

IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

State of Ohio ex rel. Stephen J. Smith, :
 :
 Plaintiff-Appellee, :
 :
 v. : No. 11AP-663
 : (M.C. No. 2011 EVH 60167)
 Amin Hotels, Ltd. et al., :
 : (REGULAR CALENDAR)
 Defendants-Appellees, :
 :
 (Columbus Southern Power Company, :
 :
 Intervenor-Appellant). :

D E C I S I O N

Rendered on March 27, 2012

Means, Bichimer, Burkholder & Baker Co., LPA, Dennis J. Morrison, Jeffrey J. Madison and Mark A. Weiker, for appellee Huntington National Bank.

Marilyn McConnell, for appellant.

APPEAL from the Franklin County Municipal Court,
Environmental Division

KLATT, J.

{¶ 1} Intervenor-appellant, Columbus Southern Power Company ("Columbus Southern"), appeals a judgment of the Franklin County Municipal Court, Environmental Division, appointing a receiver. Defendant-appellee, The Huntington National Bank ("Huntington"), opposes Columbus Southern's appeal. For the following reasons, we reverse the judgment and remand for further proceedings.

{¶ 2} On June 15, 2011, Stephen J. Smith, the law director for the city of Dublin, filed a complaint requesting that the trial court declare the hotel known as "America's Best Value Inn & Suites" a public nuisance and order the hotel closed. The complaint named as defendants Amin Hotels Ltd. and Sanjay Amin, the owners and operators of the hotel, and Unizam Bank, NA, the holder of a mortgage on the hotel property.

{¶ 3} On July 8, 2011, Huntington, as the successor by merger to Unizam Bank, NA, filed an answer, crossclaim, counterclaim, and third-party complaint. Along with other relief, Huntington sought foreclosure of its mortgage and appointment of a receiver. Pursuant to an agreed order, the trial court immediately appointed a receiver over the hotel and personal property subject to Huntington's security interests. In relevant part, the July 8, 2011 agreed order also provided that:

[A]ny utility company providing services to the Hotel Property, including gas, electricity, water, sewer, trash collection, telephone, communications or other similar services, may rely upon this Order as the basis for establishing a new account under the exclusive control of the Receiver, but shall be prohibited from discontinuing service to the Hotel Property, or demanding deposit, as a result of the receivership, regardless of prior failure, if any, of the Defendant to pay utility charges[.]

Agreed Order Granting Motion of The Huntington National Bank for Appointment of Receiver, at ¶ 17.

{¶ 4} On August 5, 2011, Columbus Southern, the provider of electricity to the hotel, filed a motion to intervene and set aside the agreed order as it pertained to regulated utilities. The trial court granted Columbus Southern leave to intervene. Immediately upon achieving party status, Columbus Southern appealed the July 8, 2011 agreed order to this court.

{¶ 5} On appeal, Columbus Southern assigns the following errors:

I. The Court's Order Appointing [a] Receiver [and] prohibiting utilities from terminating utility service or from charging a deposit was entered into without notice to Appellant, or opportunity for hearing, which violated Appellant's due process rights.

II. The Court cannot issue an order granting injunctive relief against a known non-party without following the provisions of the Civil Rules regarding injunctions.

III. The Court lacks subject matter jurisdiction to interfere with a utility's tariff procedures by prohibiting disconnection or charging deposits.

{¶ 6} We will begin our review with Columbus Southern's third assignment of error. By that assignment of error, Columbus Southern argues that the trial court lacked jurisdiction to order it to provide continuous service to the hotel without charging a deposit. We agree.

{¶ 7} Subject-matter jurisdiction connotes the power to hear and decide a matter upon its merits. *Cheap Escape Co., Inc. v. Haddox, LLC*, 120 Ohio St.3d 493, 2008-Ohio-6323, ¶ 6. The Public Utilities Commission ("commission") has exclusive jurisdiction over matters involving public utilities, such as rates and charges, classifications, and service, effectively denying to all Ohio courts (except the Supreme Court) any jurisdiction over such matters. *State ex rel. Cleveland Elec. Illuminating Co. v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 447, 450 (2000); *see also Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, 150-51 (1991) ("The General Assembly has by statute pronounced the public policy of the state that the broad and complete control of public utilities shall be within the administrative agency, the Public Utilities Commission.").

{¶ 8} Every public utility in Ohio is required to file tariffs for commission review and approval. R.C. 4905.30; *Hull v. Columbia Gas of Ohio*, 110 Ohio St.3d 96, 2006-Ohio-3666, ¶ 25; *Kazmaier Supermarket* at 150. " 'Public utility tariffs are books or compilations of printed materials filed by public utilities with, and approved by, the commission that contain schedules of rates and charges, rules and regulations, and standards for service.' " *State ex rel. Columbus S. Power Co. v. Fais*, 117 Ohio St.3d 340, 2008-Ohio-849, ¶ 28, quoting *Migden-Ostrander v. Pub. Util. Comm.*, 102 Ohio St.3d 451, 2004-Ohio-3924, ¶ 8, fn. 5. The commission possesses exclusive jurisdiction to oversee filed and approved tariffs. *Id.*; *Hull* at ¶ 26.

{¶ 9} Pursuant to R.C. 4903.12, "[n]o court other than the supreme court shall have power to review, suspend, or delay any order made by the public utilities

commission." Because tariffs require the approval of the commission, they constitute commission orders. *Columbus S. Power Co.* at ¶ 28; *State ex rel. N. Ohio Tel. Co. v. Winter*, 23 Ohio St.2d 6, 9-10 (1970). Consequently, "[a]n injunction issued by a Court of Common Pleas, which enjoins a public utility from following tariffs filed with and approved by the Public Utilities Commission, amounts to a review, suspension and delay of orders of the commission, and is a usurpation of authority." *N. Ohio Tel. Co.*, paragraph two of the syllabus.

{¶ 10} With regard to non-residential customers, the commission-approved tariff for Columbus Southern provides that Columbus Southern "reserves the right to discontinue the supply of electric energy and disconnect its lines and remove its property" for certain enumerated reasons. Columbus Southern Power Company Compliance Tariff, Standard Service, 3-8 to 3-9, filed pursuant to *In the Matter of the Application of Columbus S. Power Co. and Ohio Power Co. to Modify Their Line Extension and Certain Related Terms and Conditions of Service*, PUCO No. 09-1003-EL-ATA. The tariff also allows Columbus Southern to "require a deposit by the customer." *Id.* at 3-4.

{¶ 11} In contravention to these provisions of Columbus Southern's tariff, the July 8, 2011 agreed order prohibited Columbus Southern from either discontinuing service to the hotel or demanding a deposit. Because this injunction suspended the operation of the tariff, the trial court lacked jurisdiction to issue it. Accordingly, we sustain Columbus Southern's third assignment of error.

{¶ 12} Our ruling on the third assignment of error requires reversal of the trial court's judgment, and thus, renders the two remaining assignments of error moot. We therefore decline to decide either the first or second assignments of error.

{¶ 13} For the foregoing reasons, we sustain Columbus Southern's third assignment of error, which renders the first and second assignments of error moot. We reverse the judgment of the Franklin County Municipal Court, Environmental Division, and remand this cause to that court for further proceedings consistent with law and this opinion.

Judgment reversed; cause remanded.

FRENCH and TYACK, JJ, concur.
