

DOCUMENT  
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED

Gary J. and Amy L. Seraly

APR 23 2002

v.

Docket No. C-20015964

Columbia Gas Transmission Corporation and  
Columbia Gas of Pennsylvania, Inc.

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2002 MAR 29 AM 11:15  
SECRETARY'S BUREAU  
P.U.C.

PREHEARING ORDER

An initial telephonic hearing in this case is scheduled for Thursday, May 16, 2002 at 10:00 a.m. Accordingly, the parties are hereby directed to comply with the following requirements:

1. If you intend to present any documents or exhibits for my consideration, you must send one (1) copy to the other party and three (3) copies to me one week before the hearing. Be sure that you serve me directly with a copy of any document that you file in this proceeding at the time of filing. If you send me any correspondence or document, you must send a copy to all other parties. For your convenience, a copy of the Commission's current service list of the parties to this proceeding is enclosed with this Order

2. If you or any proposed witness will be at a telephone number that is different than the number on the hearing notice, you must notify me of that telephone number at least one (1) week before the hearing.

3. A request for a change of the scheduled hearing date must be submitted in writing no later than five (5) days prior to the hearing. 52 Pa. Code §1.15(b). Requests for changes of initial hearings must be sent to the undersigned Administrative Law Judge, 1103

Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, PA 15222. Only the undersigned Administrative Law Judge or OALJ Scheduling Staff may grant a request for a change of an initial hearing. Such changes are granted only in rare situations where sufficient cause exists. Requests for changes of subsequent hearings, if any, should also be served directly on me.

4. YOU MAY LOSE THIS CASE, IF YOU DO NOT TAKE PART IN THIS HEARING AND PRESENT EVIDENCE ON THE ISSUES RAISED.

5. ALTHOUGH THIS HEARING IS BEING CONDUCTED TELEPHONICALLY FOR THE CONVENIENCE OF THE PARTIES, IT IS STILL A FORMAL HEARING AND WILL BE CONDUCTED IN ACCORDANCE WITH THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE.

6. Pursuant to 52 Pa. Code §§1.21 & 1.22, you may represent yourself, if you are an individual, or you may have an attorney represent you. However, if you are a partnership, corporation, trust, association or governmental agency or subdivision, you must have an attorney represent you in this proceeding. Unless you are an attorney, you may not represent someone else

7. The Complainant bears the burden of proof in this proceeding and must show by a preponderance of the evidence that the Respondent has violated the Public Utility Code or a regulation or an Order of this Commission so that the Complainant is entitled to the relief requested in the complaint.

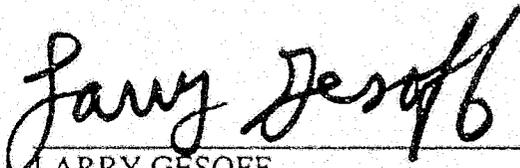
8. If you intend to subpoena witnesses for the hearing, you should review the procedures established in 52 Pa. Code §5.421. You must submit your written application to me sufficiently in advance of the hearing date so the other parties will have the required ten (10)

days' notice to answer or object, and so you will have enough time to receive the subpoena and serve it.

9. Any party may conduct discovery to learn the factual basis of another party's position in this case. However, 52 Pa. Code §5.331(b) provides, in relevant part, that "[a] participant shall endeavor to initiate discovery as early in the proceedings as reasonably possible." Additionally, 52 Pa. Code §5.322 provides, in relevant part, that "participants are encouraged to exchange information on an informal basis." All parties are urged to cooperate in informal information exchanges and in conducting discovery. Cooperation is preferable to disagreements, which require my participation to resolve. There are limitations on discovery (52 Pa. Code §5.361) and sanctions for abuse of the discovery process (52 Pa. Code §§5.371 & 5.372).

10. Commission policy is to encourage settlements. 52 Pa. Code §5.231(a). Therefore, you are urged to discuss informally between yourselves the possible settlement of this case at least one week before the hearing. If you are unable to settle this case, you may still resolve as many questions or issues as possible during your informal discussion.

Dated: March 26, 2002

  
LARRY GESOFF  
Administrative Law Judge



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Office Of Administrative Law Judge  
P.O. Box 3265, Harrisburg, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

May 6, 2002

In Re: C-20015964

(See letter dated 03/21/02)

Gary J. and Amy L. Seraly v. Columbia Gas of Pennsylvania, Inc.

Disputing not being able to receive natural gas service.

Cancellation Notice

This is to inform you of the following cancellation:

Type: Initial telephone hearing  
Date: Thursday, May 16, 2002  
Time: 10:00 a.m.  
Location: Pittsburgh, Pennsylvania  
Presiding: Administrative Law Judge Larry Gesoff

MAY 08 2002

Please mark your records accordingly.

pc: Judge Gesoff  
Herbert Nurick, Mediator  
Judy Weaver, Scheduling Officer  
Beth Plantz  
Docket Section  
Calendar File

DOCUMENT  
FOLDER

ORIGINAL

CHRISTOPHER E. MILES, ESQUIRE

Attorney at Law  
330 East Beau Street  
Washington, Pennsylvania 15301  
(724) 228-1138  
email: cemiles@pulsenet.com

May 8, 2002

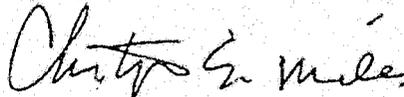
James J. McNulty  
Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
Second Floor  
400 North Street  
Harrisburg, Pa 17120

Re: Gary J. and Amy L. Scraly v. Columbia Gas  
Request for Natural Gas Service  
Docket No. C-20015964  
Our File: G-506

Dear Mr. McNulty:

Enclosed for filing are the original and three copies of the Complainant's Answer to Respondent Columbia Gas Transmission's Motion to Dismiss. Also, for your information, I have enclosed a copy of the Request for Continuance of the scheduled initial telephonic hearing.

Very truly yours,



Christopher E. Miles, Esquire

CEM:abr  
Enclosure

cc: Kevin C. Abbott  
Theodore J. Gallagher

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20

FA PUC  
SECRETARY'S BUREAU

2002 MAY 10 AM 11:40



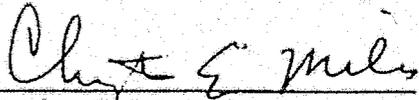
In January 1994, the Complainant's neighbor, Mr. William F. McComas, filed a Formal Complaint with the Pennsylvania Public Utility Commission against Columbia Gas of Pennsylvania, Inc. at Docket No. C-00945501, as a result of which, Mr. McComas, who had been denied service, was permitted to tap in to Columbia Gas Transmission's Line No. 2757 for the purpose of providing residential service. The circumstances surrounding the Complaint filed by Mr. McComas are precisely the same as those cited by the Complainant herein, Mr. and Mrs. Seraly. The Respondent has not proffered any justification as to why Mr. and Mrs. Seraly should be treated differently from their surrounding neighbors, as well as numerous other residents along Vaneal Road who also receive natural gas service from Columbia Gas Transmission's Line No. 2757.

