BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Katherine M. Lycourt-Donovan Complainant,	)	
v.	)	Case No. 12-2877-GA-CSS
Columbia Gas of Ohio, Inc. Respondent.	)	
In the Matter of the Complaint of Seneca Builders LLC, Complainant,	)	
v.	)	Case No. 13-124-GA-CSS
Columbia Gas of Ohio, Inc., Respondent.	)	
In the Matter of the Complaint of Ryan Roth et al., Complainants,	)	
v.	)	Case No. 13-667-GA-CSS
Columbia Gas of Ohio, Inc., Respondent.	)	

REPLY BRIEF

OF COMPLAINANT

KATHERINE M. LYCOURT-DONOVAN

February 3, 2014

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I. Introduction

The fundamental issue at hand before the Public Utilities Commission of Ohio (the Commission) is that Columbia Gas of Ohio, Inc. (Columbia) violated the Ohio Administrative Code and the Ohio Revised Code. Columbia provided inadequate service to Katherine M. Lycourt Donovan (Complainant) and other complainants in this matter (Seneca Builders LLC and Ryan Roth and R&P Investments, Inc.). Further, Columbia discriminated against complainants.

Chief among the violations by Columbia is the undisputed and unlawful abandonment of the natural gas service line to Oakside Road. The termination of the Complainant's natural gas account and the cutting and capping of the natural gas line serving Oakside Road – without so much as notifying the residents of Oakside Road – are fully acknowledged by Columbia and thus not in dispute. Likewise, there is no dispute that Columbia performed such actions without following the requirements of the Ohio Revised Code for abandonment. Columbia did not file formal application for abandonment with the Commission, there was no public notification, there were no public hearings before the Commission, and the Commission did not grant approval for abandonment. These factors are unlawful abandonment, which constitutes inadequate service. Per the Ohio Revised Code, each day of abandonment to each complainant is a separate violation.

What is striking and significant about Columbia's Post-Hearing Brief is not what is stated by Columbia, but instead what is NOT stated by Columbia. The Post-Hearing Brief filed by Columbia contains no defense whatsoever regarding abandonment; in fact, the words "abandon" and "abandonment" are never even mentioned in Columbia's Post-Hearing Brief.

Instead, Columbia would have the Commission limit this matter to whether Complainant and other complainants have proven the safety of the homes on Oakside Road in Toledo, Ohio. Columbia attempts to steer the Commission away from the Complainants' case at hand by stating

"Complainants primarily argue that the presence of stray gas in the soil at or near a home's foundation is not a safety hazard warranting interruption of service" (Page 1, fourth paragraph of Columbia's Post-Hearing Brief). The case Columbia wishes to defend is NOT the Complainant's case before the Commission.

Complainant, through the evidence and testimony in this proceeding and as described in Complainant's Post-Hearing Brief and in the Post-Hearing Brief of the other complainants (Seneca/Roth), has satisfied the burden of proof that 1) Columbia violated the Ohio Administrative Code and Ohio Revised Code, 2) Columbia provided inadequate service, and 3) Columbia discriminated against Complainant.

II. Complainant Has Met the Burden of Proof that Columbia Violated Ohio Laws, Inadequate Service, and Discriminated Against Complainant, and Complainant is Not Required to Prove the Safety of Complainant's Residence.

Complainant's case is quite simple. In this matter before the Commission, the Complainant has the burden of proving that Columbia violated the law, provided inadequate service, and discriminated against complainants. Complainant has met this burden of proof before the Commission as fully supported by the evidence and testimony in this proceeding.

Ohio's abandonment and withdrawal code sections place the burden of proving the necessity and public good of that withdrawal or abandonment upon the public utility desiring the result. Had Columbia followed the Ohio Revised Code and applied to the Commission for abandonment, the burden of proof would have been upon Columbia to prove the homes were unsafe. Columbia would have had that burden of proof in a public hearing, held by the Commission, to pursue abandonment and gain the Commission's approval for abandonment.

Columbia abandoned service to Oakside Road without following Ohio's abandonment and withdrawal code sections. Columbia acted in total disregard for its customers, the law, and the authority of the Commission. Columbia decided unilaterally to abandon service to Oakside Road without due process and without the Commission's approval. There is no clause or provision in the Ohio Revised Code that allows a public utility to ignore required abandonment procedures because of a public utility's safety policies or perceptions. The unlawful abandonment of natural gas service to Oakside Road was performed entirely by Columbia and cannot be undone.

Columbia's actions and inactions resulting in the unlawful abandonment constitute inadequate service. By circumventing the abandonment process and electing to abandon service unlawfully, Columbia forced the Complainant down the path of filing a formal complaint before the Commission, thereby shifting the burden of proof from Columbia to the complainants. That burden of proof is to prove violations of law, inadequate service, and discrimination. Complainant has done so. Complainant does not have any burden of proof to prove Complainant's home is safe.

The actions and behavior of Columbia regarding safety must be considered: Columbia has told Complainant, Seneca Builders, and other residents of Oakside Road that other forms of energy (propane and electricity, both of which constitute ignition sources) are acceptable alternatives to natural gas[1]. The actions of Columbia as the chain of events unfolded clearly contradict Columbia's stated position that the delivery of natural gas is unsafe. Columbia has reached settlements with other Oakside Road residents, and each of those residents remain in their homes with electricity service (i.e., ignition sources) and without installing remediation systems. Even Columbia's own expert witness, Mr. Stephen E. Erlenbach, stated in his direct testimony that

[1] Page 15, Lines 1 – 4, Pre-Filed Direct Testimony of Complainant Lycourt-Donovan and also Hearing Exhibit Seneca 18, where Kozak writes on June 7, 2012 "I asked the developer if he has looked at other energy sources for these homes: Propane or electric. He said he has not; I told him he should consider."

