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 *et al.*, Complainants,	)	
v.	)	Case No. 13-0124-GA-CSS
Columbia Gas of Ohio, Inc., Respondent.	)	
In the Matter of the Complaint of Ryan Roth et al., Complainants,	)	
v.	)	Case No. 13-0667-GA-CSS
Columbia Gas of Ohio, Inc., Respondent.	)	

POST-HEARING REPLY BRIEF OF RESPONDENT COLUMBIA GAS OF OHIO, INC.

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1. Introduction

In 2012, the Public Utilities Commission of Ohio ("Commission") dismissed a customer complaint against Columbia Gas of Ohio, Inc. ("Columbia") with important similarities to the present proceedings. The complainants in that case, Dr. Abdollah and Nasrin Afjeh ("the Afjehs"), filed their complaint after "Columbia interrupted their gas service due to an alleged gas leak located in [their] garage." *In re Afjeh v. Columbia Gas of Ohio, Inc.*, Case No. 10-461-GA-CSS, Opinion and Order at 1 (Mar. 14, 2012). The Afjehs argued that there was no proof of a leak because the equipment used by Columbia's leak inspector might have gotten a false-positive reading. *Id.* at 4. They argued that Columbia should have accepted Dr. Afjeh's opinion that there was no leak, because he was an engineer and had pressure-tested the line downstream from the meter. *Id.* at 3-4. They complained that Columbia said the Afjehs would need to hire a certified plumber or heating and cooling contractor to fix the leak. *Id.* at 4. They asserted that "Columbia violated its own policies because it did not conduct a pressure test of the curb-to-meter service line to determine the source of the leak." *Id.* at 5. And, they complained that Columbia had not done enough to push them to resolve the leak. *Id.* at 6.

The Commission rejected all of those arguments. The Commission found the Afjehs had offered no evidence to support their contention that Columbia might have detected something other than a natural gas leak. *Id.* at 5. The Commission found that Dr. Afjeh's pressure test was not a sufficient basis to restore service, as he was not "a DOT certified plumber who would be qualified to complete the tests and repairs." *Id.* And, the Commission held that Columbia's policy did not require Columbia to conduct a pressure test, and that it would not matter if it had because "Complainants were directed to arrange for a certified plumber to make repairs" and yet "failed to have repairs made." *Id.* at 6. In dismissing the Afjehs' claim, the Commission found the Afjehs had "failed to sustain their burden of proof," holding:

> Complainants failed to provide sufficient evidence of their claims, instead basing all of their claims on speculation and unsubstantiated factual claims. The evidence shows that Columbia believed it discovered a gas leak, disconnected gas, and advised complainants to make repairs. Instead of making those repairs, complainants chose to discontinue their gas service, either directly or through inaction. The evidence of record does not reflect that Columbia acted in a manner that was unjust or unreasonable in not restoring gas to what it believed was an unsafe situation.

Id. at 7-8.

In these combined proceedings, the Commission faces a similar set of allegations. The Complainants argue that there is no stray gas at the foundations of their homes, or that the presence of stray gas is not a safety hazard. They suggest that the stray gas Columbia detected inside one of the homes may have come from another source. (*See* Seneca Brief at 14-15.) They argue that Columbia should have pressure-tested all of the customer service lines in Graystone Woods before interrupting service. Complainant Katherine Lycourt-Donovan ("Ms. Donovan") argues that the Commission should accept the opinions offered by her boyfriend, an engineer who performed his own tests despite having no prior experience doing so. The Complainants complain that Columbia required them to hire a methane remediation expert to resolve the stray gas issue as a predicate to having their service restored. They argue that Columbia violated its stray gas policies. And, they argue that Columbia has not done enough to fix their stray gas problem for them.

And yet, the Complainants go much further than the Afjehs. The Afjehs argued that Columbia should have restored their gas service even though they did not hire a certified plumber. The Complainants, in comparison, argue that Columbia's failure to restore their gas service, even though the Complainants did not hire a methane remediation expert or obtain the necessary consent forms, constitutes an abandonment of service. The Afjehs did not contest that they had the burden of proving their allegations. The Complainants, in comparison, ask the Commission to shift the burden of proof to Columbia **after the hearing on Complainants' claims has already been held**. The Afjehs simply sought compensation for water damage from a leak in their attic after their service was interrupted. *Afjeh*, Opinion and Order at 1. The Complainants, in comparison, seek treble damages and **tens of millions** of dollars in "fines" and forfeitures as punishment for Columbia's "intolerable behavior." (Donovan Brief at 19.) And, where the Afjehs made a handful of unsubstantiated allegations, the Complainants have concocted an entire unsubstantiated conspiracy theory. Complainants contend that "Columbia desired to terminate service and permanently close the gas service line into Graystone Woods almost immediately after interrupting service on May 31, 2012" (Seneca/Roth Brief at 20); that Columbia's removal of customers from its automated billing system "was [part of] a coordinated effort * * * to separate the Graystone Woods infrastructure from Columbia's distribution system and terminate the Company's relationship with the customers on Oakside Road" (*id.* at 17); that "Columbia * * * intended that the termination of service would be lasting" (*id.*at 18); that Columbia "required all

parties to play by rules * * * that Columbia * * * mischaracterized, misrepresented, and changed mid-course" (*id.* at 37-38); and that "Columbia's illegal abandonment was a deliberate maneuver to shift the burden of proof * * * to Complainant[s]" (Donovan Brief at 16). None of these allegations, or many other similar allegations in the Complainants' post-hearing briefs, are supported by citations to the evidence presented at hearing.

The Commission has held, in *Afjeh* and other opinions, that complainants fail to sustain their burden of proof if they "bas[e] all of their claims on speculation and unsubstantiated factual claims." *Afjeh*, Opinion and Order at 7; *see also In re Buckeye Energy Brokers, Inc. v. Palmer Energy Co.*, Case No. 10-693-GE-CSS, Entry on Rehearing, at ¶40 (Feb. 23, 2012) ("The Commission must rely squarely on the evidence presented * * * and not on speculation or conj[ecture]."); *In re Chatham v. Lakeside Utilities Corp.*, Case Nos. 83-413-WS-CSS *et al.*, Opinion and Order, 1985 Ohio PUC LEXIS 1681, at *13 (Sept. 10, 1985) (finding that the complainants in those cases had "failed to meet their burden of proof" on an issue for which the only evidence they had submitted was "the complainants' unsubstantiated beliefs"). Yet, Complainants' cases are based almost entirely on speculation and unsubstantiated factual claims. Indeed, Complainants effectively admit that they have not proved their claims – they ask the Commission to shift the burden of proof to Columbia.

The evidence submitted at hearing demonstrates that Columbia responded to a very unusual situation – widespread methane in the soil throughout a new suburban development, from an unknown and still unidentified source – by disconnecting the residents' service until the residents could remediate the problem and get someone with expertise in stray gas remediation to affirm that it was safe to restore service. In doing so, Columbia acted in good faith, and out of a desire to keep the residents of Graystone Woods safe. The Complainants, however, rejected Columbia's safety concerns and refused to remediate the problem, preventing Columbia from ever restoring service. And now, the Complainants ask the Commission to punish Columbia for the Complainants' own intransigence. For the reasons provided below, the Commission should reject the Complainants' unprecedented burden-shifting requests and astronomical forfeiture demands, find that the Complainants have not met their burden of proof, and dismiss the Complainants' complaints against Columbia with prejudice.

2. Complainants' Legal Claims Lack Merit.

2.1. Columbia did not unlawfully abandon Graystone Woods.

Throughout these proceedings, the focus of the Complainants' claims has been on their allegations of inadequate service and discrimination. Neither Complainant Ms. Donovan nor Complainant Seneca Builders pled abandonment in their complaints. Seneca Builders' first complaint specifically noted that "Columbia Gas turned the gas off at the main on Bancroft and Oakside at the end of August [2012]" (Seneca Builders Complaint at 7), but did not allege that this constituted abandonment. Complainants Ryan Roth and R&P did plead that "Columbia Gas has effectively abandoned the service to 2141 Oakside Road, in violation of Ohio law" (Roth Complaint at 3), but there was no indication that they were specifically referencing Columbia's temporary disconnection of the main line serving Graystone Woods, or Ohio's utility line abandonment statutes. Their complaint cites Sections 4905.22 (regarding necessary and adequate service) and 4905.35 (prohibiting discrimination between similarly situated consumers) of the Revised Code, but does not cite Sections 4905.20 or 4905.21, Rev. Code, which relate to abandonment. Moreover, none of the complaints asked the Commission to order Columbia to file an application for abandonment, publish notice of an abandonment hearing, schedule such a hearing, or assess a forfeiture against Columbia pursuant to Section 4905.20, Rev. Code.

Now that the evidence has been presented and the hearing is completed, however, all three complainants are newly arguing abandonment as their primary claim. Complainants argue that Columbia's decision to temporarily disconnect the main line serving Graystone Woods constitutes an abandonment of natural gas service for which Columbia was required to file an application at the Commission. (*See* Donovan Brief at 14-19; Seneca/Roth Brief at 11-28.) In particular, Complainants theorize that Columbia intended from the beginning (June 2012) to abandon service to Graystone Woods (*see* Seneca/Roth Brief at 20); that Columbia denied a request by Seneca Builders' consultant Hull & Associates in August 2012 to "temporarily restore service in order to conduct further testing" because Columbia wanted to abandon the main line (*id.* at 19); that Columbia recommended that Seneca Builders consider alternative energy sources in June 2012 because Columbia wanted "to fully terminate service" (*id.* at 21); that Columbia never intended to reconnect the main line after pressure testing it in August 2012 (*see id.* at 18); that Columbia tried to convince FirstEnergy to convert Graystone Woods into an all-electric neighborhood to somehow facilitate the abandonment (*see id.* at 21); and that Columbia's

"intentional[choice] to illegally abandon the Oakside Road natural gas [main] line" was a "deliberate maneuver to shift the burden of proof away from Columbia and instead place such burden upon Complainant[s] and others" (Donovan Brief at 16, 18). Accordingly, Seneca Builders, Ryan Roth, and R&P now argue that the Commission should impose the burden of proof on Columbia to demonstrate "that the abandonment was reasonable." (Seneca/Roth Brief at 24.) The Commission should reject this request, for four reasons.