Columbia Gas Transmission maintains that it no longer will entertain requests for "mainline" consumer taps. However, the line for which Mr. and Mrs. Seraly request a tap is not a "mainline." It is a two inch (2") line which dead ends just beyond Complainant's property and the sole purpose of which is only to serve all of the surrounding neighbors of Mr. and Mrs. Seraly. Line No. 2757 does not feed any mainline or transmission line.

Columbia Gas of Pennsylvania bills and collects the amounts due from the customers served by this line (No. 2757) which is alleged to be only a transmission line and is thereby governed by the rules and regulations of the Pennsylvania Public Utility Commission. 52 Pa. Code §59.31 indicates that service to applicants directly from production or transmission lines which are not part of the distribution system from which customers are normally supplied shall be furnished under conditions stated in the tariff rules and regulations of the utility. Here, Columbia Gas Transmission alleges that it does not approve requests for mainline taps; however, the gas line in question, No. 2757, is a two inch (2") line and is not a mainline.

WHEREFORE, Complainant requests that Respondent Columbia Gas Transmission's Motion to Dismiss be denied and that the Respondents provide natural gas service to their residence.

Respectfully submitted,

  
\_\_\_\_\_  
Christopher E. Miles, Esquire  
Attorney for Complainant

Date: May 8, 2002

CERTIFICATE OF SERVICE

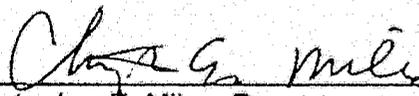
I hereby certify that a true and correct copy of the foregoing ANSWER TO COLUMBIA GAS TRANSMISSION'S MOTION TO DISMISS was sent by First Class U.S. Mail on May 8, 2002 to

Theodore J. Gallagher, Esquire  
Bricker and Eckler, LLP  
For Columbia Gas of Pennsylvania, Inc.  
100 South Third Street  
Columbus, OH 43215

Mark R. Kempic, Esquire  
NiSource Corporate Services  
For Columbia Gas of Pennsylvania, Inc.  
200 Civic Center Drive  
Columbus, OH 43215

Mary Pat Wilson, Esquire  
For Columbia Gas Transmission Corporation  
12801 Fair Lakes Parkway  
Fairfax, VA 22033

Kevin C. Abbott, Esquire  
Reed Smith  
For Columbia Gas Transmission Corporation  
435 Sixth Avenue  
Pittsburgh, PA 15219-1886

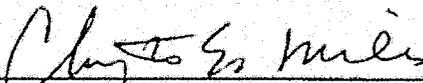
  
\_\_\_\_\_  
Christopher E. Miles, Esquire  
Attorney for Complainant



depending upon the ruling on the Motion to Dismiss. In any event, not having had sufficient time to engage in discovery with Respondent Columbia Gas Transmission the Complainant would be hampered in the presentation of its case until after receipt of information from Columbia Gas Transmission.

WHEREFORE, Complainant respectfully requests a continuance of the scheduled initial telephonic hearing in this case until after a decision on the Motion to Dismiss and additional time to engage in discovery.

Respectfully submitted,

  
Christopher E. Miles, Esquire  
Attorney for Complainants

Date: May 8, 2002

**CERTIFICATE OF SERVICE**

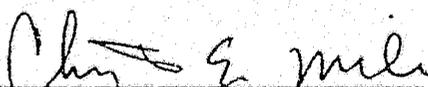
I hereby certify that a true and correct copy of the foregoing REQUEST FOR CONTINUANCE OF SCHEDULED INITIAL TELEPHONIC HEARING was sent by First Class U.S. Mail on May 8, 2002 to:

Theodore J. Gallagher, Esquire  
Bricker and Eckler, LLP  
For Columbia Gas of Pennsylvania, Inc.  
100 South Third Street  
Columbus, OH 43215

Mark R. Kempic, Esquire  
NiSource Corporate Services  
For Columbia Gas of Pennsylvania, Inc.  
200 Civic Center Drive  
Columbus, OH 43215

Mary Pat Wilson, Esquire  
For Columbia Gas Transmission Corporation  
12801 Fair Lakes Parkway  
Fairfax, VA 22033

Kevin C. Abbott, Esquire  
Reed Smith  
For Columbia Gas Transmission Corporation  
435 Sixth Avenue  
Pittsburgh, PA 15219-1886

  
Christopher E. Miles, Esquire  
Attorney for Complainant

ORIGINAL

May 10, 2002

James J. McNulty  
Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
Second Floor  
400 North Street  
Harrisburg, PA 17120

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BTL

PA

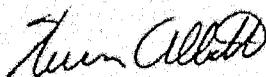
Re: Gary J. and Amy L. Seraly v. Columbia Gas of Pennsylvania, Inc. and Columbia Gas  
Transmission, Docket No. C-20015964

Dear Mr. McNulty:

Enclosed for filing is the original and three copies of the Reply of Columbia Gas Transmission  
Corporation in Support of Motion to Dismiss. Please call me if you have any questions. Thank you for  
your assistance.

Please note that all orders, notices etc. directed to Columbia Gas Transmission Corporation should be  
sent to me. I did not receive the May 6, 2002 Order canceling the May 16 hearing.

Very truly yours,



Kevin C. Abbott

KCA:am

Enclosure

cc: Administrative Law Judge Larry Gesoff  
Christopher E. Miles  
Theodore J. Gallagher

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2002 MAY 14 AM 9:14  
PA PUC  
SECRETARY'S BUREAU

435 Sixth Avenue  
Pittsburgh, PA 15219-1886  
412 288 3131  
Fax 412 288 3062  
Delaware  
New Jersey  
New York  
Pennsylvania  
United Kingdom  
Virginia  
Washington, DC

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

CARY J. & AMY L. SERALY,

Complainant,

v

COLUMBIA GAS OF PENNSYLVANIA,  
INC. and COLUMBIA GAS  
TRANSMISSION,

Respondent.

