

# **Bond Case Briefs**

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## **PUBLIC UTILITIES - OHIO**

### **In re Complaint of Suburban Natural Gas Company v. Columbia Gas of Ohio, Inc.**

**Supreme Court of Ohio - November 12, 2020 - N.E.3d - 2020 WL 6600063 - 2020 -Ohio-5221**

Natural-gas company sought judicial review of a decision of the Public Utilities Commission, finding that the company failed to prove allegations arising from a competitor's use of energy-efficiency incentives for home builders in areas served by company and from the competitor's expansion of its gas-distribution service.

The Supreme Court held that:

- Commission adequately explained its rejection of claim that competitor violated stipulated agreement;
- Company failed to show error in determination that competitor's tariff schedules authorized energy-efficiency incentives;
- Commission adequately explained its decision not to rely on precedent offered by company;
- Record supported Commission's rejection of company's challenge to competitor's expansion of its service based on purported duplication of facilities;
- Commission did not ignore evidence in rejecting claim that competitor implemented incentives in unfair and anticompetitive manner;
- Company failed to show error in Commission's determination that it should have intervened in prior case brought by competitor; and
- Company failed to show error in Commission's summary dismissal of allegations of various statutory violations.

Supreme Court lacked jurisdiction over natural-gas company's claim that the Public Utilities Commission failed to apply the express terms of a stipulated agreement with a competitor by ignoring the competitor's release and covenant not to sue, which purportedly prohibited competitor from instituting energy-efficiency incentives for home builders in areas served by company, where company did not argue on rehearing that the Commission should have applied the language of competitor's release instead of distributor's, but instead company alleged that the Commission erred when it applied the language of company's release to claims company did not make.

Public Utilities Commission sufficiently explained its order rejecting natural-gas company's claim that a competitor violated a stipulated agreement between them by offering energy-efficiency incentives to home builders to compete in areas served by company; the Commission reviewed the pertinent language of the agreement, and, because the agreement was unambiguous, the Commission was not required to consider other evidence to refute company's interpretation of the agreement.

Natural-gas company failed to show error in Public Utilities Commission's determination that a competitor's tariff schedules were sufficiently detailed to authorize payment of incentives to builders

for construction of homes that exceeded certain energy-efficiency standards, where company did not cite the applicable tariff or point to language, or lack thereof, in the tariff that would support its claim.

Public Utilities Commission did not erroneously conclude that it lacked authority to preclude the duplication of utility facilities, in a proceeding brought by a natural-gas company, challenging a competitor's extension of its gas-distribution service based on a purported duplication of facilities in an area served by company; the Commission merely held that company failed to cite caselaw for the proposition that the Commission had to preclude a natural-gas company from serving new customers if that service would result in duplication of facilities.

Public Utilities Commission adequately explained its decision not to rely on precedent offered by natural-gas company in challenging a competitor's extension of its gas-distribution service based on a purported duplication of facilities in an area served by company; Commission explained that the cases cited by company were inapplicable because they did not involve a natural-gas company being precluded from serving a new customer if such service would result in duplication of facilities, Commission cited longstanding precedent establishing that natural-gas companies were not bound by certified service territories and could serve any customer in any part of the state, and Commission reiterated in its second rehearing entry that the cases cited by company were factually and legally dissimilar, if not wholly irrelevant.

Record supported Public Utilities Commission's decision rejecting a claim by a natural-gas company, challenging a competitor's extension of its gas-distribution service based on a purported duplication of facilities in an area served by company; county's chief deputy engineer testified that he knew of no unnecessary duplication of natural-gas facilities in the county, even with the recent extension of competitor's distribution main, engineer's testimony that he did not specifically consider whether competitor's distribution main duplicated company's main was not affirmative evidence that competitor duplicated company's facilities on a particular road, and company's vice president of system development admitted that a particular home builder was under no legal obligation to select company to serve a home development.

Natural-gas company failed to show error in Public Utilities Commission's decision rejecting company's challenge to a competitor's extension of its gas-distribution service based on a purported duplication of facilities in an area served by company; contrary to company's claims regarding waste of resources, testimony established that some duplication might be inherent and even necessary, evidence showed that a subdivision to be served by competitor was still under development and that no gas company was providing distribution service to the subdivision when competitor extended its gas main, and a county chief deputy engineer's testimony about potential for increased costs to customers concerned the concept of unnecessary duplicate facilities in general, not the merits of company's complaint.

Supreme Court lacked jurisdiction over natural-gas company's contention that a competitor improperly extended energy-efficiency incentives to home builders outside its service territory; company did not seek rehearing of Commission's determination that a particular subdivision to be served by competitor was outside of competitor's service territory, company did not argue on rehearing that competitor's builder incentives were limited to customers already served by competitor, and company's rehearing application did not mention a statute setting forth a policy of promoting alignment of natural-gas-company and consumer interests in energy efficiency and conservation.

Public Utilities Commission did not ignore evidence that natural-gas company's competitor told a subdivision's developer about energy-efficiency incentives and that the incentives gave competitor

an advantage over company, in rejecting company's claim that competitor implemented the incentives in an unfair and anticompetitive manner; Commission found that competitor was authorized to offer incentives to encourage developers to choose competitor and that competitor had an advantage over company as a result of the incentives, but instead the Commission rejected company's claim that the advantage violated a statute forbidding a public utility from subjecting a corporation to undue or unreasonable prejudice or disadvantage, as company could have requested its own energy-efficiency program.

Supreme Court lacked jurisdiction over natural-gas company's contention that the Public Utilities Commission failed to explain its purported departure from its precedent in finding that a competitor did not use energy-efficiency incentives as a competitive-response tool at home development, where the company failed to raise the argument on rehearing before the Commission.

Natural-gas company failed to show reversible error in Public Utilities Commission's determination that company should have intervened in a prior case brought by a competitor to raise concerns about competitor's purported unfair and anticompetitive use of energy-efficiency incentives, in company's subsequent proceeding challenging competitor's use of the incentives; Commission did not find that company forfeited any arguments by failing to intervene, but instead the Commission's order addressed and found no merit to company's claims that competitor used the incentives in an abusive or anticompetitive manner.

Supreme Court lacked jurisdiction to consider natural-gas company's claim challenging the Public Utilities Commission's determination that company raised for the first time on rehearing its issue regarding a competitor's purportedly unfair and anticompetitive use of energy-efficiency incentives, where the company never filed a subsequent application for rehearing and, thus, never alleged error in the Commission's finding.

Natural-gas company failed to show error in Public Utilities Commission's summary dismissal of company's allegations of various statutory violations on the part of a competitor based on the competitor's implementation of energy-efficiency incentives; the Commission's order noted the company's argument that the same proofs purportedly supporting company's other counts, including that the incentives violated a stipulated agreement and that they were used in an unfair and anticompetitive manner, would support the statutory violations, but the Commission rejected the other counts, and company failed to identify an independent legal theory or evidence to support its claim that the statutory violations stood on their own.