

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-CSS

Columbia Gas of Ohio, Inc., )

Respondent, )

Relative to various alleged vio- )  
lations of the Ohio Revised Code. )

ENTRY ON REHEARING

The Commission, coming now to consider its Opinion and Order issued August 4, 1987, the applications for rehearing filed August 28, 1987, and September 3, 1987, the memoranda contra to the applications for rehearing, and the request for a stay, and being fully advised, issues this Entry on Rehearing

- 1) On August 4, 1987, the Commission issued its Opinion and Order in this proceeding. The Commission found that The Suburban Fuel Gas, Inc. (Suburban) had not met its burden of proving its allegations against Columbia Gas of Ohio, Inc. (Columbia) in regard to Columbia's offering of general service agency purchase and transportation agreements to Columbia's existing and new customers in order to maintain and to attract load. The Commission found that it was proper for Columbia to offer such general service agency purchase and transportation agreements to new and to existing customers. The Commission also found that it was proper to allow for blanket approval of such agreements upon filing with the Commission. However, the Commission also found that Suburban had met its burden of proving other allegations of its complaint. The Commission found that the general service agency purchase and transportation agreement rates should not take effect prior to Commission approval, which, because of previously authorized pre-granted approval of similar arrangements, is conditionally granted upon filing. To the extent that Suburban presented evidence that Columbia had placed the special agreement rates into

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effect prior to their filing with the Commission, the Commission found that Suburban had met its burden of proving the allegations of the complaint that Columbia's actions were unlawful. In addition, the Commission found that, because the general service agency purchase and transportation agreements as approved by the Commission incorporate Columbia's tariffs by reference, Columbia's customers under the agreements are subject to Columbia's tariffs on file with the Commission. To the extent that Suburban presented evidence that Columbia had violated its tariffs in several instances with regard to the customers entering into such agreements with Columbia, the Commission found that Suburban had met its burden of proving that Columbia's actions were unlawful.

- 2) On August 28, 1987, Columbia filed an application for rehearing and a request for a stay. Columbia argued that the Commission erred in finding that Columbia had acted improperly in billing customers under special contracts prior to approval by the Commission. Columbia argued that although special contracts are not "lawful" until they are approved by the Commission, such special contracts are "effective" upon agreement by the parties. Columbia argued that the contracts would not be enforceable in a court of law until Commission approval but that the contracts are nevertheless effective prior to approval. Columbia argued that in many circumstances a special contract would be worthless if Columbia had to wait for formal Commission approval. In addition, Columbia argued that the Commission erred in finding that Columbia's extension of its distribution mains without requiring deposits from certain customers violated Columbia's tariffs and Sections 4905.30, 4905.32, and 4905.35, Revised Code. At present, Columbia requires deposits of commercial and industrial customers only for that portion of a proposed main extension which is not deemed to be justified at Columbia's expense. Columbia argued that a uniform measure is not appropriate, and therefore Columbia makes a feasibility study to determine the maximum allowable investment which is then used to determine what deposit, if any, will be required. Columbia argued

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that to require in all circumstances a deposit equal to the cost of the extension would greatly increase the cost of gas service to new plants located in Columbia's service territory. Finally, Columbia argued that 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 Sections 4905.30, 4905.32, 4905.33, and 4905.35, Revised Code. Columbia argued that these items are not public utility services over which the Commission has jurisdiction. However, assuming that the provision of these services did violate Columbia's tariffs, Columbia argued that such provision did not violate Sections 4905.33 and 4905.35, Revised Code, because those statutes prohibit undue or unreasonable discrimination, and Columbia believes that the competitive situation renders the discrimination appropriate. Columbia argued that its tariffs need to be interpreted flexibly in order that Columbia can function in the competitive marketplace.

- 3) Columbia further asked for a stay of the Commission's orders regarding Columbia's main extension policy and marketing incentives, which the Commission considered to be tariff violations, until the Commission has considered these issues in a generic proceeding on competitive practices or until Columbia has had the opportunity to file, and the Commission has considered, tariff changes. Columbia argued that the stay was necessary because the Commission's Opinion and Order will severely restrict Columbia's ability to expand its market share and will hamper economic growth and development throughout Columbia's service territory. Columbia believes that the Commission's Opinion and Order with regard to its tariff violations places Columbia at a competitive disadvantage.
- 4) On September 3, 1987, Suburban filed a memorandum contra to Columbia's application for rehearing and request for a stay. Suburban argued that Columbia chose to ignore its own tariffs with regard to main line extensions, customer service lines, regula-

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tors, house piping, and the reimbursement of the differential in cost between gas and electric appliances. Suburban argued that a public utility in Ohio is prohibited by statute from offering any service or facility to any person contrary to the provisions of its tariffs. In addition, Suburban argued that Columbia's special contract rates are neither lawful nor effective under Section 4905.31, Revised Code, until such rates are approved by the Commission. Suburban argued that Columbia is seeking to violate the most elemental principle of regulatory law, which is that a public utility must publish its rates and tariffs and must abide by them. Finally, Suburban argued that Columbia could amend its tariffs expeditiously and did not need a stay in this proceeding.