Docket No. C-20015964

**REPLY OF COLUMBIA GAS  
TRANSMISSION CORPORATION IN  
SUPPORT OF MOTION TO DISMISS**

Filed on Behalf of Respondent

Columbia Gas Transmission Corporation

Counsel of Record:

Kevin C. Abbott  
Pa. I.D. No. 35734

Nicolle R. Snyder Bagnell  
Pa. I.D. No. 87936

REED SMITH LLP  
435 Sixth Avenue  
Pittsburgh, PA 15219  
(412) 288-3804

SECRETARY'S BUREAU

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involved a complaint solely against Columbia Gas of Pennsylvania, Inc. As part of a settlement, McComas applied to Columbia Transmission for permission to tap into Columbia Transmission's pipeline. The settlement agreement explicitly specified that "It is understood that [Columbia Gas of Pennsylvania] cannot guarantee or warrant that [Columbia] Transmission will in fact grant permission to tap into Line 2757." Ex. A at p. 4. If permission was granted, gas service would be supplied by Columbia Gas of Pennsylvania, Inc. Id. The McComas agreement further limited Columbia Transmission's obligations by making it clear that Columbia Transmission was not obligated to continue service or provide alternative service. Id. The ALJ's Order approved the terms of the settlement and again emphasized that there was no guarantee that Columbia Transmission would grant a tap and that, if it did, Columbia Transmission was under no obligation to provide service or alternate service. Ex. A, Order at ¶ 2, 4.

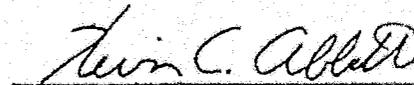
In McComas, the Commission did not assert jurisdiction over Columbia Transmission and did not order Columbia Transmission to do anything. To the contrary, that action did not involve Columbia Transmission at all except that the complainant requested a tap from Columbia Transmission.

In this case, the Complainants can (and have) requested a tap from Columbia Transmission but Columbia Transmission is not required to grant that request and the Commission has no jurisdiction to force Columbia Transmission to grant such requests. Columbia Transmission's policy as to taps has changed since the time of the McComas case. For operational reasons, Columbia Transmission no longer grants taps in the circumstances present here. As in McComas, the decision whether or not to grant a

tap is solely within Columbia Transmission's discretion. Columbia Transmission's motion to dismiss should be granted

REED SMITH LLP

Dated: May 10, 2002



Kevin C. Abbott  
Nicole R. Snyder Bagnell

435 Sixth Avenue  
Pittsburgh, PA 15219  
(412) 288-3804

Counsel for Respondent  
Columbia Gas Transmission Corporation

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

William F. Mccomas

v.

Columbia Gas of Pennsylvania,  
Incorporated

:  
:  
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:  
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:

C-00945501

**DOCKETED**  
JAN 20 1995

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INITIAL DECISION

Before  
James D. Porterfield  
Administrative Law Judge

History of the Proceeding

On January 6, 1994, William F. Mccomas ("Mccomas" or "Complainant") filed a formal complaint, with the Pennsylvania Public Utility Commission ("the Commission") against Columbia Gas of Pennsylvania, Incorporated ("Columbia" or "Respondent"). The complaint was docketed at C-00945501. The complaint alleges, as follows:

I applied for gas service from Columbia Gas of PA on January 22, 1993. This was forwarded to Columbia Gas Transmission because the line on my property belongs to them. Bill Joy of the Uniontown office told me all applications were denied and filed without looking or even considering them. There is already a meter on my property for a neighbor. There was a connection made this summer up the road. The basis for denial was the fact that if they wanted to abandon the line they did not want to pay to connect their customers to alternate fuels.

I have an electric heat pump that malfunctions. I ran on resistance heat for three months waiting word from the gas company [and] to this day I have only gotten verbal

denial!

The Complainant seeks gas service.

Columbia Gas of Pennsylvania, Inc., by counsel, answered the subject complaint on February 24, 1994. The answer denies certain material allegations, and (in part) avers, as follows:

5. Columbia affirmatively states as follows:

Complainant first filed an informal complaint against Columbia with the Bureau of Consumer Services, which complaint was verbally closed on July 14, 1993 for lack of jurisdiction over Transmission. This formal complaint is the result of Complainant's appeal from that decision.

Complainant applied to Columbia for a gas tap from Transmission's production line 2757 on February 12, 1993. On March 1, 1993, Columbia submitted a request to Transmission for consideration of a line tap on Transmission's production line 2757. On March 19, 1993, Transmission denied the request. On April 1, 1993, Columbia denied Complainant's tap request because in the event the tap were made and Transmission subsequently elected to abandon line 2757, Columbia would be faced with either having: (1) to extend its distribution facilities to continue rendering service to Complainant, or; [sic] (2) to convert Complainant to an alternate fuel. Neither the extension nor the conversion would be economically feasible, and both would prejudice Columbia's existing ratepayers through their subsidization of the costs associated with either alternative....

By notice to the parties dated March 18, 1994, the complaint was scheduled for an initial telephonic hearing on Monday, May 9, 1994, at 10:00 AM, with ALJ James D. Porterfield as the assigned presiding officer. Because of the unavailability of a witness for Columbia, the hearing was converted to a prehearing

conference by agreement of the parties. For the prehearing conference, William F. McComas entered an appearance on his own behalf, and Theodore J. Gallagher, Esquire, entered an appearance on behalf of Columbia. The hearing scheduled for June 30, 1994, by notice to the parties dated June 15, 1994, was canceled by notice to the parties dated June 29, 1994. By notice to the parties dated July 7, 1994, the complaint was scheduled for an in-person hearing on Tuesday, August 9, 1994, at 10:00 AM, in the 11th Floor Hearing Room, Pittsburgh State Office Building, 300 Liberty Avenue, Pittsburgh, Pennsylvania.

For the scheduled hearing, William F. McComas entered an appearance on his own behalf and offered testimony in support of his complaint. Complainant offered and had admitted into the record three exhibits (Complainant's Exh. Nos. 1, 2, and 3). Theodore J. Gallagher, Esquire, entered an appearance on behalf of Columbia and offered the testimony of William R. Joy, who sponsored Columbia's four exhibits (Col. Exh. Nos. 1, 2, 3, and 4). During the course of the hearing, the parties reached a tentative agreement to settle the subject complaint.

The proposed settlement agreement was reduced to writing and submitted for consideration on September 29, 1994. The proposed settlement Agreement is attached to this Initial Decision as Appendix A and is incorporated herein by reference.

The record in respect of the subject hearing consists of the transcript of the prehearing conference (which is 17 pages in length), the transcript of the evidentiary hearing (which is 113

pages in length), Complainant's three exhibits, Respondent's four exhibits, and the proposed settlement Agreement (Appendix A, hereto).

Terms of the Proposed Settlement

Complainant, William F. McComas, and Columbia Gas of Pennsylvania, Inc., agree to and request approval of the following terms and provisions in settlement of this matter:

1) On or before September 15, 1994, Respondent shall re-apply to Transmission for permission to tap into Transmission's Line No. 2757, for the purpose of providing residential service to the Complainant. In its application to Transmission, Respondent will request that Complainant be given ninety days prior notice of Transmission's abandonment of Line 2757. It is understood that Respondent cannot guarantee or warrant that Transmission will in fact grant permission to tap into Line No. 2757.