"*My purpose is to present my opinions regarding the potential for natural gas in the soil outside a home to infiltrate the home and the potential explosion hazards associated with natural gas infiltration*"[2]. Thus, even Columbia's own expert witness limits his portrayal of the situation on Oakside Road as a **potential** safety threat, and not as a verifiable or imminent safety threat.

Had Columbia followed the abandonment procedures as required by the Ohio Revised Code, Columbia would have borne the burden to prove conditions on Oakside Road were unsafe in an entirely different proceeding. The interior and exterior of Complainant's home has been tested and no stray gas was detected[3], and Complainant regards her home as safe; nonetheless, in THIS case before the Commission, Complainant does not have any obligation whatsoever to prove the safety of Complainant's home or any other home on Oakside Road. Accordingly, Columbia's repeated statement in its Post-Hearing Brief that Complainant has not proven the safety of the homes on Graystone Woods is immaterial and represents nothing more than a distraction to the case at hand.

III. Columbia Misrepresents the Testing For and Detection of Stray Gas at Complainant's Residence.

Columbia is misrepresenting the facts regarding the detection of Stray Gas at or near the foundation of Complainant's residence. There are material differences in the detections for Stray Gas on Oakside Road, and Columbia wrongly attempts to lump all homes as one. The opening sentence on Page 1 of Columbia's Post-Hearing Brief states "In May 2012, Columbia interrupted service to 13 homes in the Graystone Woods subdivision of Toledo, Ohio, after detecting natural

[2] Page 2, Lines 30 – 32 of the Pre-Filed Direct Testimony of Erlenbach.
[3] Lines 8 through 11 on the Second Page of the Answer to Question 55 in Pre-Filed Direct Testimony of Weiss.

gas in the soil at the foundation of each of those homes." This is not true and Columbia's statement is a deliberate misrepresentation of the evidence in this matter.

A. There is no evidence that Columbia detected Stray Gas at or near the foundation of Complainant's residence that justified the interruption of natural gas service to Complainant on May 31, 2012.

The opening sentence on Page 1 of Columbia's Post-Hearing Brief states "In May 2012, Columbia interrupted service to 13 homes in the Graystone Woods subdivision of Toledo, Ohio, ***after*** detecting natural gas in the soil at the foundation of each of those homes" (emphasis added). The evidence in this case is that Columbia did NOT detect natural gas in the soil at or near the foundation of Complainant's residence at 2130 Oakside Road on May 31, 2012 that justified interruption of service on that date. Columbia's Mr. Curtis J. Anstead sent a letter to the Chief of the Toledo Fire on May 31, 2012[4] that specifically defined where Columbia detected Stray Gas. The letter definitively states that "the perimeter of the combustible gas was found against the foundation of the residences at 2103, 2107 and 2119 Oakside Road in Toledo." (The Commission should take note that on Page 10 of Columbia's Post-Hearing Brief, Columbia states "*On May 31, 2012, Mr. Anstead sent a letter to the Toledo Fire Chief, copying the Ohio Department of Natural Resource, that confirmed that gas from an unknown source was detected against the foundation of 2107 Oakside Road* ***and neighboring homes***" [emphasis added]. Columbia changed the actual language of the letter and is using the words "and neighboring homes" in its Brief rather than specific addresses; Columbia is clearly making an effort to overstate its testing in the hopes

[4] Transcript Exhibit Donovan 13

the Commission will incorrectly assume "neighboring homes" should be interpreted to mean "all homes on Oakside Road".)

The letter to the Toledo Fire Department uses the term "perimeter" in identifying the extent of Stray Gas. The term "perimeter" is explicitly defined by Columbia in its internal Gas Standard policy GS 1714.010(OH) identified as "Leakage Classification and Response" as follows:

> *When evaluating any gas leak indication, the initial step is to determine the perimeter of the leak area … The "leakage area" concept, as used in this procedure, is the basis for describing the extent of the leakage reported for a particular leak record. A leakage area is an area of positive combustible gas indicator (CGI) tests surrounded by an area of negative CGI tests.*[5]

Complainant's residence is on the opposite side of the street as the three identified residences. Accordingly, Complainant's residence is NOT within Columbia's reported perimeter where Stray Gas was allegedly detected. By Columbia's own policy and Columbia's letter to the Toledo Fire Department on May 31, 2012, **Complainant's residence is outside Columbia's defined perimeter on May 31, 2012 and is instead within the area of negative CGI tests**.

To further reinforce this, Columbia has no evidence of Stray Gas at or near the foundation of Complainant's residence on or before May 31, 2012 that supported Columbia's decision to interrupt natural gas service to Complainant. When asked in discovery to produce a copy of the specific readings, tests, findings, maps, documentation, records and evidence Columbia obtained on or before Mary 31, 2012 to support Columbia's decision to cease providing natural gas service to 2130 Oakside Road, Columbia responded: "None."[6] Furthermore, Columbia never put forth a witness who could testify that he or she tested and detected Stray Gas at or near Complainant's residence on or before May 31, 2012. Any assertion by Columbia that Complainant's natural gas

[5] Attachment RRS-2 of the Pre-Filed Direct Testimony of Smith
[6] Attachment KLD-007 of the Pre-Filed Direct Testimony of Complainant Lycourt-Donovan.