- 5) Suburban also filed its application for rehearing on September 3, 1987. Suburban argued that the Commission erred in failing to find that Columbia's general service agency purchase and transportation agreements violate Sections 4905.32, 4905.33, and 4905.35, Revised Code. Suburban argued that the general service agency purchase and transportation agreements violate Section 4905.33, Revised Code, by allowing Columbia to furnish service for less than actual cost for the purpose of destroying competition. Suburban argued that the Commission should have explicitly stated that the Commission would not allow the general service agency purchase and transportation rate to go below Columbia's actual cost, which, according to Suburban, would be Columbia's applicable general service rate plus the other rate components set forth in the general service agency purchase and transportation agreements. Suburban also argued that the general service agency purchase and transportation agreements violate Sections 4905.32, 4905.33, and 4905.35, Revised Code, by allowing Columbia not to offer such agreements to all similarly-situated customers who are subject to competition. Suburban argued that the general service agency purchase and transportation agreements should be available to all customers subject to competition. Suburban believes that the Commission intended to clarify this issue but neglected to do so.

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Suburban also stated that the Commission apparently wished to order that the general service agency purchase and transportation agreements were permissible to attract new load only when that new load is not presently served by any gas distribution company. Suburban asked that the Commission explicitly address this issue in this Entry. Finally, Suburban asked that the Commission specifically order Columbia to cease and desist from the violations of law found by the Commission, because the Commission did not explicitly do so in its Opinion and Order.

- 6) On September 3, 1987, the Office of the Consumers' Counsel (OCC) also filed an application for rehearing in this proceeding. OCC argued that the Commission erred in finding that Columbia could offer the general service agency purchase and transportation agreements to existing and new customers in order to maintain and to attract new load. OCC believes that Suburban met its burden of proving that such agreements are unreasonable. According to OCC, the record in this proceeding shows that Columbia does not offer the general service agency purchase and transportation agreements to all customers who have alternate sources of energy available. OCC argued that the selective offering of such agreements is unlawful discrimination. Finally, OCC argued that the general service agency purchase and transportation agreements as offered by Columbia discriminate unjustly against residential customers who have no choice but to pay the higher costs of Columbia's general service and gas cost recovery rates.
- 7) On September 10, 1987, Columbia filed a memorandum contra to the applications for rehearing filed by Suburban and OCC. Columbia argued that there was no evidence on the record that Columbia had offered the general service agency purchase and transportation rate for less than actual cost or had any intention of doing so. In addition, Columbia argued that the class of customers who would be offered general service agency purchase and transportation agreements is not simply a class of customers subject to competition but a class of

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customers who had been offered service from a competitor and whose offer the customer was prepared to accept had the general service agency purchase and transportation agreement not been offered by Columbia. Columbia pointed out that the Commission found that a class of customers who would not otherwise be served was a reasonable customer classification under Section 4905.31(D), Revised Code. Columbia argued that there was no evidence on the record that Columbia had failed to offer a general service agency purchase and transportation agreement to any general service customer who had been offered a lower rate by a competitor and which offer the customer was prepared to accept. In answer to OCC, Columbia argued that when a classification is reasonable under Section 4905.31(D), Revised Code, the special agreement does not constitute undue or unreasonable discrimination.

- 8) On September 11, 1987, The East Ohio Gas Company (East Ohio) filed a motion for leave to file, instanter, materials in support of Columbia's application for rehearing. The materials were offered in support of Columbia's argument that the Commission has erred as a matter of law in holding that service under reasonable arrangements under Section 4905.31, Revised Code, may not be provided until the arrangements have been filed with and approved by the Commission. East Ohio argued that it has a real and substantial interest in this issue. East Ohio made essentially the same argument that Columbia made regarding the language in Section 4905.31, Revised Code, that while special arrangements may not be lawful unless they are filed with and approved by the Commission, such arrangements are nevertheless effective upon the agreement of the parties. East Ohio argued that because the General Assembly did not use the word "effective" and did not say that no arrangement should be "effective" until it is filed with and approved by the Commission, an arrangement can indeed be effective if it is not filed with or approved by the Commission although it would not be lawful. East Ohio argued that arrangements must be entered into before they can be filed and should be

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operative upon agreement. East Ohio finds significance in the General Assembly's use of the word "effective" in Section 4909.17, Revised Code, which states that no rate shall be effective until the Commission determines it to be just and reasonable. East Ohio argued that while rates must be approved before they may be implemented, a special arrangement under Section 4905.31, Revised Code, does not need to be filed or approved before it is implemented.