First, the Commission should not allow the Complainants to raise new grounds for complaint in their post-hearing briefs. The Commission's governing statutes contemplate that the Commission will review complaints against a public utility to determine if "reasonable grounds for complaint are stated" and, if so, set those complaints for hearing. Section 4905.26, Rev. Code. The Commission's rules, in turn, require complaints to contain "a statement which clearly explains the facts which constitute the basis of the complaint[ ] and a statement of the relief sought." Rule 4901-9-01(B), Ohio Admin. Code ("O.A.C.") None of the Complainants raised claims relating to the temporary disconnection of the main line, requested that the Commission hold an abandonment hearing, or asked that the Commission assess a forfeiture against Columbia for abandonment. Complainants' attempts to change their claims and requests for relief after the hearing violates both Section 4905.26 and Rule 4901-9-01(B) and should not be permitted. The Commission should not rule on claims that were never properly put before it. *Cf. In re OHIOTELNET.COM, INC. v. Windstream Ohio, Inc.*, Case No. 09-515-TP-CSS, Entry, at 4 (Dec. 1, 2010) (granting a motion to strike testimony regarding allegations not pled in the complaint).

Second, it would be unfair, and inappropriate, for Complainants to attempt to shift the burden of proof to Respondent **after** the presentation of evidence was completed in this matter. Complainants were notified that they had the burden of proof in this proceeding. The Attorney Examiner issued an entry in the *Lycourt-Donovan* case that stated: "As is the case in all Commission complaint proceedings, the complainants have the burden of proving the allegations of the complaints." *In re Lycourt-Donovan v. Columbia Gas of Ohio, Inc.*, Case No. 12-2877-GA-CSS, Entry, ¶8 (Nov. 2, 2012), *citing Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1996). The Commission's *Formal Complaint Procedures* brochure, which was mailed to each of the Complainants after they filed their complaints in this case, also notified the Complainants that "you as the complainant have the responsibility to prove the claims made in your

complaint, the 'burden of proof.'" (*See* Attachment 1.)[1] None of the complainants – three of which are represented by counsel – challenged that assignment of the burden of proof before or at hearing. Nor have the complainants cited any previous instances in which the Commission shifted the burden of proof after hearing. In other complaint cases, the issue of abandonment was raised up front and the burden of proof was assigned to the utility in advance of the hearing. *See, e.g., Bowman v. Columbia Gas of Ohio*, Case No. 83-1328-GA-CSS, Entry on Rehearing, ¶7, 1987 Ohio PUC LEXIS 1443, at *5 (July 16, 1987). On basic due process grounds, the Commission should reject Complainants' request to shift the burden of proof after the Complainants have already failed to meet that burden. "The burden of persuasion never leaves the party on whom it is originally cast." *Burroughs v. Ohio Dep't of Admin. Servs.*, 10th Dist. Franklin No. 12AP-522, 2013-Ohio-3261, ¶ 20, *quoting* 29 American Jurisprudence 2d, Evidence, Section 171 (2012).

Third, Columbia could not have filed an abandonment application. Section 4905.21, Rev. Code, as Ms. Donovan points out, prevents the Commission from granting an application to permanently abandon a gas line "unless the * * * public utility has operated the * * * gas line * * * for at least five years." (Donovan Brief at 17-18, *quoting and citing* Section 4905.21, Rev. Code.) The Line Extension Agreement for Graystone Woods was not executed until April 2009 (*id.* at 18), and the main line running down Oakside Road into Graystone Woods was installed towards the end of 2009 (Hearing Tr. Vol II at 313), meaning that Columbia could not have filed an abandonment application until the end of 2014 at the earliest. When Columbia temporarily disconnected the main service line to Graystone Woods in August 2012, to quote Ms. Donovan, that "service line was * * * NOT eligible for abandonment * * *." (Donovan Brief at 18.)

Fourth, and most importantly, Columbia never abandoned the main line serving Graystone Woods. The abandonment statutes, Sections 4905.20 and 4905.21, Rev. Code, do not define "abandon." The Commission's Minimum Gas Service Standards, however, define "abandoned" to mean "pipe that was not intended to be used again for supplying of gas or natural gas, including a

[1] The Attorney Examiner may take judicial notice of the Commission's *Formal Complaint Procedures* brochure. *See* Ohio Evid.R. 201(B) (a court may take judicial notice of a fact "not subject to reasonable dispute in that it is * * * capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."). If the Attorney Examiner is unwilling to take judicial notice of the Commission's *Formal Complaint Procedures* brochure, Columbia would respectfully ask that the evidentiary record be re-opened, pursuant to Rule 4901-1-34, O.A.C., so as to allow the introduction of this newly relevant evidence.

deserted pipe that is closed off to future use." Rule 4901:1-13-05(A)(3)(d), O.A.C. Per this, or any reasonable, understanding of the word "abandon," the main line serving Graystone Woods and the service lines serving Complainants' properties were not "abandoned." Columbia consistently iterated – in private communications among Columbia employees, in communications with the Graystone Woods residents, and in communications with governmental authorities – that it would restore natural gas service to the residents of Graystone Woods upon remediation of the stray gas problem:

- In Columbia's May 31, 2012 letter to the residents of Graystone Woods, Columbia said: "Your natural gas service will be restored once this situation has been resolved." (Donovan Ex. 5.)

- In a June 8, 2012 e-mail from Columbia's communications and community relations manager, Chris Kozak, to Margi Smith, the Operations Coordinator for Columbia's Toledo Operations Center, Mr. Kozak stated: "Once [the developer] gets this issue resolved, we are more than willing to get service to these homes restored." (Seneca Builders Ex. 16, at COH01769.)

- In Columbia's June 12, 2012 responses to the residents' questions regarding the interruption of service, Columbia said it would "resume gas service" if the residents installed remediation systems and obtained the necessary consent forms. (Donovan Ex. 2, Donovan Testimony, Ex. KLD-006.)

- In Columbia's June 15, 2012 letter to each resident, forwarding the results of Columbia's June 14th bar-hole testing and model consent forms for the residents to use to reestablish service, Columbia stated: "It is in our best interest to serve you, and we value you as a Columbia Gas customer, but not at the expense of your safety, the safety of your property [or] of the community. Once we have a clear indication that natural gas service is safe for your homes, we will gladly restore service." (*Id.*, Ex. KLD-026; *see also* Columbia Ex. 3.)

- On August 9, 2012, Steve Sylvester, the then-general manager/vice president for Columbia Gas of Ohio and Kentucky, e-mailed Dave Monte (his direct supervisor) that Columbia planned to "cut the main[,] test it[, and] leave it **temporar[il]y** disconnected * * *."

(Emphasis added.) (Seneca Builders Ex. 5; *see* Hearing Tr. Vol. II at 321, lines 6-17 (describing Mr. Sylvester and Mr. Monte's job titles).)

- On August 10, 2012, Curtis J. Anstead, the Toledo Operation Center Manager, sent an e-mail to Ken Murphy, Columbia's scheduling leader, stating: "We will need a job order to install a valve and **temporarily** disconnect the main at Oakside in Toledo. * * * [O]nce they complete their remediation work, we can go back out[,] retest[,] and re-establish, otherwise we will continue to leave the piping separated." (Seneca Builders Ex. 6; *see* Hearing Tr. Vol. II at 331, lines 11-14 (describing Mr. Murphy's job title and responsibilities).)

- In Columbia's August 23, 2012 letter to each resident, informing them that their accounts would be removed from Columbia's system (because Graystone Woods residents were complaining about receiving bills but not receiving service (*see* Hearing Tr. Vol. III at 558, lines 1-16)), Columbia stated: "**[T]his action in no way impacts our immediate ability to restore service once the situation has been resolved.** * * * Once the stray gas situation has been abated, and consent has been given that conditions are safe, we look forward to restoring the natural gas service to your home." (Emphasis added.) (Donovan Ex. 2, Donovan Testimony, Ex. KLD-030.)

- Columbia's October 3, 2012 letter to Ms. Donovan stated the steps that would be required (*e.g.*, "installation of a remediation system") for "[r]esumption of gas service" to her residence. (*Id.*, Ex. KLD-051.)

- Chris Kozak sent an e-mail on October 10, 2012, to the Legislative Aide for Rep. Michael Ashford that repeated the criteria "[t]o restore service * * *." (Seneca Builders Ex. 15 at COH00211.)

Columbia's witnesses said the same thing at hearing. Mr. Kozak testified that during "the entire course of this process our desire was to * * * have their natural gas service restored." (Hearing Tr. Vol. III at 555, lines 20-22.) He testified that Columbia still considered the residents of Graystone Woods its customers, even after their accounts were removed from Columbia's computer system. (*Id.* at 558, lines 17-21.) Mr. Anstead testified at hearing that Columbia continued conducting bar-hole testing around the residences in Graystone Woods into September 2012 because Columbia was "still working with the customers out there" and was prepared to "reestablish[ ] service * * * if the requirements were

met * * *." (Hearing Tr. Vol. II at 394, lines 1-3, 9-18; *see also id.* at 393, lines 11-13). He reiterated that the main line to Graystone Woods "was temporarily disconnected and pressure tested" (Hearing Tr. Vol. II at 320, lines 15-16) but "can be tied back in at any time" (*id*. at 335, line 18). He further testified that Columbia would have to go back to Graystone Woods and do at least some minimal work if it were to abandon the line serving Graystone Woods. (*Id.* at 336-337.)

Nor does the Complainants' other purported evidence support their theories. Complainants point to Chris Kozak's suggestion to Seneca Builders, on June 7, 2012, that it consider other sources of energy for the homes in Graystone Woods, as evidence that Columbia already "intended and desired to completely terminate service." (Seneca/Roth Brief at 21.) Yet, Mr. Kozak explained that he made that recommendation only because the developer had refused to accept Columbia's stray gas findings. (*See* Hearing Tr. Vol. III at 538, line 11, to 540, line 6.) In other words, Mr. Kozak made the recommendation not because Columbia wanted to stop serving the residents of Graystone Woods, but because the developer of Graystone Woods refused to acknowledge or address the stray gas problem. Over the "entire course of this process," Mr. Kozak explained, Columbia's "desire was to have [the residents] have their natural gas service restored." (*Id.* at 555, lines 20-22.)

Complainants assert that Columbia acted in "bad faith" when it denied Hull & Associates' request to restore service to Graystone Woods. (Seneca/Roth Brief at 19.) But, the evidence shows Columbia denied the request because the question Hull was trying to answer by reestablishing service – *i.e.*, whether "the gas line is * * * contributing to the methane concentrations observed" (Seneca Builders Ex. 2, Hensley Testimony, Ex. RWH-9, at SEN000058 to -059) – had already been answered. As Columbia counsel Chuck McCreery explained to Seneca Builders' counsel Doug Haynam, Columbia had already sampled and tested the stray gas, and that sampling confirmed that it was not from Columbia's facilities. (*See* Seneca Builders Ex. 5 at COH01985.) Moreover, Columbia had already conducted a "leak survey" in the neighborhood and found no leaks. (*Id.*) Reestablishing service would have served no useful purpose.