2) In the event that Transmission agrees to the requested tap into Line 2757, it is understood that Complainant shall become a residential customer of Respondent for the purposes [sic] of billing only and that all service provided by Respondent to Complainant shall be governed by the terms and conditions of Respondent's Tariff, and any successor thereto. If before, or after, the Complainant becomes a residential customer of Respondent, Transmission should abandon Line No. 2757:

(a) Transmission shall not be further obligated to continue gas service to the Complainant or to provide alternate service to the Complainant, and; [sic]

(b) Respondent shall not be further obligated to continue gas service to the Complainant or to provide alternate service to the Complainant, unless Respondent is

obligated to continue gas service or to provide alternate service to other customers served from direct taps on abandoned Line No. 2757 as of the date of this agreement.

3) The Complainant shall withdraw, with prejudice, his Formal Complaint currently before the Pennsylvania Public Utility Commission, at Docket Number C-C0945501. The Parties agree that this Agreement shall be made a part of the record of the Formal Complaint.

4) This settlement Agreement shall be binding upon the Parties' respective heirs, executors, assigns, and personal representatives. Respondent shall be responsible for the filing of this document in the real estate records in the county where the subject property is located, and shall be responsible for all filing costs associated therewith.

5) This Agreement is subject to Transmission's approval of Respondent's request for a tap into Line 2757 and to the Commission's approval of this Agreement. In the event that either or both of these approvals fail to occur, this Agreement shall be void and shall not serve to bind the Parties hereto in any manner.

#### Discussion

The Commission encourages settlements. 52 Pa. Code §5.231. Settlements reduce the time, effort and expense associated with litigation, or otherwise conserve the resources of the parties to a dispute or proceeding, thereby ultimately benefitting ratepayers.

In this proceeding, the parties offer a proposed settlement that appears to be fair, reasonable, and consistent with the public interest. The settlement is conditioned upon approval

of all terms of the settlement, without modification. The proposed settlement includes a provision pursuant to which the Complainant agrees to withdraw, with prejudice, the subject formal complaint.

The proposed settlement appears to accommodate the interests of the parties in a reasonable manner, *i.e.*, the Complainant has a fair opportunity to obtain natural gas service, and if the Complainant obtains natural gas service, that service, vis-a-vis Columbia, will be on the same terms and conditions as other customers served from direct taps on Line No. 2757. Consequently, the terms and conditions of the proposed settlement are approved and shall be incorporated into the accompanying order, including a grant of permission for the Complainant to withdraw the subject complaint. 52 Pa. Code §5.94.

ORDER

THEREFORE,

IT IS ORDERED (as follows):

1. That the proposed settlement Agreement, submitted by the parties in connection with the complaint proceeding initially captioned William F. McCombs v. Columbia Gas of Pennsylvania, Incorporated and later corrected and captioned William F. McCombs v. Columbia Gas of Pennsylvania, Incorporated, at Docket No. C-00945501, be approved and that the terms and provisions of the proposed settlement be adopted.

2. That on or before September 15, 1994, Respondent shall re-apply to Columbia Gas Transmission for permission to tap into Columbia Gas Transmission's Line No. 2757, for the purpose of providing residential service to the Complainant; in its application to Columbia Gas Transmission, Respondent will request that Complainant be given ninety days prior notice of Columbia Gas Transmission's abandonment of Line 2757, if such should occur; Respondent does not guarantee or warrant that Columbia Gas Transmission will in fact grant permission to tap into Line No. 2757.

3. That in the event Columbia Gas Transmission agrees to the requested tap into Line 2757, it is understood that Complainant shall become a residential customer of Respondent for the purpose of billing only and that all service provided by Respondent to Complainant shall be governed by the terms and conditions of Respondent's Tariff, and any successor thereto.

4. That if before, or after, the Complainant becomes a residential customer of Respondent, Columbia Gas Transmission should abandon Line No. 2757:

(a) Columbia Gas Transmission shall not be further obligated to continue gas service to the Complainant or to provide alternate service to the Complainant; and

(b) Respondent shall not be further obligated to continue gas service to the Complainant or to provide alternate service to the Complainant, unless Respondent is obligated to continue gas service or to provide alternate service to other customers served from direct taps on abandoned Line No. 2757 as of the date of this agreement.

5. That the Complainant shall be permitted to withdraw, with prejudice, the subject formal complaint pending before the Pennsylvania Public Utility Commission, at Docket Number C-00945501.

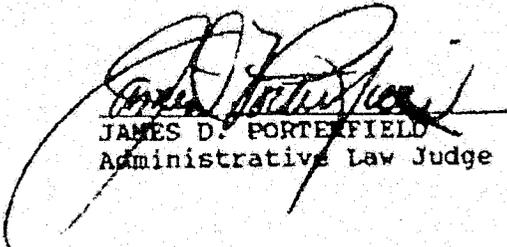
6. That the parties' Agreement and the terms and conditions thereof shall be made a part of the record of the subject formal complaint proceeding.

7. That the settlement Agreement shall be binding upon the parties' respective heirs, executors, assigns, and personal representatives.

8. That the Respondent shall be responsible for the filing a copy of the subject Agreement in the real estate records in the county where the subject property is located, and shall be responsible for all filing costs associated therewith.

9. That the subject Agreement is subject to Columbia Gas Transmission's approval of Respondent's request for a tap into Line 2757.

Date: December 22, 1994

  
JAMES D. PORTEFIELD  
Administrative Law Judge

CERTIFICATE OF SERVICE

The following hereby certifies that a true and correct copy of the foregoing Reply of Columbia Gas Transmission Corporation in Support of Motion to Dismiss has been served by First-Class Mail, postage prepaid on the following:

Christopher E. Miles  
330 East Beau Street  
Washington, PA 15301

Theodore J. Gallagher  
Bricker and Eckler, LLP  
100 South Third Street  
Columbus, Ohio 43215-4291

Date: May 10, 2002

*Hein C. [Signature]*

SECRETARY'S BUREAU

2002 MAY 14 AM 9:14

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# OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.:	C-20015964		YES	NO
Case Name:	Gary J. and Amy L. Seraly v. Columbia Gas of Pennsylvania, Inc.	Prehearing Held:	<input type="checkbox"/>	<input type="checkbox"/>
Location:	Pittsburgh	Hearing Held:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Date:	May 16, 2002	Testimony Taken:	<input type="checkbox"/>	<input type="checkbox"/>
ALJ:	Larry Gesoff	Transcript Due:	<input type="checkbox"/>	<input type="checkbox"/>
Reporting Firm:	Commonwealth Reporting	Hearing Concluded:	<input type="checkbox"/>	<input type="checkbox"/>
		Further Hearing Needed:	<input type="checkbox"/>	<input type="checkbox"/>
		Estimated Add'l Days:		
		RECORD CLOSED:	<input type="checkbox"/>	<input type="checkbox"/>
		DATE:		
		Briefs to be Filed:	<input type="checkbox"/>	<input type="checkbox"/>
		DATE:		
		Bench Decision:	<input type="checkbox"/>	<input type="checkbox"/>
		REMARKS:	FO completed 5-1-02 dismissing Complaint	

DOCUMENT  
FOLDER

RECEIVED

2002 MAY 16 10:30  
 PA PUC  
 COMMONWEALTH REPORTING

PLEASE PRINT CLEARLY • Incomplete Information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
	City      State      Zip	
Telephone:	E-mail Address:	Fax Number:
	City      State      Zip	
Telephone:	E-mail Address:	Fax Number:
	City      State      Zip	
Telephone:	E-mail Address:	Fax Number:

Check this box if additional parties or attendees appear on back of form.