service was interrupted because Columbia detected Stray Gas within five feet of Complainant's foundation must be dismissed as hearsay. The fact of the matter is clear – Columbia interrupted natural gas service to Complainant on May 31, 2012 without any basis for doing so. Columbia interrupted Complainant's service because of a detection on the opposite side of the street as Complainant's home. Columbia interrupted Complainant's service not because of Stray Gas within five feet of Complainant's foundation, but instead because of the **potential** for a safety hazard. This is a very important point that cannot be ignored. Per the Commission's ruling in the Cameron Creek case (Case No. 08-1091-GA-CSS), Columbia has the right to interrupt service when there is a verifiable safety hazard. However, the Commission ruled that Columbia does not have the right to interrupt service due to a **potential** safety threat.[7] Columbia did NOT recommend evacuation. Columbia did not recommend elimination of ignition sources. Instead, Columbia recommended the introduction of propane and electricity (which are ignition sources) as an alternative to natural gas on Oakside Road[8]. That recommendation on its own conclusively demonstrates that Columbia itself did not perceive the Oakside Road situation to be an imminent and verifiable safety hazard. Columbia's actions show it only wished to eliminate its own involvement in the neighborhood and depart, which Columbia did by abandoning service unlawfully. Columbia, as a public utility, has the obligation to provide adequate service. They do not have the luxury of picking and choosing which customers they decide to serve or to abandon for internal policy reasons.

[7] Case 08-1091-GA-CSS: Page 20 of the Commision's Opinion and Order
[8] Page 15, Lines 1 – 4, Pre-Filed Direct Testimony of Complainant Lycourt-Donovan and also Hearing Exhibit Seneca 18, where Kozak writes on June 7, 2012 "I asked the developer if he has looked at other energy sources for these homes: Propane or electric. He said he has not; I told him he should consider."

B. The evidence is that Columbia interrupted natural gas service to Complainant, and then embarked on a testing program in the hopes of finding Stray Gas at or near Complainant's residence.

The first paragraph on Page 3 (last paragraph of Section 2.1) of Columbia's Post-Hearing Brief states "It is highly unusual for Columbia to find stray gas in soil". The first paragraph of Section 2.2, Page 3 of Columbia's Post-Hearing Brief goes on to state: "Unusually, Columbia detected gas at the foundation of each of the 13 houses on Oakside Road. To protect its customers' lives and safety, Columbia interrupted natural gas service to those homes and continued to investigate the situation."

If the detection of Stray Gas is as unusual and hazardous as Columbia claims in this proceeding, one must question why Columbia would have expressed to the Toledo Fire Department that the limit of the perimeter of Stray Gas is the foundation of only three homes (2103, 2107 and 2119 Oakside Road) if Stray Gas had actually been detected by Columbia at 13 homes.

Conversely, if Columbia actually did search for and find Stray Gas at or near Complainant's home on May 31, 2012, given Columbia's assertion of the highly unusual nature associated with presence of Stray Gas, one must then question why Columbia would elect to NOT inform the Toledo Fire Department that ten additional homes were affected. Columbia's own policy that was in place in 2012 regarding "Investigation of Gas Indication from an Unknown Source"[9] states as follows:

> *"The existence of a potentially hazardous situation shall be communicated to a public safety official (usually the local fire chief) and a letter sent to confirm the original contact."*

[9] Attachment RRS-1 of the Pre-Filed Direct Testimony of Smith

The evidence herein is quite simple. Columbia allegedly found Stray Gas at three houses (2103, 2107 and 2119 Oakside Road) and Columbia informed the Toledo Fire Department as such. Columbia did not inform the Toledo Fire Department that Columbia found Stray Gas at the other 10 homes on Oakside Road on May 31, 2012. The most logical explanation is because Columbia did not find Stray Gas at those homes – including Complainant's home – on May 31, 2012.

Columbia now wants the Commission to believe that Columbia found Stray Gas at Complainant's residence at 2130 Oakside Road on May 31, 2012, then interrupted Complainant's service, and – contrary to Columbia policy – did not bother to inform the Toledo Fire Department. The story being presented to the Commission in Columbia's Post-Hearing Brief is inconsistent with the evidence in this case: Columbia interrupted service to 2130 Oakside Road on May 31, 2012 without any basis for doing so.

C. Columbia offers misleading and incorrect descriptions of testing at Complainant's residence.

Columbia deliberately and intentionally overstates the results of Stray Gas testing at Complainant's residence. In the first paragraph on Page 1 of Columbia's Post-Hearing Brief, Columbia writes "The presence of Stray Gas in the soil at Graystone Woods was subsequently confirmed, on multiple occasions, by Columbia and by two consultants hired by the subdivision's developer, Seneca Builders, LLC". That statement is incorrect. TTL, one of the two consultants, NEVER found Stray Gas at Complainant's service address[10] during multiple days of testing.

[10] Hearing Exhibit Columbia 2, Page identified as SEN000007 and SEN000010

Hull, the second consultant, tested Complainant's residence on four different days, and on three of those days NEVER detected a positive reading at Complainant's residence. On the one day when Hull reported a single positive reading at Complainant's residence, that lone reading was 0.1% CH_4. The Hull report states that a concentration of 0.1% CH_4 is within the margin of error of its detectors when calibrating the devices; thus the single reading of 0.1% CH_4 obtained by Hull at Complainant's residence is not meaningful.