Complainants also point to Columbia's discussions about filing a formal abandonment application in September 2012, and its conversations with Commission staff about such an application. (*See* Seneca/Roth Brief at 22.) Columbia may have "desire[d]," in late September 2012, to file an abandonment

application at the Commission, once it became clear that Seneca Builders and the residents of Graystone Woods would not remediate their stray gas problem (*see id.* at 22; Hearing Tr. Vol. III, at 544-548), but for the reasons described above, Columbia was not legally able to do so.

And, although Complainants assert that "Columbia had several conversations with FirstEnergy about converting the Greystone [*sic*] community into an all-electric neighborhood" (Seneca/Roth Brief at 21 (citing Hearing Tr. Vol. III at 570-573)), their evidence does not support that contention. Seneca Builders' co-owner Ron Hensley reached out to Toledo Edison about making Graystone Woods all-electric. (Seneca Builders Ex. 2, Hensley Testimony, at 8, lines 4-5.) The conversations between Columbia and FirstEnergy that Complainants point to were all about the fact that Seneca Builders had failed to share the results of its stray gas testing with FirstEnergy. (*See* Hearing Tr. Vol. III at 570, line 14, to 573, line 3.)

Complainants insist, repeatedly, that Columbia intended to abandon the main line to Graystone Woods "almost immediately after interrupting service on May 31, 2012" (Seneca/Roth Brief at 20) and then "intended that the termination of service would be lasting" when it disconnected the main line serving that development (*see id.* at 18). Yet, Complainants offer no evidence to support their contentions. Indeed, the evidence introduced at hearing shows the exact opposite. The Commission should reject Complainants' newly developed, and entirely unsupported, abandonment arguments.

2.2. Columbia did not discriminate against Complainants.

2.2.1. Complainants' discrimination arguments regarding Columbia customers elsewhere in Ohio are improper and without merit.

Complainants assert that Columbia discriminated against them by allegedly treating them differently than it treated customers elsewhere in the state. (Donovan Brief at 22-23; Seneca/Roth Brief at 30-31.) Specifically, Ms. Donovan argues that Columbia discriminated against her compared to a customer in Avon Lake, Ohio because Columbia allegedly restored gas service to that customer "after zero readings against a foundation were found upon re-inspection," but refused to do the same after Columbia obtained zero readings against Ms. Donovan's foundation on September 25, 2012. (Donovan Brief at 22.) She also alleges that Columbia restored service to the Avon Lake customer

without first receiving signoff from the local safety official, but required Ms. Donovan to obtain a governmental consent before service would be restored. (*Id.* at 23.) Ryan Roth, R&P, and Seneca Builders similarly claim that Columbia acted discriminatorily by allegedly not investigating a potential stray gas incident in Sylvania, Ohio in a manner consistent with Columbia's investigation into the stray gas situation at Graystone Woods. (Seneca/Roth Brief at 30-31.) None of these contentions have merit.

As Columbia explained in its initial post-hearing brief, Complainants' claims regarding Columbia's customers in Avon Lake and Sylvania are not properly raised here. *See* Rule 4901-9-01(B), O.A.C. ("If discrimination is alleged, the facts that allegedly constitute discrimination must be stated with particularity.") (*See also* Columbia Brief at 15-16.) The Commission's rules prevent complainants from making broad or ill-defined claims of discrimination and then going on fishing expeditions to find random situations where they can allege other customers were treated differently. That is exactly what the Complainants are attempting to do here. Neither the Avon Lake customer discussed in Ms. Donovan's brief nor the Sylvania customer discussed in Ryan Roth, R&P, and Seneca Builders' brief were mentioned in any complaint in this proceeding. Complainants cannot now, after the fact, add these discrimination claims regarding other customers when no facts about those customers – or any customer other than those on Oakhaven Road, adjacent to Graystone Woods – were stated with particularity in their complaints. *In re OHIOTELNET.COM, INC.*, Entry, at 4.

Moreover, Complainants' new discrimination claims fail because Complainants have not established that Columbia's customers in Avon Lake and Sylvania are similarly situated to them. Section 4905.35(B)(1), Rev. Code requires "[a] natural gas company that is a public utility [to] offer its regulated services or goods to all similarly situated consumers, including persons with which it is affiliated or which it controls, under comparable terms and conditions." Except for the fact that Avon Lake, Sylvania, and Toledo are all in Northern Ohio, no common facts connect the disparate events Complainants raise in their briefs.

Ryan Roth, R&P, and Seneca Builders have not established that the customer in Sylvania, Ohio was similarly situated to any customer in Graystone Woods. (*See* Seneca/Roth Brief at 30-31.) Readings at the Sylvania customer's residence were "nonstandard" gas, not methane; they were only obtained in the area of the yard where hydroseed had been sprayed; and they were not obtained at the foundation of the residence. (Hearing Tr. Vol. II at 400, lines 14-23, and 403,

lines 15-25.) Because the readings at the Sylvania customer's address were higher near where the hydroseed had been sprayed and lower away from the hydroseed, Columbia was "pretty confident" that the fertilizer caused its readings. (*Id.* at 404, line 15, to 405, line 7.) In Graystone Woods, on the other hand, both Columbia and third-party experts detected methane gas on numerous dates at numerous locations, including at the foundation of each and every home in the subdivision (*see* Columbia Ex. 12, Anstead Testimony, at 2, line 1, to 6, line 6, and Exs. CJA-2, CJA-4, CJA-5; Hearing Tr. Vol. I at 36, line 18, to 39, line 8; Columbia Ex. 2; Seneca Builders Ex. 2, Hensley Testimony, Ex. RWH-9), and there is no evidence hydroseed was present that could have caused the readings. Moreover, the Graystone Woods customers differed from the Sylvania customer because they were already receiving natural gas service from Columbia when the stray gas situation was discovered, whereas the Sylvania customer did not yet have service when the nonstandard readings were detected. (Hearing Tr. Vol. II at 401, lines 12-14.) Thus, unlike at Graystone Woods, Columbia was not supplying natural gas to the Sylvania customer that could have contributed to or exacerbated a potential safety hazard, had one existed there. For these reasons, Mr. Roth, R&P, and Seneca Builders have not shown that the Sylvania customer was similarly situated to them, or that Columbia treated that customer differently from the Graystone Woods residents under comparable circumstances. Accordingly, this discrimination claim must fail.

Similarly, Ms. Donovan has not established that she and the customer in Avon Lake, Ohio are similarly situated. (*See* Donovan Brief at 23.) Columbia detected methane in the soil at or near the foundation of Ms. Donovan's residence through bar-hole tests on May 31, June 14, and June 28, 2012. (*See* Columbia Ex. 12, Anstead Testimony, at 4, lines 6-12, 5, line 35, to 6, line 6, Ex. CJA-4 at 8, Ex. CJA-5 at 9.) For the Avon Lake customer, it is unclear how or when "the presence of a combustible gas was indicated" (Donovan Ex. 14) or whether combustible gas was **ever** detected at or near the foundation. (Hearing Tr. Vol. II at 475, lines 2-5.) As Columbia witness Rob Smith testified, if Columbia does not detect methane in the soil **at or near** the foundation of a structure, it is not required to interrupt service to the structure and does not require a consent form from a local government official to restore service. (*Id*. at 472, lines 4-18; *see also* Columbia Ex. 13, Smith Testimony, Ex. RRS-1.) Ms. Donovan also asserts that Columbia treated her differently than it treated the Avon Lake customer because Mr. Smith "requested signoff from the local safety official more than six weeks **after** gas service was restored to the residence" there while, in Ms. Donovan's case, Columbia required a governmental consent before it would restore service. (Donovan Brief at 23.) But, Ms. Donovan did not establish that Columbia sought

signoff from the local safety official for the purpose of restoring service to the Avon Lake customer. The exhibit on which she relied at hearing states that Mr. Smith sought the signature of the "local safety official" so Columbia could "**restore the customer's property back to [its] original state**." (Emphasis added.) (Donovan Ex. 15.) Because Ms. Donovan failed to demonstrate that she and the Avon Lake customer are similarly situated or that Columbia treated them differently under comparable circumstances, Ms. Donovan's discrimination claim regarding Columbia's Avon Lake customer also must fail.

2.2.2. Ms. Donovan's other discrimination claims are baseless.

Like her claim regarding Columbia's customer in Avon Lake, Ohio, the remainder of Ms. Donovan's "discrimination" claims are without merit, and the Commission should disregard them. Ms. Donovan first argues that the Commission should find that Columbia discriminated against her because Columbia allegedly did not deny discrimination in its answer to Ms. Donovan's complaint. But Columbia **did** deny discrimination. Paragraph 5 of Columbia's Answer states: "Any allegation not expressly admitted herein is denied." (Columbia Answer to Donovan Complaint at 1.) The Commission's rules specifically permit this method of answering the allegations in a complaint. *See* Rule 4901-9-01(D) ("If [the public utility] does not intend to deny all of the allegations in the complaint, it shall either make specific denials of designated allegations or paragraphs, or generally deny all allegations except those allegations or paragraphs that it expressly admits.").

Ms. Donovan next alleges that Columbia "held [her] to a higher and significantly stricter standard than what was actually in Columbia's Gas Standard" when it told her that it could not restore her service unless she "install[ed] a permanent venting system designed to prevent accumulation around the foundation or immediate perimeter of the structure or building and direct gas away from potential ignition sources," because the 2012 version of GS 1708.080 did not specifically contain the words "around the foundation or immediate perimeter of the structure or building." (Emphasis omitted.) (Donovan Brief at 20-21.) Although Columbia denies that the addition of those words to its Gas Standard changed the meaning of the policy – a topic Columbia will discuss in greater detail below – what Ms. Donovan is alleging here is not actually discrimination. Without evidence that Columbia applied a less strict standard for reconnection of service to other "similarly situated consumers * * * under comparable terms and conditions" (Section 4905.35(B)(1), Rev. Code), Ms. Donovan has not proven or even alleged discrimination.