\_\_\_\_\_  
Reporter's Signature

*Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.*

April 18, 2002

VIA OVERNIGHT MAIL

James J. McNulty  
Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
Second Floor  
400 North Street  
Harrisburg, PA 17120

ORIGINAL RECEIVED  
APR 18 2002

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

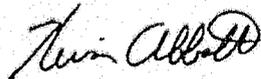
REP

Re: Gary J. and Amy L. Seraly v. Columbia Gas of Pennsylvania, Inc. and Columbia Gas  
Transmission; Docket No. C-20015964

Dear Mr. McNulty:

Enclosed for filing are the original and three copies of the Motion to Dismiss and Answer of Respondent  
Columbia Gas Transmission and the Memorandum of Law in Support. Please call me if you have any  
questions. Thank you for your assistance.

Very truly yours,



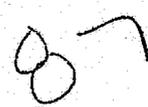
Kevin C. Abbott

KCA:am

Enclosure

cc: Christopher E. Miles  
Theodore J. Gallagher

DOCUMENT  
FOLDER



435 Sixth Avenue  
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Delaware  
New Jersey  
New York  
Pennsylvania  
United Kingdom  
Virginia  
Washington, DC

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

GARY J. & AMY L. SERALY,

Complainant,

v.

COLUMBIA GAS OF PENNSYLVANIA,  
INC. and COLUMBIA GAS  
TRANSMISSION,

Respondent.

Docket No. C-20015964

**MEMORANDUM OF LAW IN SUPPORT  
OF MOTION TO DISMISS OF  
RESPONDENT COLUMBIA GAS  
TRANSMISSION CORPORATION**

Filed on Behalf of Respondent

Columbia Gas Transmission Corporation

Counsel of Record:

Kevin C. Abbott  
Pa. I.D. No. 35734

Nicolle R. Snyder Bagnell  
Pa. I.D. No. 87936

REED SMITH LLP  
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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU



jurisdiction of the Federal Energy Regulatory Commission and is not a public utility subject to the jurisdiction of the Pennsylvania Public Utility Commission.

The jurisdiction of the Commission is limited to "public utilities" as defined in 66 Pa.C.S.A. § 102. To fall within that definition, a utility must provide service to the public. See *id.* Columbia Transmission does not sell gas at retail to any customer in Pennsylvania, nor is it engaged in the business of supplying gas to the general public. Columbia Transmission did previously sell natural gas at wholesale, subject to the jurisdiction of the FERC, but does not do so any longer as the result of a FERC order issued on April 14, 1997 in Docket No. RP 95-408, 79 FERC ¶ 61,044.

Columbia Transmission is engaged solely in the interstate transportation of natural gas and is regulated exclusively by the Federal Energy and Regulatory Commission ("FERC") under the Natural Gas Act, 15 U.S.C. §§ 717-717z. All of Columbia's pipelines and related facilities used in its interstate business, and all points of delivery to its transportation customers (including main line tap customers), are constructed and operated under certificates of public convenience and necessity issued from time to time by FERC or its predecessor, the Federal Power Commission, under Section 7 of the Natural Gas Act, 15 U.S.C. § 717f. Moreover, Columbia's rates and charges and conditions of service for its interstate transportation services are regulated exclusively by FERC under Sections 4 and 5 of the Natural Gas Act, 15 U.S.C. § 717c and 717d.

The Public Utility Commission does not have jurisdiction over interstate pipeline companies which are exclusively regulated by the Federal Energy Regulatory Commission. See Procter & Gamble Paper Products Co. v. Pa. Public Utility Commission, 623 A.2d 410 (Pa. Commw. 1993) (affirming the Commission's dismissal of a complaint against a FERC-regulated pipeline company). In a case similar to this one, the Commission has specifically found that it has no jurisdiction over Columbia Transmission. Piper v. Columbia Gas of Pennsylvania, Inc., Docket No. C-881720. (Copies of the decisions of the Administrative Law Judge and the Commission are attached to the Motion as Exhibit A.) In Piper, the Complainant asked the Commission to force Columbia Transmission to provide service pursuant to a "free gas agreement." In his Initial Decision on the Motion to Dismiss of Columbia Transmission, the Administrative Law Judge states that, "[w]e believe, as [Columbia Transmission] argues, that it is not a public utility as defined at 66 Pa.C.S.A. § 102 and that the 'free gas

agreement' mentioned in the Complaint is not tariff service but a private contract not subject to utility regulation by this Commission." See id.

Columbia Transmission's motion to dismiss here is even stronger than in Piper. Mr. and Mrs. Seraly have no contractual agreement at all with Columbia Transmission and Columbia Transmission has no obligation or ability under its FERC certificate to provide the retail service demanded here. The provisions of the Pennsylvania Public Utility Code relied upon by the Complainants simply have no application to an interstate gas transmission pipeline company subject to the exclusive jurisdiction of FERC.<sup>1</sup>

Accordingly, the Amended Complaint as to Columbia Transmission should be dismissed on the ground that the Commission has no jurisdiction over Columbia Transmission because it is exclusively regulated by the Federal Energy Regulatory Commission.

## **II. To the Extent that the Commission Does Assert Jurisdiction Under Pennsylvania Law, Such State Law is Preempted by Federal Law.**

Even if the Commission asserts jurisdiction over Columbia Transmission under state law, such state law is preempted by the Natural Gas Act, 15 U.S.C. §§717-717z. In passing the Natural Gas Act, Congress determined that "the business of transporting and selling natural gas for ultimate distribution to the public is affected with the public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest." 15 U.S.C. § 717 (a).

