these are new customers of Columbia. However, prior to the arrangements being filed, the Commission can make no determination in this matter.

With regard to the provision of free customer service lines, regulators, and various equipment and the waiver of deposits on main line extension, the Commission notes that all the general service agency purchase and transportation agreements that have been approved by the Commission have all incorporated Columbia's tariffs on file with the Commission as part of the arrangements. The Commission finds that Columbia's tariffs on file with the Commission apply to the general service agency purchase and transportation agreements. In addition, to argue, as Columbia does, that customer service lines, main line extensions, and regulators are not subject to Columbia's tariffs is directly contrary to the fact that Columbia's tariffs expressly cover these items and expressly state the customers' responsibilities. To waive tariff provisions for customers with regard to these services would render Columbia's tariffs on these services completely unreliable as a source of information on Columbia's charges and would violate Sections 4905.30 and 4905.32, Revised Code. The Commission finds that the waivers of tariff provisions for customers are violations of Columbia's tariffs and Sections 4905.30, 4905.32, 4905.33, and 4905.35, Revised Code. Under Section 4905.30, Revised Code, the tariffs are to contain all charges for service of every kind furnished by Columbia. Under Section 4905.32, Columbia may not collect a different charge for any service rendered than that contained in its tariffs, and Columbia may not remit any charge or extend to any person any privilege except as specified in its tariffs and as extended uniformly to all persons under similar conditions. Under Section 4905.33, Revised Code, Columbia may not charge any person a greater or lesser amount for any service rendered than it charges any other person under the same circumstances. Under Section 4905.35, Revised Code, Columbia may not give any unreasonable advantage to any person or subject any person to any undue disadvantage. Under Columbia's tariffs, the customer is responsible to provide customer service lines, house piping, and appliances, and there are no exceptions in Columbia's tariffs to

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these requirements. Columbia may not apply its tariffs to one customer and not to another.

Therefore, Columbia's tariffs on file with the Commission apply to C & C as the tariffs apply to any other general service customer of Columbia. C & C should have been required to deposit the cost of the main line extension with Columbia as required by Columbia's tariffs. The tariff does not make the deposit subject to Columbia's discretion. Once Columbia determines that the main extension should be done, it is mandatory under the tariffs that the customer deposit with Columbia the cost of the extension. In addition, the free equipment to C & C violated Columbia's tariffs. However because Columbia has already provided this free service to C & C and has already waived the deposit, the Commission will not require any payment for these services by C & C. The Commission understands that the cost of this equipment was not borne and will not be borne by Columbia's ratepayers.

In addition, Columbia violated its tariffs and Sections 4905.30, 4905.32, 4905.33, and 4905.35, Revised Code by providing DAGC with a free customer service line. Under Columbia's tariffs, the customer is responsible for the expense of new customer service lines. Columbia may not waive this tariff provision for one or any of its customers. Columbia's tariffs on file with the Commission apply to DAGC as they apply to all Columbia's general service customers. However, because Columbia has already provided the free customer service line to DAGC, the Commission does not believe that DAGC should now have to pay for the line. The Commission notes that the cost of the line was not borne and will not be borne by Columbia's ratepayers.

Finally, the Commission finds that the only rules and regulations for service from Columbia that should apply to the mall are Columbia's tariffs for gas service on file with the Commission. The August 19, 1986 offer by Columbia to Brisa Builders to pay for the customer service lines to J.C. Penney and Elder-Beerman and to pay for Elder-Beerman's house piping and the differential between gas and electric appliances violated Sections 4905.32, 4905.33, and 4905.35, Revised Code, and Columbia's tariffs on file with the Commission. The competition posed by Suburban does not justify Columbia's attempt to waive tariffs in regard to the mall and to some of the mall tenants in order to beat out Suburban to serve the mall. The Commission will not now insist that Columbia collect the improperly waived charges from the mall's tenants. Although the failure to follow Columbia's tariffs was unlawful, Columbia's general service customers were not harmed to the extent that the cost of the provision of these services was not paid and will not be paid by Columbia's ratepayers.

The provision of a free regulator to BGCG and of a free customer service line to WCCRC violated Columbia's tariffs and Sections 4905.30, 4905.32, 4905.33, and 4905.35, Revised Code.

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BGCG is a general service customer of Columbia subject to Columbia's rates and tariffs on file with the Commission. Under Columbia's tariff, P.U.C.O. No. 1, Section 23, Original Sheet No. 6, the customer shall at his expense provide, install, and maintain the regulator. WCCRC is a general service customer subject to Columbia's tariffs, and under Columbia's tariff P.U.C.O. No. 1, Original Sheet No. 6, Section 22 (b) a customer is to install and maintain customer service lines at his own expense. Although WCCRC is located in the corporation limits of Bowling Green, the ordinance contract between Columbia and Bowling Green incorporates Columbia's tariffs on file with the Commission.