Finally, Ms. Donovan contends that Columbia discriminated against her because it interrupted her natural gas service, but did not interrupt service to homes on Oakhaven Road, the street adjacent to Graystone Woods, which were closer than Ms. Donovan's residence to the stray gas perimeter described in Curtis Anstead's May 31, 2012 letter to the Toledo Fire Chief. (Donovan Brief at 22.) Unlike Ms. Donovan's other discrimination allegations, this allegation is in her complaint. (*See* Donovan Complaint at 2-3.) But like her other discrimination allegations, this allegation has no evidentiary support. Columbia has explained repeatedly that it interrupted service to Ms. Donovan's home, but not the homes on Oakhaven Road, because Ms. Donovan's home had methane in the soil at or near its foundation, while the homes on Oakhaven Road did not. (Hearing Tr. Vol. II at 420, lines 17-21; Columbia Ex. 12, Anstead Testimony, at 4, lines 14-16, and 5, lines 20-26; *see also* Columbia Brief at 15-16.) Thus, the customers on Oakhaven Road, like those in Sylvania and Avon Lake described above, are not similarly situated to Complainants. Moreover, as Columbia explained in its Initial Brief, Ms. Donovan's residence was not within the perimeter described in Mr. Anstead's May 31, 2012 letter to the Toledo Fire Chief because her residence was not tested, and Columbia's investigation of the extent of the problem was not complete, until after the letter was sent. (Hearing Tr. Vol. II at 420, lines 3-21; Columbia Brief at 10.) By the end of the day on May 31, 2012, the scope of the perimeter of the stray gas issue had been determined to include all 13 homes on Oakside Road. (Hearing Tr. Vol. II at 420, lines 17-21.) For all of these reasons, the Complainants have failed to support their discrimination claims.

2.3. Columbia did not fail to follow Commission complaint-handling procedures.

Ms. Donovan also contends that Columbia's handling of the stray gas situation at Graystone Woods violated the Commission's rules regarding the handling of customer complaints, set forth in Rule 4901:1-13-10(A)-(D), O.A.C. (Donovan Brief at 4-5.) These claims are incorrect. As an initial matter, subsection (A) to Rule 4901:1-13-10, O.A.C., is merely a definitional provision, defining the term "customer/consumer complaint." It does impose any duty or prohibition upon a utility. Columbia cannot, as a matter of law, have violated this subsection of the rule. *See State ex rel. Curtin v. Indus. Comm'n*, 86 Ohio St.3d 581, 584, 715 N.E. 2d 1162 (1999) (affirming Industrial Commission ruling that an employer did not violate a definitional subsection of a rule because that subsection contained "only a definition and not a specific * * * requirement that imposed a duty").

Ms. Donovan's claim that Columbia failed, in violation of subsection (B) to the rule, "to make a good faith effort to settle the unresolved dispute [with Graystone Woods residents] within a reasonable time" (*see* Donovan Brief at 5) is also untrue. Twelve complaints were filed with the Commission regarding the stray gas issue on Oakside Road; Columbia settled all but the three complaints at issue here.[2] Moreover, Columbia met with the Graystone Woods residents, Seneca Builders, and with Ms. Donovan and Mr. Weiss on numerous occasions in an attempt to resolve this dispute. (*See, e.g.*, Seneca Builders Ex. 19; Hearing Tr. Vol. I at 226, line 11, to 228, line 5, 229, lines 9-17, and 231, lines 20-23; Columbia Ex. 12, Anstead Testimony, at 6, line 25, to 8, line 8.)

Ms. Donovan's contentions that Columbia did not provide her with a status report within three days of her complaint, in violation of Rule 4901:1-13-10(C) (*see* Donovan Brief at 5), and that Columbia did not update her at five-business-day intervals until its investigation was complete, in violation of subsection (D) to the rule (*see id.*), are also false. Importantly, Ms. Donovan has not identified a specific contact *with her* to which Columbia failed to respond within 3 business days. And, Ms. Donovan has failed to identify a particular customer complaint that Columbia was "investigating" that required five day updates. Ms. Donovan did not file a complaint with the Commission until October 30, 2012, well after the period of time about which she complains. (*See also* Hearing Tr. Vol. I at 234, lines 5-9 (Ms. Donovan testifying that she had not filed a complaint with the Commission in June 2012).) Although she did ultimately call Columbia to complain about its interruption of her natural gas service, Ms. Donovan could not recall when that call was made, and she did not dispute that she could not be certain that Columbia did not provide her with a written response within three business days. (*Id.* at 234, line 10, to 235, line 9.)

Ms. Donovan attempts to portray Columbia as having disconnected her natural gas service and simply ignoring her and other Oakside Road residents until she filed her complaint at issue here. That portrayal could not be further from the truth. From late May 2012 on, Columbia had numerous communications with Graystone Woods residents and Seneca Builders. Columbia left letters at each home on Oakside Road the same day the stray gas perimeter was determined, advising residents of the situation, and it met with several residents that day. (Columbia Ex. 12, Anstead Testimony, at 6, lines 27-35.) Columbia had telephone conversations with several residents within days

[2] Columbia has settled with the complainants in Case Nos. 12-2706-GA-CSS, 12-2971-GA-CSS, 12-2974-GA-CSS, 12-3103-GA-CSS, 12-3131-GA-CSS, 12-3232-GA-CSS, 13-0768-GA-CSS, 13-0781-GA-CSS, and 13-1318-GA-CSS. Each of those complaints has been dismissed with prejudice.

after the stray gas perimeter was determined. (Hearing Tr. Vol. III at 566, lines 6-11.) Chris Kozak, met with residents at Ms. Donovan's home on June 11, 2012. (*Id.* at 514, lines 11-15.) Mr. Kozak followed up with residents the following day, June 12, 2012, with responses to questions asked at that meeting. (Hearing Tr. Vol. I at 231, lines 22-23.) Columbia sent letters to residents three days after *that* communication, on June 15, 2012. (Columbia Ex. 12, Anstead Testimony, at 7, lines 17-26.) Mr. Kozak also offered to meet in person with residents in September 2012 (*see* Hearing Tr. Vol. III at 550, line 21, to 551, line 17); notably, however, only one resident took him up on this offer. (*Id.* at 551, lines 18-21.) Neither Ms. Donovan nor the Roths accepted that offer.

Columbia more than satisfied any and all of its obligations to communicate regularly with its customers, and it satisfied its obligations under Rule 4901:1-13-10, O.A.C. The Commission should disregard Ms. Donovan's baseless claims to the contrary.

2.4. The Commission's decision in *Cameron Creek* is inapplicable.

Next, Complainant Ms. Donovan argues that Columbia's actions violate the Commission's rulings in *Cameron Creek Apartments v. Columbia Gas of Ohio*, Case No. 08-1091-GA-CSS ("*Cameron Creek*"). (Donovan Brief at 11-14.) The remaining Complainants do not join her in this argument, and for good reason: *Cameron Creek* is facially inapplicable and is distinguishable in ways that are not helpful to Complainants.

Cameron Creek involved a disagreement between Columbia and Cameron Creek Apartments, a 240-unit apartment complex in Galloway, Ohio. When the dispute arose, the apartment complex had been occupied for approximately 10 years. *Cameron Creek*, Opinion and Order, at 3 (June 22, 2011). Columbia was generally concerned that the gas appliances took in combustion air from inside the apartments, instead of from outside as required by the company's adopted safety code, the National Fuel Gas ("NFG") Code. *Id.* at 4-5. Because of this, any carbon monoxide produced by the gas appliances would go into the apartments, rather than being vented outside. *Id.* at 17. Columbia red-tagged (*i.e.*, shut off gas service to) various gas appliances at Cameron Creek Apartments approximately 100 times over the course of 2 ½ years before the complex filed its complaint case. *Id.* at 4. Cameron Creek, however, argued that Columbia had no right to apply a safety code that differed from the local building code, particularly to appliances in an existing structure. Thus, the "overriding question" in *Cameron Creek* was:

> [I]f Columbia believes there is a potentially hazardous condition in a dwelling that was approved for occupancy in prior years, pursuant to City codes that were in effect at the time of such approval, and the construction in that dwelling has not been altered such that the City code would require that it be brought up to current code, can Columbia require that the dwelling be retrofitted in order to bring it into compliance with the current NFG Code before Columbia will connect or reconnect gas service.

Id. at 19.

The Commission rejected the complainant's challenges to Columbia's use of the National Fuel Gas Code as a safety code, and held that Columbia's "practice of referencing and enforcing * * * the most recent NFG Code is just and reasonable." *Id.* at 19. It concluded, however, that Columbia had failed to "substantiate that * * * there was an actual serious CO [carbon monoxide] hazard * * * at Cameron Creek in general." *Id.* at 20. The Commission held that the "two reports of alleged [carbon monoxide] difficulties at the Cameron Creek apartments" discussed at hearing were not connected to the manner in which the gas appliances were installed. *Id.* at 19-20. It found that "Cameron Creek effectively called to question the sufficiency of the CO tests performed by Columbia * * *." *Id.* at 20. It found that Cameron Creek had demonstrated that "there was adequate outside air infiltration for the gas appliances" and that "Cameron Creek was not tightly constructed * * *." *Id.* It held that, because Columbia had not inspected the appliances at Graystone Woods when they were installed and because there was no "actual serious CO hazard" at Cameron Creek, Columbia's efforts to apply the National Fuel Gas Code "essentially equate[d] to retroactive enforcement of standards * * *." *Id.* at 20. It found that the appliances at Cameron Creek could be kept safe through "continued and diligent maintenance and repair of the gas appliances [and] ventilation system * * *, as well as the replacement of the appliances when necessary." *Id.* at 21. It further found that Cameron Creek had "attempted to mitigate the concerns raised by Columbia by installing interconnected and hardwired combination smoke/CO detectors in each apartment." *Id.* Finally, it raised concerns that, if Columbia could require existing appliance installations to come into compliance with the National Fuel Gas Code "thousands of dwellings" might be required to spend over $1,000 per unit to "bring the[ir] ventilation system up to current code * * * ." *Id.* at 19.

Based on these findings, the Commission held that "Columbia may not disconnect or refuse reconnection of service citing potential unsubstantiated hazard conditions due to noncompliance with the [National Fuel Gas] Code."

Cameron Creek, Opinion and Order, at 23. And, on rehearing, the Commission provided the following guidance to Columbia for future, similar situations:

> [If] prescriptive compliance with the NFG Code * * * is economically or practically unreasonable, a program of maintenance and monitoring should be followed in order to ensure that the same level of safety espoused by the NFG Code is achieved. * * * Where older structures cannot demonstrate prescriptive NFG Code compliance or the existence of a specially engineered solution with an appropriate professional engineering verification, * * * Columbia [continues to have the ability to require retrofits that are necessary to ensure a reasonable margin of safety but] should balance any requirements for extensive retrofits with a rule of reason. * * * [A] reasonable safety margin can be provided by a combination of structural elements and monitoring that warns occupants of developing risks.

Cameron Creek, Entry on Rehearing, at 2-3 (Aug. 17, 2011).

On its face, then, *Cameron Creek* is inapplicable. Columbia did not interrupt service to Ms. Donovan's home based on violations of the National Fuel Gas Code. This case has nothing to do with appliance installations or any condition that is the subject of local building codes. Columbia has not asked Ms. Donovan to "retrofit" anything inside her home, "extensive" or otherwise. Nor has Ms. Donovan offered evidence that the dangers posed by carbon monoxide are similar to the dangers posed by stray gas. Accordingly, the holding of *Cameron Creek* cannot be applied to Graystone Woods.

