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file

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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SEP 3 1987
DOCKETING DIVISION
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

Relative to various alleged violations
of the Ohio Revised Code.

COMPLAINANT'S MEMORANDUM CONTRA
RESPONDENT'S APPLICATION FOR REHEARING
AND REQUEST FOR STAY

COMES NOW The Suburban Fuel Gas, Inc. ("complainant"), by its attorneys, and, pursuant to Rule 4901-1-35, O.A.C., respectfully files its memorandum contra the application for rehearing and request for stay filed by Columbia Gas of Ohio, Inc. ("respondent") in the above-docketed proceeding on August 28, 1987.

MEMORANDUM CONTRA

The respondent's application for rehearing raises no new question of law or fact not previously considered and properly disposed of by the Commission in entering its August 4, 1987

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Opinion and Order in this case. Moreover, it is inconceivable to complainant that the respondent would claim surprise at the consequences of that Order. This case has been pending before the Commission since August 29, 1986, more than a year; and the respondent has been fully informed as to the issues involved and potential outcome of this proceeding. It was incumbent upon the respondent, therefore, to take reasonably prudent precautions to be prepared for that outcome; and it should not now be permitted to shift the consequences, if any, of its own inaction to the Commission, particularly in view of the clarity of the issues raised by the complaint.

This case, while significant, was not complex. The respondent's tariff clearly provided one thing and the respondent chose to do another. For example, the respondent's tariff clearly provided that industrial and commercial customers "shall" deposit the full cost of a line extension once a determination was made by the respondent that the same was economically feasible. For a variety of reasons, including competition, the respondent chose to ignore its tariff. clearly violated R.C. 4905.32 which prohibits a public utility from extending to "any person... any rule, regulation, privilege, or facility except such as are specified in (its) schedule..." filed with this Commission. Moreover, as the Commission found, the respondent chose to ignore this requirement of its tariff for some persons and not for

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others, in violation of R.C. 4905.32, R.C. 4905.33, and R.C. 4905.35.¹

The same is true with regard to the respondent's decisions to provide free customer service lines, regulators, and house piping and to reimburse the differential in cost between gas and electric appliances, and, again, to provide them to some persons and not to others. These actions clearly violated the express provisions of the respondent's tariff and the express provisions of R.C. 4905.30, R.C. 4905.32, R.C. 4905.33, and R.C. 4905.35 as well.

The respondent argued and continues to argue that the provision of these "incentives" does not constitute the provision of a "public utility service." However, even if this were true, which complainant disputes, R.C. 4905.32 is not restricted to "services." That statute prohibits the extension of any "facility," as well as any service, to any person contrary to the provisions of a public utility's tariff. Consequently, even if one were to accept the respondent's characterization of these so-called "incentives," they are still precluded under the respondent's tariff and R.C. 4905.32.

¹In its memorandum in support of its application for rehearing, the respondent asserts that the complainant "obviously concurs" in the respondent's interpretation of the line extension deposit provisions of its tariff since the complainant has interpreted its own tariffs in the same manner (Page 7). This is both irrelevant and untrue. If complainant "obviously concurred" in the respondent's interpretation, the issue would not even have come before the Commission in this case.

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The same is true with respect to the respondent's practice of billing the CTAPA rate before receiving Commission approval. Again, R.C. 4905.32 clearly provides: "No public utility shall charge...a different rate...for any service rendered, or to be rendered, than that applicable to such service...filed with the public utilities commission which is in effect at the time" (Emphasis added). In this case, the respondent was charging the CTAPA rate to CTAPA customers even before the contract was filed with the Commission and even though the rate filed with the Commission and in effect at the time was the respondent's applicable general service rate. The respondent tried to avoid these clear violations of R.C. 4905.32 by arguing that special contract rates are governed by R.C. 4905.31--not R.C. 4905.32.² However, R.C. 4905.31 also requires that special contract rates be filed with and approved by the Commission to be valid; and contrary to respondent's arguments, contract rates which are not filed with the Commission are neither lawful nor effective. Consequently, the only effective rate was the respondent's general service rate which was the rate required to be charged under R.C. 4905.32.

The point is that this case dealt with the most elemental principles of regulatory law, i.e., that a public utility must publish its rates, rules, regulations, and practices, must abide

²This still does not explain why the effective rate, the general service rate, was not changed, as required by R.C. 4905.32, until the CTAPA rate was at least filed.

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by them, and must offer them indiscriminately to the public at large; and the fact is that the respondent has not operated and, apparently, does not want to operate under those principles. That is what its defense was all about in this case and that is the sole basis for the requested stay. Unfortunately for the respondent, it is beyond the power of this Commission to disregard the mandates of R.C. 4905.30, R.C. 4905.32, R.C. 4905.33, and R.C. 4905.35 and/or to deregulate the natural gas distribution business. That is a matter for the legislature.

In the meantime, complainant submits that the respondent must conform its behavior to the clear dictates of the statutes and its published tariff, as found by the Commission in this case. If the respondent does not want to require deposits from commercial or industrial customers for line extensions, it can amend its tariffs to eliminate this requirement and it can do so expeditiously without obtaining a stay in this proceeding. The important thing, once again, is that the respondent does what its tariffs provide and that they be extended uniformly to all customers similarly situated, as ordered by the Commission herein. What it cannot do and what it is urging this Commission to allow it to do is specifically provide one thing in its tariff, e.g., that the customer will pay for the full cost of all appliances, and do another, e.g., reimburse customers for certain appliances on a selective basis--that is the gravamen of its requested stay.

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CONCLUSION

The respondent has not alleged a single fact or presented a single instance which would justify a grant of the requested stay. Instead, it has alleged vague generalities regarding some unspecified harm which might befall the public generally in the absence of a stay. Complainant submits that the harm currently suffered by customers and prospective customers from the respondent's failure to lawfully and uniformly apply its published tariffs far outweigh any arguments presented by the respondent. In this regard, while the Commission noted that none of the respondent's customers are being harmed by its so-called incentive program because the costs are not being collected through rates, the Commission should not disregard the direct economic injury suffered by those of the respondent's customers who are, instead, paying for their service lines, line extensions, regulators, and appliances nor should the Commission disregard the respondent's continuing exposure to treble damage actions under R.C. 4905.61 as the result of its continuing violations of law.

WHEREFORE, complainant respectfully urges the Commission to deny the respondent's application for rehearing and requested stay.



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Respectfully submitted,

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By David L. Pemberton
David L. Pemberton

ATTORNEYS FOR COMPLAINANT
THE SUBURBAN FUEL GAS, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served a copy of the foregoing memorandum contra to Kenneth W. Christman, Esquire, Columbia Gas of Ohio, Inc., P. O. Box 117, Columbus, OH 43216, and Evelyn R. Robinson, Esquire, Office of the Consumers' Counsel, 137 East State Street, Columbus, OH 43215, by first class mail, postage prepaid, this 3rd day of September, 1987.

David L. Pemberton
David L. Pemberton

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Summary: Memorandum Complainant's memorandum contra respondent's application for rehearing and request for stay, filed by D. Pemberton electronically filed by Docketing Staff on behalf of Docketing