Pursuant to the Natural Gas Act, interstate gas storage pipeline companies may not construct or operate any facilities covered by the Natural Gas Act unless there is in force a certificate of public convenience and necessity issued by FERC authorizing

---

<sup>1</sup> In their Amended Complaint, Mr. and Mrs. Seraly rely on the fact that Columbia Transmission has, in the past, permitted taps on its pipelines. Columbia Transmission's current policy is to not permit a tap on its pipelines unless Columbia is required to provide a tap by the lease or other agreement granting Columbia the right to operate the pipeline on the property. Columbia has no such contractual obligation to the Seralys. Even if the Complainants here claimed that Columbia Transmission had such an obligation, it would be a matter of private contract outside of the Commission's jurisdiction. See Piper decisions, (Ex. A. to Motion).

such acts. 15 U.S.C. § 717f(c). In light of the comprehensive regulation effected by the Natural Gas Act, the United States Supreme Court has held that the Natural Gas Act confers upon FERC exclusive jurisdiction over the transportation, storage, and sale for resale of natural gas in interstate commerce and preempts all state law in that field. See Schneidewind v. ANR Pipeline Co., 485 U.S. 293 (1988). In Schneidewind, the Court held that a Michigan statute regulating the issuance of securities by interstate gas companies was preempted by the Natural Gas Act because it regulated a field that the Natural Gas Act had occupied to the exclusion of state law. Schneidewind, 485 U.S. at 300. The Court explained that, through extensive regulation, the Natural Gas Act had preempted the field of matters relating to the wholesale sales and transportation of natural gas in interstate commerce, including "the regulation of rates and facilities" of interstate natural gas companies. Id. at 305, 307. The court concluded that the Michigan statute had been preempted by the Natural Gas Act because it attempted indirectly to regulate rates and to ensure "proper maintenance of [the FERC regulated company's] facilities and continuance of its services . . ." both of which are matters within FERC's exclusive jurisdiction. Id. at 308.

Consistent with the Supreme Court's holding that the Natural Gas Act has broadly preempted the field of natural gas regulation, courts have consistently held state law to be preempted by the Natural Gas Act in a variety of circumstances. See, e.g., Northern Natural Gas Co. v. State Corp. Comm'n, 372 U.S. 84 (1963) (Kansas regulation requiring pipeline company to take ratably from all wells with which it connected preempted); Panhandle Eastern Pipeline Co. v. State of Oklahoma, 83 F.3d 1219 (10<sup>th</sup> Cir. 1996) (Oklahoma royalty statute preempted); National Fuel Gas Supply Corp. v. Public Service Comm'n, 894 F.2d 571, 579 (2d Cir. 1990) (New York environmental regulatory scheme preempted); Michigan Consolidated Gas Co. v. Panhandle Eastern Pipeline Co., 887 F.2d 1295 (6<sup>th</sup> Cir. 1989) (state bypass regulation preempted); Tennessee Gas Pipeline Co. v. Massachusetts Bay Transp. Auth., 2 F. Supp. 2d 106 (D. Mass. 1998) (state statute prohibiting taking of property near railroad preempted); Columbia Gas Transmission Corp. v. Exclusive Natural Gas Storage Easement, 747 F. Supp. 401 (N.D. Ohio 1990) (state law of trespass preempted).

Here, any attempt to apply Pennsylvania law to force Columbia Transmission to provide service to retail customers from a FERC-certificated interstate gas transmission pipeline would be preempted because such an application of state law goes to the heart of the field preempted by federal law.

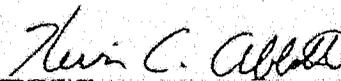
For these reasons, the Amended Complaint as to Columbia Transmission should be dismissed on the ground that to the extent that the Commission may extend jurisdiction over Columbia Transmission pursuant to state law, that law is preempted by the Natural Gas Act which comprehensively regulates the field.

**CONCLUSION**

The Amended Complaint as to Columbia Transmission should be dismissed on the ground that the Commission has no jurisdiction over Columbia Transmission because it is exclusively regulated by the Federal Energy Regulatory Commission pursuant to the Natural Gas Act, which preempts all state law in the field.

REED SMITH LLP

Dated: April 18, 2002



Kevin C. Abbott  
Nicolle R. Snyder Bagnell

435 Sixth Avenue  
Pittsburgh, PA 15219  
(412) 288-3804

Counsel for Respondent  
Columbia Gas Transmission Corporation

**CERTIFICATE OF SERVICE**

The following hereby certifies that a true and correct copy of the foregoing  
Memorandum of Law in Support of Motion to Dismiss of Respondent Columbia Gas  
Transmission Corporation has been served by First-Class Mail, postage prepaid on the following:

Christopher E. Miles,  
330 East Beau Street  
Washington, PA 15301

Theodore J. Gallagher  
Bricker and Eckler, LLP  
100 South Third Street  
Columbus, Ohio 43215-4291

Date April 18, 2002

Kevin C. Abbott

ORIGINAL

COMMONWEALTH OF PENNSYLVANIA  
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

GARY J. & AMY L. SERALY,

Complainant,

v.

COLUMBIA GAS OF PENNSYLVANIA,  
INC. and COLUMBIA GAS  
TRANSMISSION,

Respondent.

Docket No. C-20015964

**MOTION TO DISMISS AND ANSWER OF  
RESPONDENT COLUMBIA GAS  
TRANSMISSION CORPORATION**

Filed on Behalf of Respondent

Columbia Gas Transmission Corporation

Counsel of Record:

Kevin C. Abbott  
Pa. I.D. No. 35734

Nicolle R. Snyder Bagnell  
Pa. I.D. No. 87936

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Pittsburgh, PA 15219  
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PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU



not engaged in the retail sale of natural gas to individual residential consumers. The Seralys brought this claim against Columbia Transmission contending that service should be provided to their residence.

2. The Commission does not have jurisdiction over Columbia Transmission because its jurisdiction is limited to "public utilities" as that term is defined in 66 Pa. C.S.A. § 102. The cornerstone of that definition is that the utility must provide service to the "public." Columbia Transmission is not engaged in the business of supplying gas to the general public and does not supply gas at retail to any consumer in Pennsylvania. While Columbia at one time engaged in wholesale sales of natural gas subject to the jurisdiction of the FERC, it no longer provides wholesale sales service as a result of the FERC order issued on April 14, 1997 in Docket No. RP 95-408, 79 FERC ¶ 61,044.

3. Columbia Transmission is engaged solely in the interstate transportation of natural gas and is regulated exclusively by the Federal Energy Regulatory Commission ("FERC") under the Natural Gas Act, 15 U.S.C. §§ 717-717z. All of Columbia's pipelines and related facilities used in its interstate pipeline business, and all points of delivery to its transportation customers (including main line tap customers) are constructed and operated under certificates of public convenience and necessity issued from time to time by FERC or its predecessor, the Federal Power Commission, under Section 7 of the Natural Gas Act (15 U.S.C. § 717f). Moreover, Columbia's rates and charges and conditions of service for its interstate transportation services are regulated exclusively by FERC under Sections 4 and 5 of the Natural Gas Act (15 U.S.C. §§ 717c and 717d).