Despite Columbia's claim that testing was performed on multiple dates prior to June 14, 2012, there is no evidence that Columbia detected Stray Gas within five feet of Complainant's foundation prior to June 14, 2012. Columbia has no documentation of positive detections, and any assertions of positive detections at Complainant's residence must be dismissed as hearsay. No testimony has been offered by Columbia from any witness who directly performed or observed any positive tests at or near the foundation of Complainant's residence. On June 14, 2012, Columbia reported positive detections of Stray Gas near the foundation of Complainant's residence and recorded these alleged concentrations. Complainant was present during such testing; however, Columbia personnel refused to answer Complainant's questions, refused to allow Complainant to observe the display of the testing device, and refused to allow Complainant to photograph or take video recordings of the testing. The secretive tactics employed by Columbia during its testing raise questions as to the integrity of Columbia's alleged recorded readings. On that date of June 14, 2012, Complainant's natural gas service had been interrupted for more than two weeks; only then did Columbia conveniently have its "Eureka! We've found it!" moment and produce positive readings. Complainant wishes to highlight that Columbia's actions during the June 14, 2012 testing are contradictory to Columbia's statement on Page 7 of their Post-Hearing Brief that Columbia maintained communications with the Oakside Road

residents. When a dispute arises, a public utility such as Columbia has the obligation to communicate in good faith and provide reports to customers. Columbia deliberately made efforts to avoid communicating in good faith, and in doing so, thus violated Ohio Administrative Code 4901:1-13-10. Such a violation of the Ohio Administrative Code constitutes inadequate service.

Finally, Columbia states in the first full paragraph of Page 5 of the Post-Hearing Brief that "On June 14, June 28, and September 25, Columbia detected stray gas in potentially combustible concentrations near the foundations of each of the homes at Graystone Woods". This is not true and is a blatant attempt to mislead the Commission. Columbia's own testing of Complainant's property on September 25, 2012 shows a dozen ZERO readings at or near the foundation[11].

IV. Columbia Inappropriately Attempts to Deflect Its Service Obligations by Focusing on the Columbia-Imposed Requirement to Procure A Signed Consent Form

The second paragraph on Page 1 of Columbia's Post Hearing Brief states "No governmental entity, including the City of Toledo, has come forward to say it is safe to provide natural gas service to the homes at Graystone Woods." Columbia's statement is deliberately misleading. Columbia is the ONLY entity that alleges the presence of a hazardous condition at Graystone Woods. However, Columbia is misrepresenting the situation in an effort to make the Commission believe that governmental agencies somehow considered the situation on Oakside Road to be unsafe. There is not a shred of evidence in this matter that any governmental agency has categorized the delivery of natural gas service to homes on Oakside Road as being unsafe. The truth is that no governmental agency has made any assertion whatsoever that Oakside Road is unsafe. Not a single governmental agency or public safety authority required Oakside Road

[11] Attachment KLD-048 of Complainant Lycourt-Donovan's Pre-Filed Testimony.

residents to evacuate, de-energize ignition sources, or take action of any type regarding the alleged hazardous conditions. The Occupancy Permits issued to the existing 13 homes as of May 31, 2012 are still valid[12], and the City of Toledo continues to issue Occupancy Permits for new builds on Oakside Road[13].

A. Columbia sent Complainant on a wild goose chase by demanding consent by a governmental authority with jurisdiction over Stray Gas while knowing such an agency did not exist and no sign-off was forthcoming.

Columbia's own Post-Hearing Brief acknowledges that Columbia knew such a governmental entity did not exist and further knew that no governmental agency would execute any sort of consent, release, waiver of liability, or other certification. Nonetheless, on June 15, 2012, Columbia provided Complainant with a release form to be executed by "the governmental authority having jurisdiction over the stray gas matter"[14]. Columbia told Complainant that this release form was required for Columbia to restore natural gas service to Complainant. As such, Complainant was sent on a wild goose chase to obtain a Columbia-required consent that Columbia knew would not be procured. Columbia did not notify Complainant that consent from a governmental authority was not forthcoming until October 3, 2012, more than a month AFTER Columbia unlawfully abandoned service[15].

[12] Attachments RWH-2 and RWH-3 of the Pre-Filed Testimony of Hensley.
[13] Attachment RWH-4 of the Pre-Filed Testimony of Hensley.
[14] Attachment KLD-028 to Complainant's Pre-Filed Testimony
[15] Paragraph 3 of Columbia's October 3, 2012 Letter shown as Attachment KLD-051 of Complainant Lycourt-Donovan's Pre-Filed Testimony

B. Columbia deliberately distorts the facts at hand in its portrayal of the Columbia-imposed governmental sign-off requirements and certifications.

Columbia, in its Post-Hearing Brief on Pages 10 and 11, described its interaction with various governmental agencies during the summer of 2012, including City of Toledo Environmental Services, Ohio EPA, the Commission, Toledo Fire Department, Toledo City Council, and state legislators. On Page 11, Columbia's Post-Hearing Brief states "None of these agencies, however, claimed responsibility for helping to resolve the stray gas situation at Graystone Woods. Deputy Mayor Herwat informed Mr. Kozak that the City of Toledo would not assume responsibility or liability. And, Ohio EPA and the Toledo Fire Department each informed Columbia that the stray gas situation on Oakside Road was outside their jurisdiction."

Columbia is clearly twisting the words in its brief. There is considerable evidence that governmental agencies took the initiative and **accepted the responsibility** to help to resolve the Stray Gas situation. The City of Toledo requested intervention in Complainant's case, stating "The nature of Toledo's interest is to see the Complainant obtain natural gas for her property"[16]; the Commission granted intervention in this case. The City of Toledo held a public hearing before City Council that included Columbia, Complainant, other Oakside Road residents, and the Toledo Fire Department in June 2012. Representative Michael Ashford organized a meeting that was held on October25, 2012 that included participation by Columbia, City of Toledo personnel (including the Deputy Mayor of Toledo), members of the Toledo Home Builders Association, representatives from PUCO, Complainant, and others. All of these efforts described above were organized by governmental agencies that took the initiative and accepted the responsibility to help find a resolution to the Stray Gas situation.

[16] Paragraph 2 of Memorandum of Support contained in the Motion to Intervene on Behalf of the City of Toledo.

