BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of The Suburban Fuel Gas, Inc., Complainant	)	
vs.	)	Case No. 86-1747-GA-CSS
Columbia Gas of Ohio, Inc. Respondent.	)	

APPLICATION FOR REHEARING AND REQUEST FOR STAY BY COLUMBIA GAS OF OHIO, INC.

Now comes Respondent, Columbia Gas of Ohio, Inc. (Columbia) and applies for rehearing with respect to the Commission's August 4, 1987 Opinion and Order in this proceeding. Columbia submits that said Order is unreasonable and unlawful in the following respects:

1. The Commission erred in finding that Columbia's extension of its distribution mains to certain customers violated Columbia's tariffs and R.C. §§4905.30, 4905.32, 4905.33, and 4905.35.

2. The Commission erred in finding that Columbia's provision of customer service lines, regulators, house piping, and equipment cost differentials violated Columbia's tariffs and R.C. §§4905.30, 4905.32, 4905.33, and 4905.35.

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3. The Commission erred in finding that Columbia acted improperly in billing customers under special contracts pending formal approval by the Commission.

4. The Commission erred in hearing and deciding a complaint brought by one of Columbia's competitors, which has no standing to challenge the lawfulness of Columbia's rates, charges, and practices.

Columbia further asks that the Commission forthwith stay those portions of the August 4 Opinion and Order concerning Columbia's main extension policies and marketing incentives, such as service lines, house piping, and equipment allowances, pending its consideration of Columbia's application for rehearing. Should the Commission deny all or part of Columbia's application for rehearing, Columbia asks that the stay be extended until (1) the Commission has considered these issues in a generic proceeding concerning practices followed in competitive situations, or (2) Columbia has had the opportunity to file, and the Commission has considered, proposed tariff changes concerning the competitive practices involved in this proceeding. Such a stay is justified for the following reasons.

A literal reading of the Commission's Opinion and Order will severely restrict Columbia's ability to compete with other energy suppliers, expand its market share, and provide natural gas to customers who desire service from Columbia. By requiring potential commercial and industrial customers to deposit the full cost of required main extensions, the Order will essentially preclude Columbia from extending service to many new customers,

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regardless of the competitive situation. The resulting inability of Columbia to make cost-justified extensions of its facilities will hamper economic growth and development throughout its service area. This will obviously have an adverse impact upon both Columbia and its existing customers.

The Commission's holding concerning marketing incentives will have a similar impact. The Order effectively precludes Columbia from furnishing such incentives, such as equipment allowances, to prospective customers. This aspect of the Order will severely restrict Columbia's ability to compete with other regulated and unregulated energy suppliers, who are not subject to such onerous restrictions and are therefore free to offer such incentives, such as the wiring allowances offered by electric utilities, and thus unfairly compete with Columbia throughout the pendency of this application and during the period in which the Commission hears and considers similar issues in matters pending before it or in generic proceedings being contemplated by the Commission.

Columbia does not believe that the Commission intended to place Columbia and its customers at such a competitive disadvantage during its consideration of these generic issues. Therefore, the Commission should grant Columbia's application for rehearing, and rescind the findings complained of. The Commission should also stay those portions of the Order concerning main extension policies and marketing incentives, as requested by Columbia herein.

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The arguments supporting these assignments of error and the basis for the requested stay are set forth in the attached Memorandum in Support, which is expressly incorporated herein by reference.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

In its August 4, 1987 Opinion and Order, the Commission found that certain of Columbia's practices violated its existing tariff provisions, as well as various sections of the Revised Code. Columbia was both surprised and perplexed by these findings, because the Company believed, and continues to believe, that its actions were fully consistent with both its tariffs and the relevant provisions of Ohio law. The findings are particularly troublesome, because they have ramifications that go well beyond competition between Columbia and Suburban Fuel Gas, Inc. (Suburban). For the reasons set forth herein, Columbia maintains that certain of the Order's findings are unreasonable and unlawful, and that the related ordering paragraphs are overbroad in relation to the narrow and limited scope of the findings and discussion in the Order. Those findings and ordering paragraphs should be rescinded by the Commission on rehearing.