The Commission finds that Suburban has met its burden of proving the allegations of its complaint to the extent discussed above. The Commission agrees that the provision of free services and the waiving of deposits for customers were in violation of Columbia's tariffs and the Revised Code. The Commission has not ordered Columbia to demand payment from mall customers, C & C, DAGC, BGCG, or WCCRC for the provision of various services in violation of Columbia's tariffs and the Revised Code; however, the Commission expects Columbia to cease such practices immediately. The Commission does not agree with Suburban that CTAPA rates should not be offered to customers facing competition from other natural gas distribution companies. The Commission believes that it is reasonable for Columbia to offer a CTAPA rate to retain load that would otherwise be lost to any competing supplier or to attract new load. In addition, the Commission sees no distinction between new and existing customers in regard to which customers may be offered such arrangements. It should be clear, however, that the Commission does not condone the actions of Columbia in offering facilities free or below cost in violation of Columbia's tariffs. The Commission is also considering the possibility that there may be certain classes of customers who may not be appropriate for general service agency purchase and transportation agreements. Finally, the Commission does not foreclose the possibility that Suburban will be able to establish its own general service agency purchase and transportation arrangements with customers whose load might otherwise be lost to competitors.

FINDINGS OF FACT:

1) This complaint was filed by Suburban on August 29, 1986 against Columbia. On October 22, 1986, Suburban filed an amended complaint. Suburban alleged that Columbia's practices were violations of Sections 4905.30, 4905.32, 4905.33, and 4905.35, Revised Code.

2) On January 27, 1987, Columbia answered the complaint. Columbia denied all the substantive allegations of the complaint.

3) On May 14, 1987, the motion of OCC to intervene in this proceeding was granted.

4) The hearing in this matter was held on May 7, 1987. Notice of the hearing was published in the Daily Sentinel-Tribune, a newspaper of general circulation in Wood County, Ohio.

5) Equity was a customer of Columbia in July 1986 when Columbia offered Equity a general service agency purchase and transportation agreement. Equity had been approached by Suburban and would have switched from Columbia to Suburban had the transportation arrangement not been offered.

6) The "flex" rate offered Equity may only be decreased by Columbia.

7) Columbia offered the new stores at the Woodland Mall general service agency purchase and transportation agreements along with free customer service lines to two of the stores and house piping and the differential between the cost of gas and electric appliances to one of the stores.

8) Columbia offered C & C a general service agency purchase and transportation agreement, provided C & C with a main line extension without requiring a deposit, and provided a pipe and riser for the line of C & C.

9) On March 11, 1987, Columbia entered into a general service agency purchase and transportation agreement with DAGC.

10) Columbia filed the CTAPA agreement with DAGC on April 2, 1987, pursuant to Madison County Hospital, Case No. 87-159-GA-AEC.

11) DAGC received a free customer service line from Columbia.

12) Columbia provided its new general service tariff customer BGCG with a regulator needed to provide service from a high pressure transmission line.

13) Columbia provided a free customer service line to WCCRC, a customer subject to Columbia's ordinance rates with the city of Bowling Green.

14) Columbia filed its general service agency purchase and transportation arrangements with the Commission in several instances after the agreements went into effect.

CONCLUSIONS OF LAW:

1) This complaint was brought under Section 4905.26, Revised Code. Notice of the hearing was published in accordance with the requirements of that section.

2) Equity was a proper customer to receive a general service agency purchase and transportation agreement from Columbia. The arrangement has been approved by the Commission pursuant to Section 4905.31, Revised Code.

3) Because Equity was a proper customer to enter into a general service agency purchase and transportation agreement with Columbia and because the Commission considers the arrangement between Columbia and Equity to be lawful and reasonable, the Commission will not inquire further into the question whether Columbia made a good bargain as long as the Commission has no reason to doubt that Columbia is not offering the service below cost for the purpose of destroying competition.

4) It is appropriate for Columbia to offer existing and new customers general service agency purchase and transportation agreements because these agreements are reasonable to allow Columbia to maintain its existing load and to attract new load.

5) C & C was a proper customer to be offered the general service agency purchase and transportation agreement. The arrangement has been approved by the Commission pursuant to Section 4905.31, Revised Code.

6) DAGC was an appropriate customer to be offered a CTAPA rate. The arrangement has

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been approved by the Commission pursuant to Section 4905.31, Revised Code.