However, despite the efforts of the governmental agencies to achieve a resolution, the situation could not be resolved because Columbia required certification by a governmental agency. This certification was in the form of a Columbia-prepared consent document. This document was to be executed by "the governmental authority with jurisdiction over stray gas"[17]. Columbia cannot identify which governmental authority has such jurisdiction over Stray Gas. No governmental has claimed to have jurisdiction over Stray Gas. Thus, Columbia – and ONLY Columbia – created a certification requirement that was impossible to meet by requiring signed consent from an agency that does not exist.

Further, Columbia imposed additional roadblocks by requiring execution of the consent form while refusing to disclose Columbia's policies and remediation standards to the same governmental agencies from which it was seeking the signed consent. This is fully described in the testimony of Kozak[18] and further described in internal Columbia email communications by Kozak[19]. Thus Columbia refused to provide its policies and standards not only to the builder and residents of Oakside Road, but also governmental entities. Columbia's policies and standards were not obtained until Columbia was forced to produce them in Discovery.

C. Columbia deliberately misrepresents certification aspects related to consultants hired by complainant Seneca Builders, LLC.

Columbia, in its Post-Hearing Brief on Page 1, Paragraph 2, states "And Seneca Builders' own consultants would not certify that it was safe to provide natural gas service to the homes at Graystone Woods." This is pure hearsay and there is NO evidence to support such a statement. To

[17] Attachment KLD-028 of the Pre-Filed Direct Testimony of Complainant Lycourt-Donovan.
[18] Hearing Transcript Page 519, Line 10 through Page 520, Line 18.
[19] Transcript Exhibit Seneca 15.

the contrary, on August 3, 2012, Hull & Associates, Inc. recommended "contacting Columbia Gas and requesting that the gas service be resumed to residences in the Subdivision."[20] Hull made a further recommendation to restore natural gas service in their report[21] dated August 3, 2012 which reads:

> *"At this time, **we recommend turning the gas line back on for regular service** (emphasis added), so that methane monitoring can be continued with the natural gas service on. As previously discussed, monitoring methane concentrations with the natural gas service on will allow us to determine if there are any significant differences in methane concentration, compare to the methane data collected while the natural gas service was off. If there are no significant differences observed in the data collected with the natural gas service on, then one can assume that the gas line is not contributing to the methane concentrations observed, and it may be determined that the gas service can remain on for residential use."*

Further, Hull's report NEVER even recommended installation of a remediation system per Columbia's requirements. The statement in Columbia's Post-Hearing Brief that Hull "would not certify that it was safe to provide natural gas service" is hearsay, entirely inaccurate, and inconsistent with the evidence in this matter.

Columbia has repeatedly stated that Columbia is not an expert in Stray Gas. Columbia identified Hull to Seneca Builders as an appropriate expert. Hull recommended the restoration of natural gas service to Oakside Road. Columbia dismissed the recommendation of the very consultant Columbia suggested, and then, in Columbia's Post-Hearing Brief, offers an unsupported allegation that Hull "would not certify that it was safe to provide natural gas service to the homes at Graystone Woods"; there is no evidence that Hull was asked to do so.

[20] Hearing Exhibit Columbia 9, First Paragraph.
[21] Attachment KLD-041 of the Pre-Filed Direct Testimony of Complainant Lycourt-Donovan.

V. Comparison of Expert Witnesses

In this matter, Columbia wishes the Commission to accept the opinions of Columbia's expert witness while dismissing the opinions of Complainant's expert witness. Mr. John L. Weiss, expert witness for the Complainant, performed testing inside and outside Complainant's home, and has extensive familiarity with the facts at hand. In contrast, Mr. Stephen E. Erlenbach, Columbia's expert witness, never performed tests on Oakside Road, instead relied largely upon the testimony of other Columbia witnesses. The marginal level of effort put forth by Mr. Erlenbach's is apparent, as Mr. Erlenbach's Pre-Filed Direct Testimony is mislabeled from another case document (Page 2 and thereafter are identified as the Cameron Creek case before the Commission: Case No. 08-1091-GA-CSS).

A. Complainant's Expert, Mr. John L. Weiss, has the requisite training, education, and experience to provide reliable and supported opinions in this matter.

Complainant's expert witness in this matter, Mr. John L. Weiss, is an established expert and has decades of experience with methane. He is a licensed professional engineer. Mr. Weiss is certified as an underground mine foreman, and his work history includes years of testing for methane, ventilating methane, and certifying the safety of the workplace in underground coal mines that liberate massive quantities of methane. Mr. Weiss understands the properties of methane and how it behaves in various environments. Mr. Weiss has experience in the movements of methane-rich atmospheres through concrete seals as a result of changes in barometric pressure, and has testified on such matters. He has also testified in matters involving methane explosions, fatalities, and serious injuries. His background, education, training and experience regarding

methane and safety, as detailed in his Pre-Filed Direct Testimony[22], are consistent with the requirements for an expert witness. This is contrary to Columbia's Post-Hearing Brief (Page 15, first full paragraph), which asserts that Mr. Weiss is unqualified.

The Commission should be aware that Columbia apparently recognized the capabilities of Mr. Weiss and the credibility of his testimony. That is because Columbia's took steps to attempt to intimidate Mr. Weiss so that he would not testify in this case. Following the filing of Mr. Weiss' Direct Testimony, Columbia's counsel contacted Mr. Weiss' employer, the President of John T. Boyd Company, questioning if he was aware that Mr. Weiss was "moonlighting" in this matter. Clearly, if Columbia had no concerns over the qualifications of Mr. Weiss, Columbia would not have resorted to such underhanded tactics.