- 9) East Ohio's motion for leave to file, instanter, materials in support of Columbia's application for rehearing should be denied. It is not clear whether East Ohio's motion is contemplated under the Commission's procedural rules. However, in any event, this motion, no matter how construed, does not appear to be timely filed.
- 10) The Commission finds that Columbia's application on rehearing should be granted in part and denied in part. On the issue of the time at which special agreement rates under Section 4905.31, Revised Code, should go into effect, the Commission does not believe it necessary that the agreements be approved prior to the special contract rates going into effect. The Commission does find that the special rates may be effective upon the filing of the special agreements with the Commission. For agreements subject to pregranted approval by the Commission, the agreements would be considered approved upon filing and would remain approved unless the Commission acts within thirty days. For other agreements, the special rate could take effect upon the filing of the agreement with the Commission, but the agreement would remain subject to subsequent Commission approval. On the issue of the tariff violations, the Commission does not find that Columbia's tariffs on file with the Commission presently allow for the sort of flexibility that Columbia now professes to require. Columbia may file to amend its tariffs and to justify such tariff amendments in another proceeding if Columbia wishes to do so. The Commission does not believe that a stay of the Commission's order that Columbia abide by its tariffs on file with the Commission would be appropriate. The Commission

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believes that Columbia has a statutory obligation to follow its tariffs and to apply them to all its customers fairly and evenly. Columbia's application for rehearing should be granted in part and denied in part and the request for a stay should be denied.

As for Suburban's application for rehearing, the Commission has already approved Columbia's general service agency purchase and transportation rate as offered by Columbia to new and existing customers. In the context of a complaint case, the Commission need only decide the issues before it. Therefore, because no evidence was presented that the rates offered in this proceeding were below cost, the Commission need not address the eventuality that such a problem might occur. Suburban did not meet its burden of proving that any rate offered by Columbia was below cost. In addition, none of the general service agency purchase and transportation agreements offered by Columbia in this proceeding were offered to customers already served by another gas distribution company. The Commission assumes then that Columbia does not intend to "raid" the established markets of other gas utilities and will not use these agreements to do so. The Commission finds that any agreement offered by Columbia, to an existing customer of a gas distribution company would not be an agreement similar to the agreements discussed in this proceeding. As for the issue regarding to whom Columbia should offer general service agency purchase and transportation agreements, the Commission finds under Section 4905.31, Revised Code, that a classification of customers who would not otherwise be served by a utility because of the customers' willingness to accept a competing offer is a reasonable classification. In addition, there is no evidence on the record that any customer who received a competing offer, which offer the customer was prepared to accept, was not offered a general service agency purchase and transportation agreement by Columbia. Finally, the Commission does not believe it necessary to order Columbia explicitly to cease and desist from tariff violations because the Commission believes its language was sufficient to order Columbia to abide by its tariffs. Given the above

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clarification, Suburban's request for rehearing should be denied.

OCC presented no new arguments or evidence for the Commission's consideration at this time. The Commission does not believe that the general service agency purchase and transportation agreements unduly discriminate against residential ratepayers because the Commission believes that these agreements are reasonable to allow Columbia to serve customers that Columbia would not otherwise serve. OCC's application for rehearing should be denied.

It is, therefore,

ORDERED, That Columbia's application for rehearing is granted in part and denied in part, and the request for a stay is denied. It is, further,

ORDERED, That CCC's application for rehearing is denied. It is, further,

ORDERED, That Suburban's application for rehearing is denied and that Suburban's request for clarification of certain issues has been granted in part as discussed above. It is, further,

ORDERED, That East Ohio's motion for leave to file, instanter, materials in support of Columbia's application for rehearing be denied. It is, further,

ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

*Thomas V. Chema*

Thomas V. Chema, Chairman

*William H. Brooks*

William H. Brooks

*Gloria L. Gaylord*

Gloria L. Gaylord

*Ashley C. Brown*

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*Alan R. Schriber*

Alan R. Schriber

CLM;geb

Entered in the Journal

15 SEP 1987

A True Copy

*Nancy L. Wolpe*  
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Secretary

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Summary: Entry Entry granting Columbia's application for rehearing in part and denying in part and denying OCC's and Suburban's application for rehearing and denying East Ohio's motion for leave and to file instanter materials in support of Columbia's application for rehearing. electronically filed by Docketing Staff on behalf of Docketing