4. The Commission has no jurisdiction over interstate pipeline companies which are exclusively regulated by the Federal Energy Regulatory

Commission. See Procter & Gamble Paper Products Co. v. Pa. Public Utility Commission, 623 A.2d 410 (Pa. Commw. 1993) (affirming the Commission's dismissal of a complaint against a FERC-regulated pipeline company). The Commission has previously held that it has no jurisdiction over Columbia Transmission. Piper v. Columbia Gas of Pennsylvania Inc., Docket No. C-881720. Copies of the decisions of the Administrative Law Judge and the Commission are attached as Exhibit A.

5. In the alternative, to the extent that Columbia Transmission is found to be a public utility as defined by 66 Pa.C.S.A. § 102, that state law is preempted by the comprehensive regulation effected by the Natural Gas Act. See Schneidewind v. ANR Pipeline Co., 485 U.S. 293 (1988). The Natural Gas Act confers upon FERC exclusive jurisdiction over the transportation, storage and sale for re-sale of natural gas in interstate commerce and preempts all state law in that field. See id. (holding that a Michigan statute regulating the issuance of securities by interstate gas companies was preempted by the Natural Gas Act because it regulated a field that the Natural Gas Act had occupied to the exclusion of state law.)

6. Accordingly, the Amended Complaint as to Columbia Transmission should be dismissed on the ground that the Commission has no jurisdiction over Columbia Transmission because it is exclusively regulated by the Federal Energy Regulatory Commission pursuant to the Natural Gas Act, which preempts all state law in the field.

WHEREFORE, the Amended Complaint should be dismissed as to Respondent Columbia Gas Transmission Corporation.

Columbia Transmission moves to be heard on this jurisdictional motion before the Initial Hearing currently scheduled for May 16, 2002.

ANSWER OF RESPONDENT  
COLUMBIA GAS TRANSMISSION CORPORATION

**DOCKETED**  
JUN 01 2002

As required by 52 Pa.C.S.A. § 5.101(b), respondent, Columbia

Transmission files the following Answer to the Amended Complaint along with its Motion to Dismiss for lack of jurisdiction.

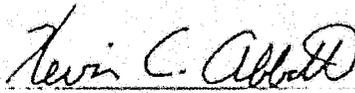
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1. Columbia Transmission is without knowledge or information sufficient to admit or deny Paragraph 1 of the Amended Complaint.
2. Columbia Transmission denies Paragraph 2 of the Amended Complaint to the extent that the Seralys have any basis for a claim against Columbia Transmission.
3. Columbia Transmission denies Paragraph 3 of the Amended Complaint except that Columbia Transmission admits that there is a 2 inch gas line which runs along Vaneal Road and that the Seralys have requested service and have been denied. The pipeline in question is part of Columbia Transmission's interstate system for the transportation of natural gas and it is not certificated for retail service. As to the allegations of taps provided to others in the past, such allegations are too vague to permit Columbia Transmission to answer. In keeping with Columbia Transmission's role as a natural gas transportation and storage company, it has been Columbia's policy in recent years to deny requests for new taps for individual landowners, except where the agreement permitting the pipeline expressly requires Columbia Transmission to do so.
4. Paragraph 4 of the Amended Complaint does not require an answer. To the extent an answer is required, Columbia Transmission denies Paragraph 4, as the Seralys are not entitled to this relief because Columbia Transmission is not in the business of providing retail natural gas service to private residences.

WHEREFORE, the respondent, Columbia Gas Transmission Corporation moves for dismissal of the Amended Complaint, all at the Complainants' cost.

REED SMITH LLP

Dated: April 18, 2002

  
Kevin C. Abbott  
Nicolle R. Snyder Bagnell

435 Sixth Avenue  
Pittsburgh, PA 15219  
(412) 288-3804

Counsel for Respondent  
Columbia Gas Transmission Corporation

VERIFICATION

I, ANNETTE L. CASTELLE, verify that the statements made in the foregoing Motion to Dismiss and Answer of Respondent Columbia Gas Transmission Corporation on behalf of the respondent Columbia Gas Transmission Corporation are true and correct to the best of my knowledge, information and belief. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. § 4904, relating to unsworn falsification to authorities.

Date: April 17, 2002

Signature: Annette L. Castelle

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCUMENT  
FOLDER

William E. Piper :  
v. :  
Columbia Gas of Pennsylvania, Inc. :

C-881720

INITIAL DECISION  
UPON MOTION TO DISMISS

Before  
George M. Kasli  
Administrative Law Judge

DECLINED  
MAY 2 1988

On or about March 3, 1988, William E. Piper, 97 Cedar Drive, Uniontown, Pennsylvania (Complainant) filed a Complaint against Columbia Gas of Pennsylvania, Inc. (Columbia), Columbia Gas Transmission Corp. (TCO), and Columbia Natural Resources (CNR). Piper alleged that he receives his gas pursuant to a written agreement dated October 30, 1986. Said agreement is styled Agreement for Delivery of Free Gas and Overburn Gas Provided by Lease. Piper further alleges that his service was terminated on one day's notice.

The parties to said agreement are William E. and Sherry L. Piper, as Applicant with TCO for delivery under a lease dated November 22, 1999, and Columbia Gas Transmission Corporation (TCO Exhibit 4). Columbia is named as "Distribution Company" which Complainant understood and agreed that TCO might

use as its agent to perform certain ministerial tasks (TCO Ex. 4).

Complainant alleges harassment in the termination of his gas service and violation of this Commission's Rules and Regulations at 52 Pa. Code Chapter 56.

In answer timely filed, Columbia admits the facts of the allegation with one major exception. Columbia asserts that when the Complainant was notified by Columbia on February 29, 1988 that service would be cut off on March 1, 1988, that Columbia in fact offered tariff service without interruption upon execution of a connect order. Columbia asserts that Complainant refused this offer. Columbia affirmatively states that on March 3, 1988 Columbia established tariff service while agreeing to waive Complainant's execution of an application or a meter set order. Columbia requests that we take such action as is appropriate to resolve the matter in an equitable manner.

Columbia Natural Resources requested and received an extension of time to file an answer. In lieu of an answer CNR filed a Motion to Dismiss CNR for lack of jurisdiction.

Columbia Gas Transmission (TCO) also requested and received an extension of time and also filed a Motion to Dismiss TCO for lack of jurisdiction.

Discussion

Piper's Complaint fails to state any claim against CNR. Complainant only mentions CNR as the parent corporation of TCO

and Columbia. CNR is not the parent but rather an oil and gas exploration and development subsidiary of Columbia Gas System, Inc. which is the parent corporation of CNR, TCO, and Columbia.

Given that CNR is not a necessary party to this action we will grant CNR's Motion to Dismiss.

TCO, by reason of its transportation, underground storage, and wholesale sale of gas in interstate commerce, is a "natural gas company" as defined in the Natural Gas Act (NGA) 15 U.S.C. §717a(6) and subject to the exclusive regulatory jurisdiction of the Federal Energy Regulatory Commission (FERC) under the NGA.