B. Columbia's efforts to demonstrate bias on the part of Complainant's expert witness are misplaced.

Columbia has gone to great lengths in its attempts to discredit the testimony of Mr. Weiss in this matter. Mr. Weiss provided full disclosure of his relationship with Complainant in his Pre-Filed Direct Testimony[23] – nothing was hidden from this Commission. Nonetheless, during cross-examination of Mr. Weiss, Columbia's counsel made it a point to refer to Complainant as "your girlfriend" until instructed by the court to cease. In Columbia's filings and Post-Hearing Brief, Columbia consistently refers to Mr. Weiss as Complainant's "boyfriend". Columbia's relentless effort to show bias is misplaced. Mr. Weiss testified that he tested Complainant's residence and found no methane inside the home, nor did he find Stray Gas in the soil surrounding Complainant's foundation; Mr. Weiss appropriately concluded that Complainant's residence is

[22] Questions and Answers 13 through 28; Pre-Filed Testimony of Weiss
[23] Questions and Answers 29 through 32, Pre-Filed Testimony of Weiss

safe. Quite simply, Columbia's allegation of bias implies that Mr. Weiss has compromised the truth for the benefit of Complainant. However, in a matter pertaining to safety, compromising the truth would mean Mr. Weiss is also compromising the safety and well-being of Complainant. Mr. Weiss has nothing to gain by placing Complainant is an unsafe situation. On the contrary, he and Complainant have much to lose by doing so, including loss of life, if one was to accept or believe Columbia's argument. The allegation of bias is simply absurd.

Columbia's Post-Hearing Brief (Page 15, first full paragraph) is also critical of Complainant because Mr. Weiss provided assistance to Complainant in this matter. Complainant is not represented by an attorney in this case before the Commission. Complainant did not have the benefit of a large legal department as Columbia does, and Complainant spent countless hours in her effort to resolve the situation. Being a *pro se* Complainant is an arduous process and required Complainant to educate herself regarding methane gas, the Ohio Administrative Code, the Ohio Revised Code, the Commission's complaint process, etc. Columbia is a public utility that passes its legal costs on to its customers at no cost to NiSource (Columbia's parent company) shareholders. In contrast, the *pro se* Complainant had to take time away from work, thus detracting from her income. Further, Complainant had to spend her own money on methane detectors, electric appliances, alternative energy sources, etc. Complainant has experienced a material reduction in the value of her home due to Columbia actions and inactions. The *pro se* Complainant, an individual with limited means, utilized every resource available to her in this matter, included Mr. Weiss' extensive knowledge and experience – Complainant would have been a fool to do otherwise.

C. Columbia's expert witness, Mr. Stephen E. Erlenbach, testified that he has never been involved in a Stray Gas matter prior to this case; thus, Mr. Erlenbach is not qualified as an expert witness and his opinions and conclusions should be disregarded.

The education, experience and background of Mr. Weiss must be compared to that of Mr. Stephen E. Erlenbach, Columbia's expert witness in this matter. Columbia has consistently maintained the position that Columbia is NOT an expert in Stray Gas. Incredibly, Columbia's selection of Mr. Erlenbach perpetuates this lack of expertise. During cross examination, Mr. Erlenbach admitted he has ***NEVER*** investigated an explosion caused by naturally occurring stray gas[24]. Further, when asked to compare the migration of fugitive gas escaping from a system under pressure to that of dissipated Stray Gas, Mr. Erlenbach responded:

> *"I don't have as much experience in stray gas to know how it can migrate and how fast and to what degree. So it would be hard for me to compare that to gas coming from a pipeline source."*[25]

During further cross examination, Mr. Erlanbach identified only two situations where he was called upon to analyze gas from an unknown source. He further testified that, upon investigation, neither situation was related to Stray Gas – both situations ultimately turned out to be leaks from pipelines.[26] Mr. Erlenbach's experience with Stray Gas is conclusively summarized on Page 501, Lines 22 to 25 as follows:

> *Question: So you're experience with stray gas is really limited to situations of fugitive gas from a pipeline system?*
>
> *Answer: I would say previous to this case, yes.*

[24] Hearing Transcript Page 498, Lines 16 – 19; Erlenbach Cross-Examination.
[25] Hearing Transcript Page 499, Line 20 through Page 500, Line 1; Erlenbach Cross Examination.
[26] Hearing Transcript Page 500, Line 8 through Page 501, Line 21; Erlenback Cross Examination.

In this matter before the Commission, Columbia has brought forth a witness in Mr. Erlenbach who, prior to this Oakside Road matter, admitted under oath that he has ZERO experience with Stray Gas. Mr. Erlenbach's experience and credibility pales in comparison with that of Mr. Weiss, who has spent more than three decades dealing with the detection and ventilation of methane and certifying the safety of those who work in such environments. Given Mr. Erlenbach's admission of his total lack of pertinent experience, Mr. Erlenbach's testimony, opinions, and conclusions should be considered suspect, at best, by the Commission.

VI. Safety

On Page 20 of its Post-Hearing Brief, Columbia states "The Commission should conclude, based on the weight of the evidence, that the presence of stray gas in the soil near the foundation of a customer's home is a safety hazard." Complainant wishes the Commission to give significant thought and attention to the serious contradictions associated with Columbia's desired outcome.

Columbia performs random leak tests over its own natural gas service lines. However, Columbia does NOT test for Stray Gas at or near the foundation of new service addresses prior to the initiation of service. Furthermore, Columbia does NOT perform routine or periodic testing to determine if Stray Gas is present at or near the foundation of existing service addresses[27]. **Columbia is therefore content to supply natural gas service to customers without knowing if Stray Gas is present at or near the foundations of service addresses**. Columbia's policies and practices are such that Columbia prefers to remain ignorant regarding whether Stray Gas is present at the vast majority of service addresses in Columbia's Ohio service territory. Thus, if Stray Gas is

[27] Hearing Transcript Page 395, Line 2 through Page 396, Line 9, Cross Examination of Anstead.

present, yet Columbia does not know it is present, Columbia considers it to be perfectly safe and acceptable. This is NOT a policy on safety.