A. Line Extension Policies

The Commission's Opinion and Order effectively holds that Columbia's tariffs prohibit the Company from extending its distribution mains to new industrial and commercial customers, unless the customer first deposits the full cost of the necessary line extension. This holding is not only unreasonable and unlawful, it is contrary to the public interest, and will have far-reaching adverse consequences which were clearly not intended by the Commission.

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Columbia's existing policy has been to require deposits only for that portion, if any, of a proposed main extension which is not deemed justified at Company expense. In the case of residential line extensions, the tariff language explicitly permits that practice, and while the language involving commercial and industrial extensions is not as specific, it is clearly broad enough to permit similar treatment. Residential usage and the gas facilities required to provide residential service are fairly uniform. Consequently, the installation of 100 feet of distribution main at the expense of the Company represents a reasonable average investment for new residential service. However, gas requirements and associated gas facilities for new commercial and industrial customers vary substantially. A uniform measure of the Company's investment is inappropriate. An economic feasibility study for all new commercial and industrial accounts is used by Columbia to determine the maximum allowable investment (MAI). The MAI is then used to determine the deposit, if any, required from the new commercial and industrial customer. This procedure ensures that all line extensions for residential, commercial, or industrial customers are treated on an equitable basis, and are cost justified for the benefit of existing customers.

The Commission's Order, as previously stated, will have a far-reaching and devastating impact upon economic development. The Commission's interpretation of the line extension tariff would apply to <u>all</u> new commercial and industrial customers, the vast majority of which are not involved in

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competitive situations. That interpretation will dramatically increase the initial cost of gas service for every automobile manufacturer, steelmaker, or other industry considering locating or expanding facilities in Columbia's service territory. This increase in the initial cost of gas service could easily lead such industrial facilities or plants to locate or expand elsewhere, with the resulting loss of load for Columbia and loss of jobs and other economic benefits for its service territory. Such a result would clearly be contrary to the public interest, and was surely not intended by the Commission.

For the reasons set forth in Columbia's post-hearing brief, Columbia maintains that its existing tariffs permit it to pay all or part of the cost of a main extension where such costs are deemed justified at Company expense. The Complainant obviously concurs in that interpretation, since the record shows that it has interpreted its own identical tariffs in the same manner. Accordingly, the Commission should grant rehearing and rescind its finding that certain of Columbia's line extension practices have violated its tariffs and various provisions of the Revised Code.

B. Service Lines, House Piping, and Equipment Allowances

The Commission also found that Columbia violated its tariffs, as well as R.C. §§4905.30, 4905.32, 4905.33, and 4905.35, by furnishing customer service lines, house piping, and equipment allowances. This conclusion is wrong for several reasons.

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To begin with, furnishing such items is not a public utility service over which the Commission has jurisdiction. The Commission has repeatedly recognized this in its prior decisions. See, e.g., Keeling v. Cincinnati Gas & Electric Co., PUCO Case No. 84-374-GA-CSS (May 1, 1984). That fact is not altered by the inclusion of various references to those items in Columbia's tariffs, since the tariffs impose no public utility obligation upon Columbia to provide such services.

Even if the Commission had jurisdiction over such items, the furnishing of service lines and other items would not violate the tariffs, because there is nothing in the tariffs that prohibits Columbia from furnishing additional assistance to its customers, above and beyond the requirements of its public utility obligations. And even assuming, for the sake of argument, that the record demonstrated a violation of Columbia's tariffs, the Commission nonetheless erred in finding that these activities violated R.C. §§4905.33 and 4905.35, which prohibit, not all discrimination, but only undue or unreasonable discrimination. The cases cited in Columbia's post-hearing brief clearly show that providing different rates or services in competitive situations does not constitute undue or unreasonable discrimination.