Cameron Creek is also distinguishable in several additional ways. First, Columbia did not retroactively impose a new standard at Graystone Woods to an existing problem, as Ms. Donovan suggests. (*See* Donovan Brief at 12-13.) In *Cameron Creek*, the appliances had been installed the same way since construction. *See*, *e.g.*, *Cameron Creek*, Opinion and Order, at 19-20. Here, there is no evidence that the stray gas problem detected at Graystone Woods was present at Ms. Donovan's residence when she moved in in July 2011. (*See* Donovan Ex. 2, Donovan Testimony, at 2, lines 5-6.) Although Columbia did not specifically test for stray gas in multiple locations around the perimeter of the homes in Graystone Woods when service was established, it does perform bar hole testing "over in the vicinity of the curb box, over the service line, and near the foundation of the meter set or the entrance of the service line into the building" when it establishes or re-establishes service to a customer's property. (Hearing Tr. Vol. II at 395, lines 21-24.) There is no evidence that Columbia detected stray

gas at the Complainants' properties when it established service at Graystone Woods. Nor is there any evidence that it would have detected stray gas at or near the foundations of Complainants' properties when it first established service if it had performed more bar-hole tests around the foundations of those homes. The source of the stray gas detected at Graystone Woods, and the length of time it has been present in the soil there, are unknown.

Second, in *Cameron Creek*, the Commission found that "Columbia is threatening to disconnect service due to the potential for a hazardous situation that is not documented on the record and is not verified." *Cameron Creek*, Opinion and Order, at 20. Unlike the carbon monoxide readings at issue in *Cameron Creek*, the presence of natural gas in the soil at the foundations of the homes at Graystone Woods is both documented on the record (*see* Columbia Ex. 12, Anstead Testimony, at Exs. 3-6) and verified by both Columbia and Complainant Seneca Builders' consultant Hull & Associates (*see* Columbia Ex. 9). The dangers posed by natural gas in the soil at the foundation of a residence are also verified, both by Mr. Erlenbach and numerous industry publications. (*See* Columbia Ex. 14, Erlenbach Testimony, at 3-4, 6.) Even Mr. Weiss – and Ms. Donovan – acknowledged that methane underground can infiltrate a home and explode, under the right circumstances. (*See* Hearing Tr. Vol. I at 177, line 10, to 178, line 16 (Mr. Weiss, acknowledging that methane in the soil can infiltrate a building with cracks in its foundation, accumulate in an enclosed space, and explode if exposed to an ignition source); Donovan Brief at 12 (agreeing that it "is true" that "'[u]nder the right conditions, methane in the soil near the foundation of a home may migrate inside and explode'").)

Third, Cameron Creek Apartments "attempted to mitigate the concerns raised by Columbia by installing interconnected and hardwired combination smoke/[carbon monoxide] detectors in each apartment." *Cameron Creek*, Opinion and Order at 21. Ms. Donovan, on the other hand, has not taken any steps to mitigate Columbia's concerns. She did not install methane detectors or attempt to install any remediation devices. (*See* Donovan Ex. 2, Donovan Testimony at 28, 41.) Indeed, Bruce Roth testified that the homeowners at Graystone Woods were "dropping lit matches in the areas with the highest readings found" and holding "neighborhood bonfires[.]" (Roth Ex. 2, Roth Testimony, at 9, lines 16-17.) For all of these reasons, the *Cameron Creek* complaint case and the Graystone Woods complaint cases are simply not comparable. The Commission's decision in *Cameron Creek* provides no reason to grant Ms. Donovan's requested relief here.

2.5. Columbia did not provide inadequate service to Complainants.

Complainants also assert that Columbia failed to meet its obligation to "furnish necessary and adequate service and facilities" that are "in all respects just and reasonable." Section 4905.22, Rev. Code. As noted (and rebutted) above, Complainants newly argue that Columbia unlawfully abandoned Graystone Woods, which they assert also constitutes inadequate service. (*See* Seneca/Roth Brief at 26-30.) Complainants also generally argue that Columbia provided inadequate service by (1) falsely claiming that it was interrupting natural gas service on safety grounds (*see* Donovan Brief at 6-7) or (2) misrepresenting its requirements for reinstating natural gas service to Graystone Woods (*see* Seneca/Roth Brief at 32-38). Neither of these arguments is supported by the law or the evidence.

2.5.1. Ms. Donovan has not demonstrated that Columbia did not act out of a valid concern for her safety.

Ms. Donovan's claims of inadequate service are generally based on her theory that there is no safety hazard at her home. Ms. Donovan alleges that her expert witness and the City of Toledo have found her home to be safe, and that Columbia's actions demonstrate that it believed her home to be safe as well. None of these assertions is supported by the record.

Ms. Donovan first argues that Columbia did not really detect natural gas in the soil at her residence on May 31, 2012, because the letter left on her door that day did not "state that gas from an undetermined source had been found at or within 50 feet of the foundation of [her] residence" (Donovan Brief at 8 (*citing* Hearing Tr. Vol. II at 282, line 22, to 283, line 1)) and because Columbia's May 31, 2012 letter to the Chief of the Toledo Fire Department suggested that the perimeter of the stray gas problem was against the foundation of the homes across the street from her house (*id*. (*citing* Donovan Ex. 13)).[3] These arguments are based on speculative inferences from documents Ms. Donovan did not draft.

[3] Ms. Donovan's pre-filed testimony makes the similar argument that a report from the Ohio EPA dated May 31, 2012, "shows test results from various residences, but no evidence of testing performed at my residence, 2130 Oakside Road, on or before May 31, 2012." (Donovan Ex. 2, Donovan Testimony, at 10, lines 15-18.) The "Ohio EPA report" she cites, which is attached to her testimony at KLD-008 through -010, is unauthenticated, and Ms. Donovan offered no testimony from Ohio EPA to support or explain it. (*See generally* Hearing Tr. Vol. I at 195-197, 201-202.) Columbia would note, however, that although the "Ohio EPA report" does not include any readings for address 2130, it does include two sets of different readings for "2120" – one of them listed between "2124" and "2140" – which suggests that the reading next to the second "2120" may be the missing reading for Ms. Donovan's address. (*See* Donovan Ex. 2, Donovan Testimony, Ex. KLD-008 through -009.)

Ms. Donovan does not know where Columbia detected natural gas on May 31, 2012, because she "was not anywhere near Oakside Road on the 31st." (Hearing Tr. Vol. II at 293, lines 9-10.) There is contemporaneous evidence, however, in the form of an e-mail from Curtis J. Anstead to Steve Sylvester, that Columbia detected gas readings at the foundations of all 13 homes in Graystone Woods that day. (*See* Seneca Builders Ex. 8.) Moreover, as explained above, Mr. Anstead's letter to the Toledo Fire Chief does not mention Ms. Donovan's address because Columbia had not yet investigated her address when he wrote the letter. (*See* Hearing Tr. Vol. II at 419, line 6, to 420, line 21.)

Ms. Donovan next argues that "there is no evidence that any other agency or entity considered (or currently considers) the alleged presence of Stray Gas to be a hazardous condition at any time following Columbia's interruption of service ** *." (Donovan Brief at 10.) However, there **is** evidence that no governmental agency or private entity was willing to offer an opinion that Graystone Woods was safe. Deputy Mayor Herwat informed Mr. Kozak that the City of Toledo would not assume responsibility or liability. (*See* Seneca Builders Ex. 14.) Ohio EPA and the Toledo Fire Department each informed Columbia that the stray gas situation on Oakside Road was outside their jurisdiction. (Columbia Ex. 12, Anstead Testimony, at 9, lines 28-32.) Seneca Builders' consultant Hull & Associates refused to offer an opinion on safety out of concern for its potential legal liability. (*See* Hearing Tr. Vol. I at 67, lines 16-17.) And, Ms. Donovan was unable to find anybody except Mr. Weiss to testify that her home was safe.

Ms. Donovan argues that the City of Toledo's issuance of occupancy permits for the homes at Graystone Woods, both before and after May 31, 2012, "conclusively demonstrates that the City of Toledo has continuously regarded all homes on Oakside Road as safe for occupancy, without limitation." (Donovan Brief at 10.) Yet, the permits say no such thing. The letter from the City of Toledo's Department of Inspection, accompanying the occupancy permits attached to Mr. Hensley's filed testimony, indicates that the issuance of a certificate of occupancy means only that "the structure to be built meets the City of Toledo's building and mechanical codes, and by referenced authority, those of the State of Ohio." (Seneca Builders Ex. 2, Hensley Testimony, Attachment RWH-2.) There is no evidence that the occupancy permits took into account the presence of stray gas at the foundations of the homes in Graystone Woods or otherwise affirmed the ongoing safety of those home.

Next, Ms. Donovan points to the testimony of her "expert witness," John Weiss, that there is no safety hazard at her address. Ms. Donovan argues that Mr.

Weiss's tests "did not find detectable concentrations of methane" in or around her home and that Mr. Weiss testified that her home is safe. (Donovan Brief at 10.) Yet, Mr. Weiss's lack of qualifications and admitted personal bias provide the Commission no reason to credit his opinions. Mr. Weiss acknowledged that he had never before used the testing equipment with which he conducted his tests for Ms. Donovan. (Hearing Tr. Vol. I at 144, lines 20-22.) He admits he has no personal experience with methane remediation in a residential context and is not a soil expert. (*Id.* at 148, lines 17-23.) Much of his pre-filed testimony is dedicated to explaining a method of detecting methane, "bar-hole testing," that he had never performed before Ms. Donovan's dispute with Columbia. (*See id.* at 143, line 3, to 144, line 5.) His opinion that the likelihood of stray gas migrating into Ms. Donovan's home is "infinitesimal" is provided with no explanation or support. (Donovan Ex. 1, Weiss Testimony, at ¶ 64.) And, he has consistently and publicly worked to advance Ms. Donovan's claims against Columbia. Mr. Weiss participated in settlement talks between Seneca Builders' then-counsel and Columbia in September 2012 (Hearing Tr. Vol. I at 151, lines 16-21); "helped provide much of the research and argument for [Ms. Donovan's] formal complaint" (Columbia Ex. 11); helped prepare her discovery requests (Hearing Tr. Vol. I at 157, lines 2-5); attended the Commission's settlement conference for her complaint case in November 2012 (*id.* at 154, lines 3-7); participated in two other settlement conferences between Columbia and Ms. Donovan in January and April 2013 (*id.*, lines 8-15); and helped her develop her filed testimony in this matter (*id.*, lines 21-23). Mr. Weiss is more a co-litigant than an expert, and his "expert" testimony on the safety of her home should be dismissed as such.