Nonetheless, in this matter, Columbia wants the Commission to rule that the presence of Stray Gas, if detected in the soil near the foundation of a customer's home, is a safety hazard. If the Commission agrees with Columbia and concludes as such, then it only stands to reason that Columbia MUST also be required to perform bar-hole testing around the foundation of EVERY service address in its Ohio territory prior to service initiation and periodically thereafter. Such a rigorous testing program would be the **only** way to accurately determine if Stray Gas is present at individual service addresses.

The periodic testing would be essential per the manner in which Columbia's policies on Oakside Road were applied. There can be considerable variations in soil gas concentrations in bar-hole tests due to a variety of factors such a temperature, precipitation, barometric pressure, humidity, etc.[28] To properly illustrate an actual occurrence of this example, Columbia allegedly found positive detections of Stray Gas near the foundation of Complainant's residence on June 14 and June 28, 2012. Hull and TTL documented "zero" readings around Complainant's foundation during testing dates in June, July and August. Columbia, during its own re-investigation on September 25, 2012, also documented a dozen zero readings around Complainant's foundation without a single positive detection[29]. When Complainant contacted Columbia to request restoration of service following these zero detections, Columbia replied "in light of the June readings, Columbia cannot be certain that the gas won't return"[30].

[28] Questions and Answers 57 through 61; Pre-Filed Direct Testimony of Weiss.
[29] Attachment KLD-048 of Complainant Lycourt-Donovan's Pre-Filed Testimony.
[30] Attachment KLD-051 of the Pre-Filed Direct Testsimony of Complainant Lycourt-Donovan.

Columbia has taken unwavering position regarding their safety concerns and policies associated with Stray Gas. If the Commission accepts Columbia's position, the mandated testing of EVERY service address in Ohio is the only way to ensure Columbia remains in compliance with its policy and to ensure customer safety. While it is fully recognized that the initial testing of more than 1.4 million service addresses would be at considerable expense, Columbia, and NOT the ratepayers, should bear this full cost, as this is already Columbia policy yet they are derelict in their duties to act upon such policies.

VII. Columbia Discriminated Against Complainant

Columbia states in 3.2.2 on Page 15 of its Post-Hearing Brief that "Complainants cannot prove their discrimination claims. Complainants claim that Columbia 'was arbitrary and discriminatory' because it 'did not [also] interrupt natural gas service to service addresses on [Oakhaven] Road' when it interrupted service on Oakside Road on May 31, 2012."

Contrary to Columbia's simplistic effort in this regard, there is ample evidence and testimony proving that Columbia discriminated against Complainant. Numerous examples of discrimination are defined throughout Complainant's Pre-Filed Direct Testimony[31]. Further, there is extensive and detailed description of Columbia's discrimination against Complainant in Section V. of Complainant's Post-Hearing Brief (Pages 19 through 23). The facts that constitute discrimination are stated with particularity and are fully supported.

[31] Questions and Answers 113 through 118 of the Pre-Filed Testimony of Complainant Lycourt-Donovan.

VIII. Conclusion

The prevailing themes of Columbia's Post-Hearing Brief are that 1) Columbia had safety standards that necessitated an interruption of natural gas service to Oakside Road, 2) Columbia was cooperative and provided transparent communication to complainants, particularly regarding Columbia's policies, 3) complainants refused to accept Columbia's safety standards and Columbia's right to interrupt service, 4) complainants would not remediate the situation per Columbia's requirements so as to enable restoration of service, and 5) this case should be dismissed because complainants have not proven their homes are safe. Columbia is deliberately portraying a situation that they very badly want the Commission to believe. Columbia's assertions are baseless and are in direct contrast with the true facts of this case.

Columbia summarizes its position in Paragraph 3 on Page 1 of its Post-Hearing Brief by stating "These Complainants ask the Commission to find that Columbia provided inadequate and discriminatory service by interrupting their service and requiring them to remediate the stray gas situation as a predicate to reconnection." That is simply not true. In fact, Complainant's expert witness Mr. Weiss testified that it is reasonable and appropriate for Columbia to have the right to interrupt service[32] for safety concerns:

> *Question:* *Do you believe Columbia acted improperly by interrupting natural gas service to Oakside Road?*
>
> *Answer:* *I believe that if Columbia finds conditions that may indicate a safety concern, it is proper and appropriate for Columbia to take action, including interruption of service and investigation …*

If Columbia had a genuine concern for the safety of Columbia's Oakside Road customers, Columbia would have (1) clearly communicated the imminent and verifiable safety hazard that

[32] Question and Answer 69 of the Pre-Filed Direct Testimony of Weiss

was present to each effected customer; (2) Columbia would have informed customers that natural gas service was interrupted to avoid igniting Stray Gas, and further instructed customers that – to protect lives and property – the Oakside Road customers should eliminate other ignition sources, and (3) then Columbia should have disclosed its policies so that Columbia's Oakside Road customers could act and remediate accordingly.

Every action of Columbia was in direct contrast to what a responsible public utility should do in the face of a safety hazard. Rather than informing Oakside Road residents that there was a specific imminent and verifiable safety threat, Columbia instead taped a letter to Complainant's door on May 31, 2012 that read:

> *"As of 5/31/12, your natural gas service has been interrupted. Columbia Gas of Ohio has detected gas of an undetermined source, and your service if (is) off to ensure your safety.*
>
> *Columbia Gas is working with the Toledo Fire Department to determine a resolution and to ensure your safety. We appreciate your patience with this issue.*
>
> *Your natural gas service will be restored once this situation has been resolved. If you have any questions, please call Ron Hensley at 419-467-2562."*

Thus, Complainant was not informed of a specific and verifiable safety threat, or, for that matter, any threat. Columbia, which has communication obligations per the Ohio Administrative Code, instead stepped away from its obligations by inappropriately and unlawfully appointing Mr. Hensley (of complainant Seneca Builders, LLC) as the point of contact.