7) The general service agency purchase and transportation rates should not take effect prior to Commission approval, which under Case No. 87-159-GA-AEC is granted upon filing of the arrangement with the Commission.

8) The general service agency purchase and transportation agreements discussed in this case incorporate Columbia's tariffs by reference, and customers of Columbia under the agreements are subject to Columbia's tariffs on file with the Commission.

9) The provision of customer service lines, regulators, and line extensions are subject to Columbia's tariffs on file with the Commission and to Sections 4905.30 and 4905.32, 4905.33, and 4905.35, Revised Code.

10) The provision by Columbia of free customer service lines, regulators, and house piping, the waiver of deposits for main line extensions, and the provision of the cost differential between gas and electric appliances to customers subject to Columbia's general service tariffs are violations of Columbia's tariffs and Sections 4905.30, 4905.32, 4905.33, and 4905.35, Revised Code.

11) Columbia may not waive its tariff requirements for some customers and not others regardless of whether the cost is not borne by ratepayers because Sections 4905.32, 4905.33, and 4905.35, Revised Code, require that the tariffs be uniformly applied to similarly-situated customers.

12) The existence of competition for customers in Columbia's service territory does not justify the disregard for Columbia's tariffs on file with the Commission.

13) The provision of a main line extension to C & C without requiring a deposit is not in conformity with Columbia's tariffs P.U.C.O. No. 1, Original Sheet No. 8, Section 34 which should have applied to C & C. The provision of material to C & C in the form of a pipe

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and riser for the service line is also not in conformity with Columbia's tariffs.

14) The provision of a free customer service line to DAGC was inappropriate for a customer who should have been subject to Columbia's tariffs.

15) Under Columbia's tariffs, P.U.C.O. No. 1, Original Sheet No. 6, Section 22 (b), installation and maintenance of customer service lines is to be at the customer's expense.

16) The provision of a free regulator to BGCG, a general service customer subject to Columbia's tariffs, is contrary to Columbia's tariffs and Ohio statutory law.

17) The provision by Columbia of a free regulator to a customer subject to Columbia's general service rate is not in conformity with P.U.C.O. No. 1, Original Sheet No. 6, Section 23, of Columbia's tariffs which states that the customer shall install and maintain, at his expense, a suitable regulator for reducing pressure where service is provided from a high pressure transmission line.

18) A free customer service line should not have been provided to WCCRC under P.U.C.O. No. 1, Original Sheet No. 6, Section 22 (b) of Columbia's tariffs.

19) Under Ordinance No. 4209 of the city of Bowling Green, Section 3, the terms and conditions of service to be rendered shall conform with the rules and regulations for furnishing gas service of Columbia on file with the Commission.

20) The provision of free service lines, house piping, and the differential in the cost of gas and electric appliances given to some but not all stores at the Woodland Mall by Columbia was not appropriate under Columbia's tariffs for customers who should have been subject to Columbia's tariffs.

21) The complainant has met its burden of proving that Columbia has violated its tariffs and Sections 4905.30, 4905.32, 4905.33, and 4905.35, Revised Code, by providing free

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customer service lines to Elder-Beerman and J.C. Penney at the Woodland Mall, DAGC, and WCCRC, free house piping and the differential between gas and electric appliances to Elder-Beerman at the Woodland Mall, a free regulator to BGCG, and a waiver of the deposit required for a main line extension to C & C.

22) The complainant did not meet its burden of proving that the general service agency purchase and transportation agreements between Columbia and its customers Equity, the Woodland Mall, C & C, and DAGC are unreasonable.

ORDER:

It is, therefore,

ORDERED, That Columbia may enter into general service agency purchase and transportation agreements to retain existing load and to attract new load. It is, also,

ORDERED, That general service agency purchase and transportation agreements take effect only upon their filing with the Commission under Case No. 87-159-GA-AEC. It is, further,

ORDERED, That Columbia apply uniformly its tariffs on file with the Commission to all Columbia's general service customers to whom these tariffs apply and to all customers subject to ordinance rates which ordinances incorporate such tariffs and to all customers subject to agreements which agreements incorporate such tariffs. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Thomas V. Chema, Chairman

William H. Brooks

Gloria L. Gaylord

Ashley C. Brown

Alan R. Schriber

CLM/vrt

Entered in the Journal
04 AUG 1987
A True Copy
Nancy L. Wolpe
Nancy L. Wolpe
Secretary

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Summary: Opinion & Order Opinion and Order stating that Columbia Gas may enter into general service agency purchase and transporation agreements to retain existing load and to attract new load. Also that said agreements take effect only upon their filing with the Commisison under Case No. 87-159-GA-AEC. electronically filed by Docketing Staff on behalf of Docketing