Finally, Ms. Donovan argues that Mr. Kozak's purported recommendation that the residents and developer of Graystone Woods "procur[e] alternative forms of energy" demonstrates that Columbia was "only concerned for its own liability." (Donovan Brief at 7.) Yet, Ms. Donovan does not explain why Columbia's concern for its legal liability if it continued to provide gas service to the residents of Graystone Woods would not, necessarily, also demonstrate its belief that continuing to provide such service to those residents would be unsafe. Moreover, the Supreme Court of Ohio has rejected speculative arguments like Ms. Donovan's. In *In re Complaint of Smith v. Ohio Edison Co.*, 137 Ohio St.3d 7, 2013-Ohio-4070, the Court considered an appeal of a complaint case from the Commission. In that case, the complainant, C. Richard Smith, "alleged that Ohio Edison had unlawfully removed the electric meter from Smith's property and disconnected his electric service." *Smith*, 2013-Ohio-4070, ¶ 1. Among other challenges, Mr. Smith challenged the Commission's finding that Ohio Edison disconnected his meter for safety reasons. *See id.* at ¶ 38. In particular, Mr. Smith

argued that Ohio Edison could not have been motivated by safety concerns because it waited four months to disconnect service. *See id.* at ¶ 41. The Court rejected this argument, holding: "Ohio Edison's failure to disconnect service before January 2009 does not prove that it did not disconnect service for safety reasons. Indeed, the argument itself is logically flawed: the absence of one thing (prompt disconnection) does not, by itself, prove the absence of another (lack of a safety issue)." *Id.* at ¶ 42. For the same reason, Ms. Donovan's argument must fail. Even if her interpretation of Mr. Kozak's recommendation were valid – and she offers no evidence to support it – it would not prove her contention that it was safe to provide natural gas service to her home.

For all of these reasons, the Commission should deny Ms. Donovan's inadequate service claim.

2.5.2. Seneca Builders, Ryan Roth, and R&P have not demonstrated that Columbia misrepresented its requirements for re-establishing service.

Seneca Builders, Ryan Roth, and R&P generally argue that "Columbia's inability to consistently present its [internal Gas Standard on stray gas] is a form of inadequate service because it is a major obstacle to the restoration of service." (Seneca/Roth Brief at 38.) Like Ms. Donovan's claims, however, those claims are not supported by the evidence.

First, Seneca Builders and the Roths argue that Columbia has communicated the requirements of Gas Standard 1708.080 differently "to various parties." (Seneca/Roth Brief at 32.) As evidence, they note that four different descriptions of Columbia's requirements for reconnecting natural gas service – one in Curtis J. Anstead's pre-filed testimony, two others in Rob Smith's pre-filed testimony, and a final description in an October 2012 e-mail from Chris Kozak to a state Representative's aide – did not use identical language. (Seneca/Roth Brief at 32-33.) Complainants further assert that "Columbia's inability to consistently present its Standard" was "a major obstacle to the restoration of service." (*Id.* at 38.) Complainants do not explain, however, how the four descriptions they quote are meaningfully different. Nor do they explain how any differences in the descriptions in Columbia's pre-filed testimony in these proceedings, or in an e-mail to a state legislator's office, affected or could have affected them. Complainants simply offer no evidence that Columbia's explanation of its requirements for restoring service meaningfully varied, or that the purported variation prevented them from restoring their natural gas service.

Second, Seneca Builders and the Roths argue that Columbia misrepresented the requirements of Gas Standard 1708.080 from June through December 2012 and then "revised its policy to bring it in line with the policy requirements it had been broadcasting to everyone." (Seneca/Roth Brief at 34.) Seneca Builders and the Roths note that the following bolded language was added to Gas Standard 1708.080 at the beginning of 2013:

> 5. RESOLUTION OF POTENTIALLY HAZARDOUS STRAY GAS SITUATIONS
>
> If gas sample result(s) indicate that the gas is not pipeline gas, or if the gas sample results are non-conclusive and a thorough investigation has determined that the source of the gas is from an unknown foreign source (or stray gas), a permanent venting system designed to prevent accumulation **around the foundation or immediate perimeter of the structure or building**, and direct gas away from potential ignition sources is an acceptable resolution.

(*Compare* Columbia Ex. 13, Smith Testimony, Ex. RRS-1, *with id.*, Ex. RRS-5.) At hearing, Columbia witness Mr. Smith acknowledged that Section 5 of the 2012 Gas Standard "doesn't talk about preventing accumulation **around a foundation**." (Hearing Tr. Vol. II at 461, line 22, to 462, line 7 (emphasis added)). Mr. Smith also acknowledged that the 2012 Gas Standard does not say, "a zero reading must be held[.]" (*Id.* at 462, lines 8-16.) Seneca Builders and the Roths thus argue that Gas Standard 1708.080 does not really require the installation of "[a] remediation system that would lower and maintain the concentration of methane around the foundation of a house at zero * * *." (Seneca/Roth Brief at 32 (quoting Columbia Ex. 12, Anstead Testimony, at 7, lines 31-33).)

Complainants offer no evidence, however, to support their speculation that Columbia was somehow trying to cover its tracks when it revised Section 5 of the Gas Standard in late 2012. (*See* Seneca/Roth Brief at 34.) They offer no evidence to counter Mr. Smith's testimony that, during his time as an Operations Compliance Manager for NiSource (*i.e.*, since October 2010), Columbia has consistently interpreted Gas Standard 1708.080 as requiring the elimination of methane around the foundation of a structure at which stray gas has previously been detected. (*See* Hearing Tr. Vol. II at 469, lines 14-19; Columbia Ex. 13, Smith Testimony, at 3, lines 1-2.) They do not explain how the addition of the words "around the foundation or immediate perimeter of the structure or building" did anything other than "clarify[ ]" the meaning of the language in the prior version

of the Gas Standard, as Mr. Smith testified. (*Id.* at 467, lines 12-25.) They do not explain why "prevent accumulation" means something different from "a zero reading must be held." They ignore the language Mr. Smith pointed to in Section 2 of the Gas Standard ("Hazardous Conditions"), which says (and said in 2012): "If the efforts to **eliminate** the gas against or within the structure are unsuccessful * * * and if the structure is served by gas, service will be terminated." (Columbia Ex. 13, Smith Testimony, Exs. RRS-1 and RRS-5, § 2 (emphasis added); *see also* Hearing Tr. Vol. II at 469, lines 5-13.) And they do not attempt to explain why Columbia would have wanted to misrepresent its policies to the residents of Graystone Woods or local government officials. In short, Complainants offer no evidence – nor even a plausible theory – to explain their contention.

Third, Seneca Builders and the Roths argue that Columbia misapplied its policy to the radon mitigation system that Seneca Builders installed at 2107 Oakside Road. (*See* Seneca/Roth Brief at 35.) Complainants initially argue that the requirement that the radon mitigation system eliminate gas around the foundation was not in the 2012 version of Columbia's policy. (*See* Seneca/Roth Brief at 36.) As noted directly above, Complainants are mistaken. Complainants next argue that a radon mitigation system should have been acceptable as it would, "[b]y design, * * * prevent the accumulation of gas and direct gas away from the ignition sources in the house." (*Id.* at 35.) Yet, Complainants cite no evidence of any kind to support that contention. One of the owners of Seneca Builders, Ron Hensley, offered his "understanding of how this type of system work[s]" (Seneca Builders Ex. 2, Hensley Testimony, at 7, line 16), but Mr. Hensley admitted at hearing that he is not an expert in radon mitigation systems and has never actually installed one (*see* Hearing Tr. Vol. I at 52, lines 18-22). And, Complainants suggest that Columbia went beyond its Gas Standard by "demand[ing] a final review and judgment on the remediation efforts which have been implemented." (Seneca/Roth Brief at 36.) Yet, Columbia simply checked to see if the radon mitigation system met Columbia's basic requirements. (*See id*. at 35.) It did not, as Ron Hensley admitted in his pre-filed testimony; it only "decreased" the readings around the foundation of 2107 Oakside Road. (Seneca Builders Ex. 2, Hensley Testimony, at 7, lines 10-15.) Mr. Hensley admitted, moreover, that he did not obtain a consent form from an expert in methane remediation, which Columbia had stated it would allow for the reestablishment of natural gas service. (*See id.* at 7, line 21, to 8, line 2; *see also id.*, Ex. RWH-13, at SEN000200.) Thus, Columbia properly applied its Gas Standard to the radon mitigation system that Seneca Builders installed at 2107 Oakside Road.

Fourth, Seneca Builders and the Roths argue that Columbia's unwillingness to share its proprietary Gas Standards with the residents of Graystone Woods, the developer, or local governmental officials made it impossible for the residents to obtain signed consent forms from local governmental authorities. According to Complainants, "Columbia has consistently required the signing of a waiver by a governmental authority" (Seneca/Roth Brief at 36), but "local governmental authorities were unwilling to accept [such a major shifting of responsibility] without first reviewing the Gas Standard" (*id.* at 37). Complainants further suggest that local governmental authorities will naturally be unwilling to accept responsibility for stray gas situations. (*See id.*) As with the Complainants' other complaints, however, this is completely unsupported by the evidence. Ms. Donovan introduced evidence showing that local governmental authorities in other cities in Ohio have authorized the restoration of natural gas service in several other stray gas situations. (*See* Donovan Ex. 2, Donovan Testimony, at Exs. KLD-062 through -069.) Complainants presented no evidence demonstrating why the local governmental authorities in Toledo declined jurisdiction over the stray gas issue at Graystone Woods, must less evidence demonstrating that their inability to read Columbia's Gas Standard was the reason. Besides, Columbia did not "consistently require[ ] the signing of a waiver by a governmental authority." (*Id.* at 36.) That policy was informally amended in 2012 to allow a consent form from a certified expert instead. (*See* Seneca Builders Ex. 2, Hensley Testimony, Ex. RWH-13, at SEN000200.) Gas Standard 1708.080 was then formally amended in 2013 "to state that a signed consent form from an accredited engineering expert in the remediation of methane would be an acceptable alternative to a written order from a public official with authority over public safety." (Columbia Ex. 13, Smith Testimony, at 11, lines 6-9.) This change was made specifically for situations, like Graystone Woods, in which "no one with authority over public safety claims jurisdiction over stray gas issues." (*Id.*, lines 19-21.) Yet, even still, Seneca Builders was unable to obtain a signed consent form. (*See* Seneca Builders Ex. 2, Hensley Testimony, at 7-8; *id.,* Ex. RWH-13, at SEN000200.)