These findings, like those involving line extensions, have ramifications that go well beyond competition between Columbia and Suburban. Columbia must compete against a variety of regulated and unregulated suppliers, and to do so effectively, it must be able to respond to individual situations in a flexible

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manner. Equipment cost differentials, for example, are particularly important in competing against electricity, which generally offers a lower initial cost for appliances and equipment. This is particularly true where the electric company offers wiring allowances or other rebate incentives to builders and developers. The very essence of meeting competition is the ability to treat different competitive situations differently, and if Ohio's utilities are to function effectively in a highly competitive marketplace, they must be permitted to respond flexibly to the requirements of a given situation. To the extent that the Commission's order implies otherwise, its findings are unreasonable, unlawful, and erroneous, and should be reconsidered and rescinded on rehearing.

C. Billing Under Special Contracts

The Commission further found that Columbia had acted improperly in billing customers under special contracts pending formal Commission approval. In doing so, the Commission rejected arguments presented by various parties, including its own staff in Case No. 87-304-GA-AEC. Columbia submits that the Commission's conclusion on this point is erroneous.

Special contracts are governed by R.C. §4905.31. That section, unlike R.C. §4909.17, does not provide that rates shall not become effective until they are approved by the Commission; it provides that special contracts shall not be lawful unless they are filed with and approved by the Commission. The terms "effective" and "lawful" are clearly not synonymous, and had the legislature intended to prevent special contracts from becoming

effective prior to Commission approval, it would have enacted legislation, similar to R.C. §4909.17, which provides such a result. Special contracts, unlike tariffs, become effective when agreed upon by the parties, but do not become "lawful," and hence enforceable in a court of law, until the Commission issues its formal approval.

This is particularly important in competitive situations, where a rapid, flexible response is essential. Indeed, the Commission specifically recognized in its Opinion and Order that special contracts entered into under R.C. §4905.31 provide an appropriate vehicle for meeting competition. That vehicle would be rendered worthless in many situations if the utility were required to await formal Commission approval before meeting a competitive threat. Such a result is neither required by the statute nor consistent with the public interest. Therefore, the Commission should grant rehearing on this issue and rescind its finding that a utility cannot properly offer service under a special contract until it has received formal approval from the Commission.

D. Standing

As Columbia argued in its motions to dismiss the original and amended complaints in this case, and again in its post-hearing brief, Suburban has no standing to challenge Columbia's rates, charges, and practices in a complaint proceeding. For that reason, the Commission should reconsider its prior ruling in this case, and the complaint should be dismissed in its entirety.

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E. Request for Stay

Although this case involved only allegations concerning competition with Suburban in a few isolated areas, the Commission's findings will immediately preclude Columbia from fairly competing for new loads throughout its entire service area. In this respect, the Order unfairly discriminates against Columbia, its customers, and the economic development efforts within the areas served by Columbia.

Indeed, a sample review of the tariffs of other regulated utilities demonstrates that the competitive playing field is not level. Some tariffs are specific as to line extension provisions, service lines, or house piping, while others are so loosely drawn that virtually any competitive activity can be accommodated. The Commission's Opinion and Order, in spite of the permissive language of Columbia's tariffs, has imposed such an unreasonable and strict interpretation of those tariffs that it has arguably removed Columbia from the competitive field altogether. The Commission's Opinion and Order is contrary to the public interest in that it restricts state's economic development and has an adverse cost impact on Columbia's customers, especially the captive customers.

In view of the far-reaching impact of these issues, and the existing disparity of tariff provisions which skews the competitive playing field for both regulated and unregulated energy suppliers, these matters are best dealt with on a comprehensive, generic basis. The Commission is currently considering competitive issues in a number of other pending

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cases, and it has suggested re-opening Case No. 85-800-GA-COI to further examine such issues. Granting the stay requested by Columbia would enable the Commission to consider such issues on a generic basis, fully analyzing the ramifications of these issues for the state's public utilities and their customers.

If the Commission deems it inappropriate to address these issues on a generic basis, Columbia asks that the portions of the Order relating to main extensions and marketing incentives be stayed with until Columbia has had the opportunity to file, and the Commission has considered, proposed tariff changes relating to the practices to be followed in competitive situations.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Rehearing and Request for Stay was served upon the parties listed below by regular U.S. Mail this 28th day of August, 1987.

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Summary: Application Application for rehearing and request for stay by Columbia Gas of Ohio, Inc. by K. Christman. electronically filed by Docketing Staff on behalf of Docketing