Then, Columbia informed Complainant and others that Columbia interrupted natural gas service because "the introduction of natural gas – and in turn pilot lights or other potential sources of ignition – presents a dangerous situation"[33]. Columbia stated that its natural gas could ignite the

[33] Transcript Exhibit Seneca 16.

Stray Gas, which is "the gas that's found against the home's foundation.[34]" However, Columbia did not recommend evacuation or elimination of other ignition sources because of a specific imminent and verifiable safety threat; **instead, Columbia, on multiple occasions, recommended the introduction of alternative energy sources (propane and electricity) which are no less an ignition source than Columbia's natural gas.[35]**

And then, rather than disclosing Columbia's policies and requirements regarding remediation so as to safely restore service, Columbia REFUSED to turn over its policies to Complainant, other Oakside Road residents, complainant Seneca Builders, LLC, and the very governmental authorities who sought information to help resolve the situation. When the Columbia policies were disclosed in Discovery, it then has been proven that the requirements imposed by Columbia were inconsistent with and significantly more stringent than Columbia's actual standards and policies. This supports complainants claims of discrimination.

Complainant – a *pro se* Complainant – has lived through this ordeal. Complainant has suffered because of inadequate service due to Columbia's stonewalling, its blatant misrepresentations and inconsistencies, and its callous behavior. Complainant has been damaged and has had to overcome considerable hurdles to present this case before the Commission as a *pro se* Complainant. Columbia has never made this a safety matter in the way it has dealt with (or failed to deal with) Complainant and her home. Yet, now, before the Commission, comes Columbia to attempt to defend its actions on safety grounds.

Complainant's case was filed with this Commission because Columbia denied service to Complainant in an unlawful and discriminatory manner. Complainant did not file this case to

[34] Transcript Page 535, Lines 6 – 7; Mr. Christopher Kozak testimony during cross-examination.
[35] Page 15, Lines 1 – 4, Pre-Filed Direct Testimony of Complainant Lycourt-Donovan and also Hearing Exhibit Seneca 18, where Kozak writes on June 7, 2012 "I asked the developer if he has looked at other energy sources for these homes: Propane or electric. He said he has not; I told him he should consider."

prove safety to Columbia's satisfaction, and Columbia's efforts to instruct the Commission to rule as such are inappropriate.

The facts before the Commission are simple: Columbia interrupted service, did not treat the matter as a safety issue, imposed impossible remediation consent requirements, and then unilaterally decided to abandon service without Commission approval.

This case – first and foremost – is a case that revolves around inadequate service. Columbia is a public utility that has service obligations. One of these service obligations is to provide adequate service to its customers. The proper abandonment of a natural gas pipeline, which includes defined steps culminating in Commission approval, is indeed adequate service. However, the abandonment of service by a public utility without following the requirements of the Ohio Revised Code and without Commission approval is inadequate service. That is what has taken place on Oakside Road. The unlawful abandonment of natural gas service to Oakside Road is proven by the testimony and evidence before the Commission. Columbia's abandonment of the natural gas service line on Oakside Road is not in dispute – even Columbia's own witnesses testified that the line is closed for service. Columbia took these actions unilaterally. However, Columbia skipped an essential obligation – they closed the line for service without first obtaining Commission approval to do so.

Furthermore, discrimination has been proven as described by the evidence in this case. There are many examples in the evidence and testimony in this case. Most notably, however, is that Columbia held complainants to a higher standard than other Columbia customers: specifically, Columbia required complainants to adhere to remediation standards that are above and beyond Columbia's own defined standards.

Complainant has no obligation to prove Complainant's home is safe in this matter before the Commission, and Columbia's assertion that the Commission should dismiss Complainant's claims is simply wrong. Complainant has met the burden of proof in demonstrating that Columbia violated the Ohio Administrative Code and the Ohio Revised Code, and Complainant has met the burden of proof in demonstrating that such violations constitute inadequate service.

A ruling of unlawful abandonment and inadequate service by the Commission is the only logical outcome. Otherwise, the precedent will be set for any utility, for any reason, to claim a safety hazard, abandon service, and walk away from service obligations. The customers, who would be without service, would then face a monumental battle of fighting precedent and trying to prove safety rather than demonstrating illegal abandonment.

As evidenced in the testimony and hearing of this case, Columbia unilaterally decided to interrupt and abandon service. In the months following May 2012, thru its actions and inactions, 1) Columbia violated the Ohio Administrative Code and the Ohio Revised Code, 2) provided inadequate service, 3) improperly and illegally abandoned the gas line serving Oakside Road and finally, 4) discriminated against the Complainant and other home owners of Oakside by holding them to a higher standard than other Columbia customers.

Complainant asks the Commission to rule in favor of Complainant on the above four (4) matters and further hold Columbia accountable for its conduct by assessing a significant forfeiture to prevent future violations, require Columbia to address any existing conditions on Oakside Road in order to restore natural gas service, and allow Complainant to seek damages as a result of Columbia's actions.

Respectfully submitted by

KATHERINE M. LYCOURT-DONOVAN

/s/ Katherine M. Lycourt-Donovan

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing REPLY BRIEF OF COMPLAINANT KATHERINE M. LYCOURT-DONOVAN has been filed with the Public Utilities Commission of Ohio and has been served upon the following parties via electronic mail on February 3, 2014.

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Summary: Reply Reply Brief of Katherine Lycourt-Donovan