Fifth, Seneca Builders and the Roths argue that Columbia "refused to share the very rules which Columbia was requiring all parties to conform with," and that Columbia's refusal to "present [its requirements] in writing" made compliance more difficult. (Seneca/Roth Brief at 37-38.) But, yet again, the record demonstrates this complaint is meritless. Although Columbia did not provide copies of its Gas Standards to the Complainants, it did detail its requirements in writing on several occasions. (*See* Columbia Brief at 8-10.) To make it easier on the residents of Graystone Woods, Columbia even gave them model consent

forms. (*See*, *e.g.*, Donovan Ex. 2, Donovan Testimony, at Exs. KLD-026 through -029.) Despite Columbia's repeated communications with the residents and Seneca Builders regarding Columbia's requirements for reestablishing service, the Complainants failed to meet those requirements – and neither the Roths nor Ms. Donovan made any real effort to comply. For all of these reasons, Seneca Builders and the Roths have failed to demonstrate that Columbia's treatment of its Gas Standard constituted inadequate service.

3. The Facts Do Not Justify, And The Law Does Not Authorize, Complainants' Requested Relief.

Finally, after asserting several new claims that were not in their complaints and are not supported by the evidence, Complainants demand several items of relief that were not in their complaints and are not supported by the evidence or the law. Indeed, Complainants demand that the Commission levy fines and penalties against Columbia that would far outstrip the relief provided in any prior complaint case.

First, the Complainants ask that they be allowed to seek treble damages in court, pursuant to Section 4905.61, Rev. Code. (*See* Seneca/Roth Brief at 44-45.) Although this relief was requested in the Complainants' complaints, the Commission should decline to authorize it. The Complainants have failed to meet their burden to produce evidence proving their clams of inadequate service, discrimination, or abandonment. Accordingly, Complainants have not demonstrated that Columbia did "any act or thing prohibited by Chapters 4901., 4903., 4905., 4907., 4909., 4921., 4923., and 4927. of the Revised Code, or declared to be unlawful, or omit[ted] to do any act or thing required by the provisions of those chapters, or by order of the public utilities commission * * *." Section 4905.61, Rev. Code. Absent such a demonstration, treble damages are unavailable.

Second, the Complainants demand that the Commission "assess a significant forfeiture of at least **$20,213,000.00** against Columbia Gas of Ohio in order to prevent future violations." (Seneca/Roth Brief at 48 (emphasis added).) In particular, the Complainants argue that the Commission should assess a forfeiture of $13,000 ($1,000 for each customer abandoned) under Section 4905.20 (*id.* at 44); $15.15 million ($10,000/day times 505 days) for abandoning service under Sections 4905.20 and 4905.54 (*id.*); another $15.15 million for providing inadequate service under Sections 4905.22 and 4905.54 (*id.*); and an additional, unspecified amount for engaging in discriminatory behavior (*id.*). This is, to put

it plainly, absurd. Even if the Commission were to conclude that Columbia's "safety concerns [were] based on * * * an overzealous and confusing misapplication of a policy based on distribution system leaks," as Complainants assert (*see id.* at 14), there is no evidence demonstrating that Columbia interrupted the Complainants' service in bad faith. Absent a showing of bad faith, there is no justification for a multi-million-dollar forfeiture.

Such a forfeiture would also be beyond the Commission's authority in a complaint case proceeding. The Commission may not impose a forfeiture on Columbia without going through the process outlined in Chapter 4901:1-34, O.A.C. *See* Rule 4901:1-34-02(B)(4), O.A.C. ("This chapter * * * governs proceedings of the commission to * * * Assess forfeitures."). The forfeiture process requires a "staff notice of probable noncompliance" (Rule 4901:1-34-03(A), O.A.C.) and typically includes a written report of investigation (Rule 4901:1-34-06(C), O.A.C.) and an evidentiary hearing (Rule 4901:1-34-06(D), O.A.C.). As there has been no staff notice of probable noncompliance or written report of investigation, the Commission may not assess a forfeiture against Columbia.

Third, Complainants ask the Commission to revise Columbia's Gas Standards so as to require Columbia to copy customers affected by a stray gas situation on any letter sent to a public safety official and attach applicable Gas Standards to those letters. (Seneca/Roth Brief at 45.) This relief was not requested in any of the Complainants' complaints and, as such, is not properly raised for the first time in post-hearing briefs, after the evidentiary record has been closed. *See* Rule 4901-9-01(B), O.A.C. ("All complaints filed under section 4905.26 of the Revised Code * * * shall contain * * * a statement of the relief sought."). Regardless, Complainants have not demonstrated that either of these steps is merited. When Columbia interrupted service to the residences in Graystone Woods, it sent a letter to the Toledo Fire Chief (Donovan Ex. 13) and posted a separate letter for the residents (*see* Donovan Ex. 5). Complainants do not explain why these letters should be combined in the future. Nor do Complainants explain why it is necessary to share copies of Columbia's Gas Standards with local safety officials or customers. Columbia's Gas Standards are proprietary to Columbia. (*See* Hearing Tr. Vol. III at 520, lines 6-10.) They are also highly technical (*see*, *e.g.*, Columbia Ex. 13, Smith Testimony, Attachments RRS-2 and -4), so they would likely be confusing to laypersons. It would be better for both Columbia and its customers if Columbia explains the requirements of its Gas Standards in lay terms, as it did, for example, in its June 15, 2012 letter to the Graystone Woods residents. (*See* Columbia Ex. 3.)

Fourth, Complainants assert that the Commission should make Columbia responsible for resolving the stray gas problem at Graystone Woods. Complainants assert that Columbia should pay the cost of any further environmental investigation or remedial measures, and the Commission should "design and present an RFP for an objective third party" if any additional investigation is necessary. (Seneca/Roth Brief at 47.) Again, this is a new request for relief that should not be entertained. Complainants fail to explain, moreover, how such relief would be within the Commission's authority. Complainants note that "[t]he Commission may order 'repairs, improvements, or additions to the plant or equipment of any public utility'" under Section 4905.38, Revised Code. (*Id.*) Yet, Complainants are not requesting repairs, improvements, or additions to Columbia's plant or equipment. They are asking that Columbia be made financially responsible for investigating and remediating a stray gas problem that it did not cause. Nothing in the Ohio Revised Code, Ohio Administrative Code, or Columbia's tariff would authorize the award of such relief.

Fifth, Complainants request that the Commission order Columbia to maintain listings of stray gas remediation firms and effective permanent venting systems and provide those listings to local authorities and customers. (*Id.* at 46.) Yet again, this relief was not requested in any Complainant's complaint and is not properly before the Commission now. Nor is Columbia qualified to provide such information to its customers. As Mr. Smith testified, Columbia does not provide recommendations or advice on the remediation systems that customers should install because Columbia's employees "are not methane remediation experts." (Columbia Ex. 13, Smith Testimony, at 10, lines 18-20.) Columbia's stray gas policy (Gas Standard 1708.080) elaborates on this point:

> Employees should be as helpful as possible to other agencies, but should keep in mind that the Company expertise is limited to the detection of leakage from the Company distribution system and its subsequent repair. The Company assumes no responsibility for abandoned gas wells, subsurface mines or for detecting origins of fermentation gas. If the city or other responsible agency needs professional assistance, they should be directed to the appropriate state agency.

(*Id.*, Ex. RSS-1, at 2.) Given Columbia's lack of legal responsibility for stray gas and its lack of expertise at methane remediation, there is no reason to task Columbia with advising its customers on these issues.

Finally, and in the alternative, Complainants argue that the Commission should order Columbia to restore their natural gas service if the Complainants

install radon-type mitigation systems and combustible gas indicators. (Seneca/Roth Brief at 47.) Complainants suggest that such systems would comply with the 2012 version of Gas Standard 1708.080 and would "ensure [the] safe use of natural gas-fired appliances." (*Id.*) But, as with so much of the rest of their case, Complainants fail to cite any evidence to support this recommendation. Complainants did not present any expert testimony on radon-type mitigation systems. Complainants did not offer any engineering assessments to demonstrate that such systems would be effective for the homes at Graystone Woods. (*See* Hearing Tr. Vol. III at 490, lines 14-22 (Columbia employee Joe Ferry, testifying that he would need to conduct a "complete engineering assessment" to determine whether radon mitigation systems might work at Graystone Woods). As the Attorney Examiner's questioning suggested at hearing, the Complainants did not even demonstrate that radon and methane gas have the same chemical fingerprints or are made of the same compounds. (Hearing Tr. Vol. III at 507, lines 10-20.) Absent any cite to record evidence to demonstrate that radon-type mitigation systems and combustible gas indicators would effectively remediate the stray gas problem at Graystone Wood, Complainants have failed to justify this alternative request for relief.

4. Conclusion

For all of the reasons provided above, Columbia respectfully requests that the Commission dismiss Ryan Roth and R&P Investments, Inc.'s claims for lack of standing; reject the Complainants' untimely and improper request to shift the burden of proof to Columbia; dismiss all of the Complainants' claims for failure to meet their burden of proof; and deny Complainants' request for treble damages, astronomical forfeitures, and other relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Post-Hearing Reply Brief of Respondent Columbia Gas of Ohio, Inc. was served this 3rd day of February, 2014, by electronic mail upon the following parties and counsel for parties:

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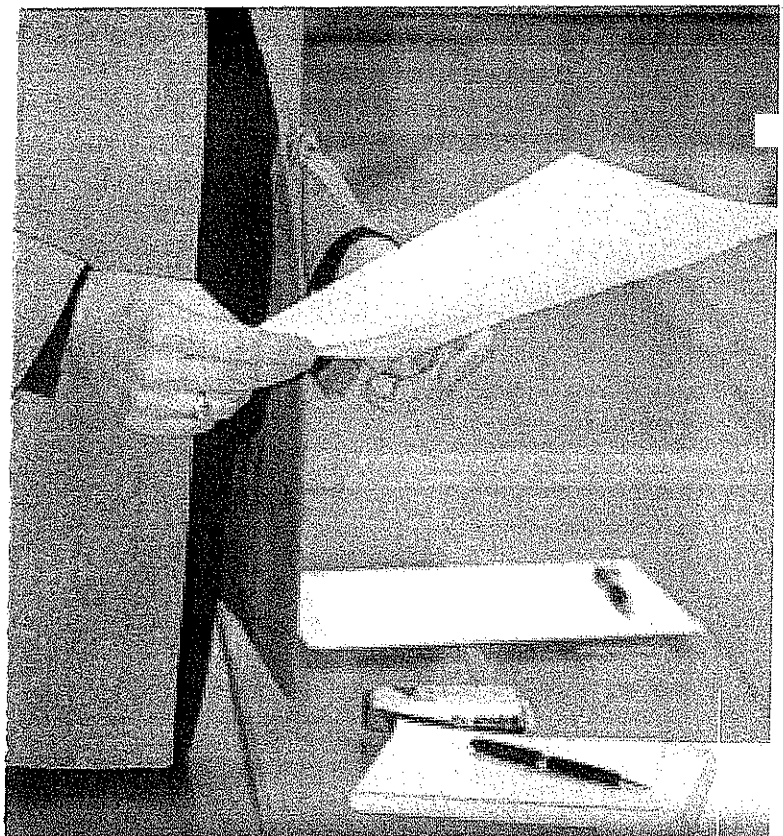


Formal Complaint Procedures

What to expect once you have filed a formal complaint before the Public Utilities Commission of Ohio

The Public Utilities Commission of Ohio

1 Formal Complaint Proceedings

This brochure explains the format and basic procedures for complaint cases formally filed with the Public Utilities Commission of Ohio (PUCO). The process allows the parties to the complaint (you and all other named entities) to inform the Commission of the facts associated with the claim(s) so that the Commission can resolve the dispute. The PUCO's rules and the complaint form may be found at www.PUCO.ohio.gov.