TCO is the successor by merger to The Manufacturers Light and Heat Company (ML&H). By Order issued September 12, (1961), the Commission approved the spin-off of all of the retail distribution facilities and operations of ML&H to Columbia (Application of Columbia Gas of Pennsylvania, Inc., A-87616 and A-87349, TCO Ex. 2).

As alluded to by Complainant, "I am involved in a legal dispute with TCO," the subject matter of the Complaint is a dispute over the validity of TCO's oil and gas lease dated November 22, 1899 and the relationship of the lease to the ancillary "Agreement for Delivery of Free Gas and Overburn Gas," dated October 30, 1986, between Complainant and his wife and TCO (TCO Ex. 3 and 4).

We believe, as TCO argues, that it is not a public utility as defined at 66 Pa. C.S.A. §102 and that the 'free gas agreement' mentioned in the Complaint is not tariff service but a private contract not subject to utility regulation by this Commission. Furthermore, we find no jurisdiction over the subject matter which is a dispute between Complainant and TCO over the validity and meaning of an oil and gas lease and the relationship of the lease to the ancillary free gas agreement.

Given that there is no jurisdiction of the subject matter and the party TCO, we will grant TCO's Motion to Dismiss.

Finally, we turn to Columbia Gas of Pennsylvania. According to the agreement (TCO Ex. 4), Columbia was not providing tariff service to Complainant, nor was it acting on its own. Columbia was acting as an agent performing a ministerial act in a private contract. We find that the rules and regulations of Chapter 56 of 52 Pa. Code do not apply to the instant Complaint. Therefore, we find no violation stemming from Columbia's action. Accordingly, and pursuant to §703(b) 66 Pa. C.S., we dismiss the instant Complaint.

#### Conclusions of Law

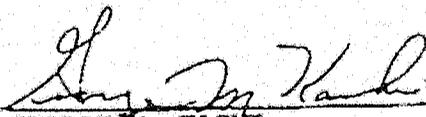
1. The Commission lacks jurisdiction of the subject matter and the parties CNR and TCO.
2. The matter is not properly before the Commission.

Therefore,

IT IS ORDERED:

1. That the Motion to Dismiss by Columbia Natural Resources be and is hereby granted.
2. That the Motion to Dismiss by Columbia Gas Transmission Corp. be and is hereby granted.
3. That the Complaint of William E. Piper, docketed to C-881720, be and is hereby dismissed.

Date: May 5, 1988

  
 \_\_\_\_\_  
 GEORGE K. KASHI  
 Administrative Law Judge

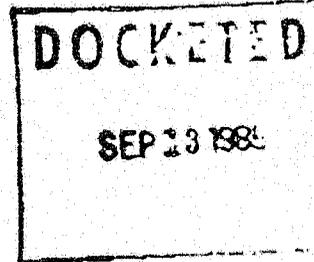
PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120

Public Meeting held September 1, 1988

Commissioners Present:

Bill Shane, Chairman  
William H. Smith, Vice-Chairman  
Linda C. Taliaferro  
Joseph Rhodes, Jr.  
Frank Fischl

William E. Piper  
v.  
Columbia Gas of Pennsylvania, Inc.



C-881720

OPINION AND ORDER

BY THE COMMISSION:



On or about March 3, 1988, William E. Piper ("Complainant") filed a Complaint against Columbia Gas of Pennsylvania, Inc. ("Columbia"), Columbia Gas Transmission Corp. ("TCO"), and Columbia Natural Resources ("CNR"). Complainant alleged that his gas service was terminated in violation of our Rules and Regulations found at 52 Pa. Code Chapter 56. Standards and Billing Practices for Residential Utility Service. In this regard, Piper stated that the terminated service was provided pursuant to a private contract entitled Agreement for Delivery of Free Gas and Overburn Gas Provided by Lease ("Agreement"). The parties to the contract are William E. and Sherry L. Piper, as Applicant and TCO as provider. The Agreement provides for delivery under a lease dated November 22, 1899. Columbia Gas of Pennsylvania, Inc. is named a "Distribution Company" which Complainant agreed that TCO might use as its agent to perform certain ministerial tasks.

Both TCO and CNR filed Motions to Dismiss for lack of jurisdiction, which were granted by the ALJ. The ALJ dismissed the Complaint against Columbia because he found that the

terminated gas service was not a tariffed service, but a private contract service, not subject to regulation by this Commission. The ALJ concluded that the Commission lacked jurisdiction over the subject matter and the parties CNR and TCO and, therefore, dismissed the complaint.

Complainant's Exceptions stated that the Commission had jurisdiction over the subject matter and Respondents TCO and CNR. The Complainant stated that, with regard to termination procedures, he should have been treated as any other residential customer of Columbia.

#### Discussion

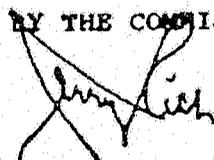
The record indicated that the Complainant received free gas service by way of a private contract which was ancillary to an oil and lease agreement. The price of that gas was not regulated by this Commission. When termination occurred, Columbia indicated that it simultaneously offered tariffed gas service to the Complainant. According to Columbia, the Complainant refused to execute a connect order for tariffed gas service.

It is axiomatic that the Public Utility Commission is not jurisdictionally empowered to decide private contractual disputes between citizens and a utility, which do not involve the provision of utility service. Allport Water Authority v. Winburne Water Company, 393 A.2d 673, Super. 1978. When this complainant elected to take free gas service pursuant to a private contract with TCO rather than tariffed gas service from Columbia, the Commission's subject matter jurisdiction was avoided. The Public Utility Commission is not the proper forum for the interpretation and enforcement of the Agreement. If and when the Complainant elects tariffed gas service, the Commission will be empowered by statute to enforce our regulations regarding residential service termination; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions of William E. Piper be, and hereby are, denied.
2. That the Initial Decision of Administrative Law Judge George M. Kashi, issued herein on May 19, 1988, be, and hereby is, adopted.
3. That the Complaint of William E. Piper be, and hereby is, dismissed.

BY THE COMMISSION,

  
Jerry Rich  
Secretary

(SEAL)

ORDER ADOPTED: September 1, 1988

ORDER ENTERED: September 2, 1988

CERTIFICATE OF SERVICE

The following hereby certifies that a true and correct copy of the foregoing Motion to Dismiss and Answer of Respondent Columbia Gas Transmission Corporation has been served by First-Class Mail, postage prepaid on the following:

Christopher E. Miles,  
330 East Beau Street  
Washington, PA 15301

Theodore J. Gallagher  
Bricker and Eckler, LLP  
100 South Third Street  
Columbus, Ohio 43215-4291

Date: April 18, 2002

Kevin C. Alford