The procedural rules for cases filed with the PUCO can be found in the Ohio Administrative Code, Chapter 4901-1. Additional procedures, specific to complaint cases, are located in Chapter 4901-9 of the Ohio Administrative Code.

Once you have filed your formal complaint:

- Once you file a complaint with the PUCO, it will be assigned a case number. Always include the case number on any information or response related to your case that you send to the PUCO.
- Your complaint will be assigned to an attorney examiner, like an administrative law judge, who is employed by the PUCO. The attorney examiner is not your attorney or your advocate; nor is he/she an attorney for the involved utility. Rather, the attorney examiner presides over the complaint case like a judge and recommends a final decision to the five members of the Commission. The attorney examiner can be reached by calling the PUCO Legal Department at (614) 466-6843.
- The PUCO will send a copy of your complaint to the utility company. The utility will have 20 days to file with the Commission its answer to the complaint. The utility must state in its answer whether it agrees or disagrees with the statements in the complaint and it must explain its defenses to the complaint. The utility will send a copy of its answer to you.
- The Commission will review your complaint to determine if it has jurisdiction over the issues raised and whether you have stated reasonable grounds for the complaint. If the Commission has jurisdiction and you have stated reasonable grounds, the Commission will process your complaint.

2 Settlement Opportunity

If the PUCO does not determine that the matter should be handled in some other manner (e.g., dismissed on legal grounds), the attorney examiner will schedule a settlement conference in your case through a written ruling called an entry, and a copy of the entry will be sent to you. The settlement conference will be held at the PUCO offices in Columbus, Ohio. It is the PUCO's policy to conduct a settlement conference in advance of formal hearings in every complaint case brought before the PUCO.

This policy was instituted by the PUCO to ensure that every possible attempt is made to settle the matter to the satisfaction of all parties prior to holding a formal hearing. Another attorney examiner who is not assigned to your case will preside at the settlement conference. The attendance of all parties involved in the complaint is necessary to ensure there is ample opportunity to discuss the issues relevant to the complaint, give all sides an opportunity to ask questions of each other, and provide an atmosphere in which all sides may attempt to resolve the complaint.

If you and the utility are able to resolve your complaint at the settlement conference, then the parties will request that the Commission dismiss the complaint.

3 The Hearing

- If at the conclusion of the settlement conference your complaint is not resolved, and it is determined that the Commission has jurisdiction over the issues and that reasonable grounds have been stated, then the complaint will be scheduled for hearing. The attorney examiner assigned to your case will issue an entry to schedule the hearing. Hearings in complaint cases are routinely held at the PUCO offices and usually begin at 10 a.m.

- Prior to the start of the hearing, the parties have an opportunity to conduct discovery. Discovery permits a party to obtain information or documents relevant to the proceeding in the possession of another party. Discovery often occurs by one party submitting written questions to another party or by requesting that copies of documents be provided. If the discovery requests are proper, then parties must respond to the requests. Disputes regarding discovery requests will be resolved by the attorney examiner.

- Any testimony that a party plans to present, which is of a technical, specialized nature, qualifies as "expert testimony." If you have an expert witness testify on your behalf, you are required to file the testimony (in question and answer format) seven days in advance of the hearing, and to provide a copy to each of the other parties to the case.

- If the complainant is a corporation, it must be represented at the hearing by a licensed, Ohio attorney.* Noncorporate complainants and individuals are not required to be represented by an attorney. The utility company will be represented by its own attorney and will have its witnesses present.

- At the hearing, you as the complainant have the responsibility to prove the claims made in your complaint, the "burden of proof." You must attend the hearing and are responsible for presenting all evidence to support your claims. You should bring to the hearing all documents that can help prove your claims. The utility company must also attend the hearing and will have an opportunity to present all of its evidence. All sides will be permitted to ask questions of each other's witnesses.

- You should try to organize any documents or information that supports your side of the dispute. You should also have copies of any documents you plan on providing as evidence so that these will be available to the utility, the court reporter, and the attorney examiner.

- A court reporter will be present to record and transcribe all matters placed in the record.

*(*A corporation is considered to be a separate person and cannot appear, in courts or before administrative agencies in quasi-judicial proceedings, through an officer of the corporation or an appointed agent not admitted to practice law. One exception exists for factual presentations before the Commission in transportation matters, per Section 4901.14, Ohio Revised Code.)*

General Hearing Room Procedure

The process in the hearing room is typically as follows. Keep in mind that the attorney examiner may alter the order of events.

1. The attorney examiner will make a brief statement formally calling the case for hearing.
2. The parties will give their appearances by stating their names and addresses for the record.
3. The parties will have the opportunity to make an opening statement.
4. The complainant will call its witnesses, who will be sworn in and required to answer questions posed by the complainant and the utility.
5. The utility company will call its witnesses, who are sworn in and required to answer questions posed by the utility company's attorney and the complainant.
6. The attorney examiner may question the witnesses. If there are objections to the questions or testimony, the attorney examiner will decide the issue.
7. If the parties have documents that they would like to have considered, they must request that the documents be marked as exhibits and admitted into the record. The other parties will have the opportunity to review and object to the documents, and the attorney examiner will decide whether the documents will be admitted as part of the case record.
8. The parties will have the opportunity to make final arguments.
9. The attorney examiner will close the hearing.

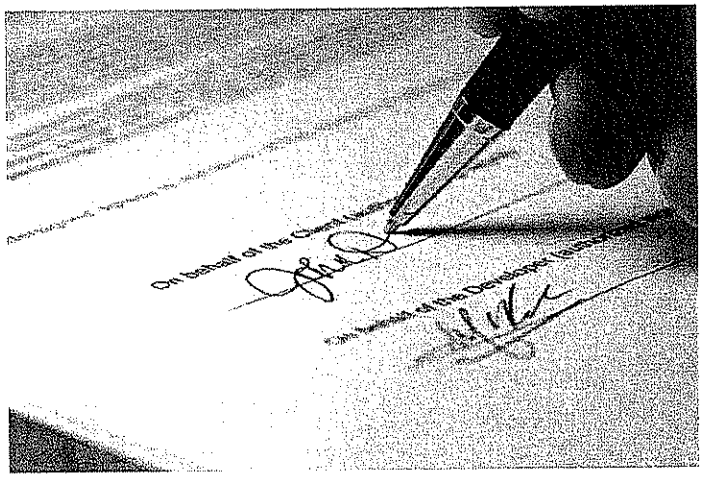
4 After the Hearing

Upon completion of the hearing, the attorney examiner assigned to your case will review the evidence and recommend a decision to the five members of the Commission. Recommendations are generally provided to the Commission within 12 weeks after the completion of the hearing.

The Commission will review the evidence in the case and, thereafter, issue a decision in written form called an opinion and order. You will receive a copy of the Commission's decision by mail.

After the Commission issues a decision, either party may request in writing that the Commission reconsider its decision. Requests must be filed with the PUCO within 30 days from the date the Commission issued the decision. Such written requests should be entitled "application for rehearing," and include the case number and specific reasons for disagreeing with the Commission's decision. Other parties may file replies to the application for rehearing within 10 days of the filing of the application for rehearing. The PUCO will issue a ruling on the reconsideration request within 30 days of the filing of the application for rehearing. A copy of that decision will be sent to all of the parties by mail.

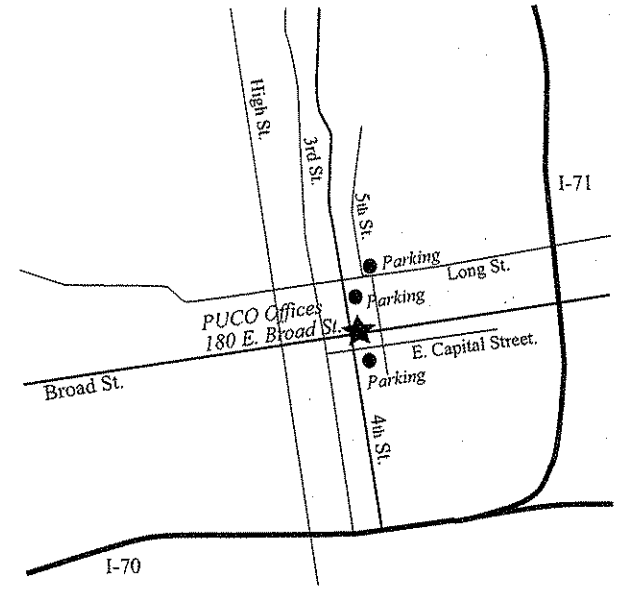
Any party who disagrees with the Commission's final decision can file an appeal with the Ohio Supreme Court within 60 days of the final decision. Any party appealing a case must follow all of the procedural requirements of the Ohio Supreme Court.



5 Directions and Other Important Information

- Settlement conferences and hearings are held at the PUCO offices located in downtown Columbus at the corner of Fourth Street and Broad Street. The address is: 180 East Broad Street, Columbus, Ohio 43215. Most hearings are held on the 11th floor of the building. The specific location will be identified in the scheduling entry.
- There are several parking lots near the PUCO. We do not recommend using street parking, because the time required for settlement conferences and hearings may exceed the maximum time permitted by the well-monitored parking meters in the area.
- Upon entering the building, you will need to present identification at the main desk and obtain a building access pass. Please allow additional time for this process.
- You can track the progress of your case through the Docketing Information System (DIS) on the PUCO Web site at www.PUCO.ohio.gov.

If you have any questions, do not hesitate to contact the attorney examiner assigned to your case by calling (614) 466-6843.



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Case No(s). 12-2877-GA-CSS, 13-0124-GA-CSS, 13-0667-GA-CSS

Summary: Brief Post-Hearing Reply Brief of Respondent Columbia Gas of Ohio, Inc. electronically filed by Ms. Christen M. Blend on behalf of Columbia Gas of Ohio, Inc.