

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of United	)	
Services Automobile Association,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	Case No. 14-1176-GA-CSS
NiSource, Inc.,	)	
	)	
and	)	
	)	
Columbia Gas of Ohio, Inc.,	)	
	)	
Respondents.	)	

ENTRY

The attorney examiner finds:

- (1) On July 3, 2014, United Services Automobile Association (USAA or Complainant), as subrogee of Roger and Joy Ellen Wood, filed a complaint against NiSource, Inc. (Nisource), and Columbia Gas of Ohio, Inc. (Columbia) (jointly, Respondents). In the complaint, USAA alleges that Respondents failed to provide reasonable, necessary, and/or adequate natural gas service as required by the Revised Code and the Ohio Administrative Code. USAA contends that Respondents' failure resulted in a fire that caused \$386,140 in damage to USAA's insureds' property. USAA further asserts that it seeks: a declaration from the Commission that Respondents breached their obligations under the Revised Code, Ohio Administrative Code, and applicable tariffs; compensation for the damage resulting from Respondents' breach of their obligations; authorization for an award of treble damages pursuant to R.C. 4905.61; compensation for the costs of litigation, including all expenses and attorneys' fees; and other relief as the Commission deems just and equitable.
- (2) On July 23, 2014, Respondents filed an answer to USAA's complaint. In their answer, Respondents generally deny the

allegations set forth in the complaint. Further, as affirmative defenses, Respondents assert that: Complainant failed to state reasonable grounds for complaint; NiSource is not a proper party to this case, as it is not a public utility subject to the Commission's jurisdiction; Columbia has complied with all applicable statutes, rules, and tariffs; Complainant has failed to clearly explain the facts constituting the complaint; the Commission lacks authority to award monetary damages, costs, expenses, or attorneys' fees; and the Commission lacks authority to adjudicate tort claims and contract claims.

- (3) Simultaneously, Respondents filed a motion to dismiss USAA's complaint on the basis that: the claims against NiSource are improper because NiSource is not a public utility; USAA's negligence, strict liability, and breach claims are improper because the Commission has no jurisdiction over tort or contract claims; USAA's regulatory violations claim is also a thinly-veiled tort claim, which is not properly before the Commission; and USAA has failed to state reasonable grounds for complaint.
- (4) On August 11, 2014, USAA filed a response to Respondents' motion to dismiss. In its memorandum contra Respondents' motion to dismiss, USAA concedes that NiSource is not a public utility subject to the Commission's jurisdiction and should be removed from the present action. Further, USAA concedes that its claims for strict liability and implied contract claims are not properly before the Commission. USAA asserts, however, that, as to all other issues, Columbia's motion to dismiss should be denied, as USAA has pleaded reasonable grounds to support its remaining negligence, breach of tariff, and regulatory violation claims. Finally, in accordance with the concessions in its response, USAA attached a "First Amended Complaint," which removed NiSource from the action and also removed the strict liability and contract claims.
- (5) Thereafter, on August 21, 2014, Columbia filed a reply memorandum in support of its motion to dismiss. In its reply memorandum, Columbia asserts that USAA's remaining negligence, breach of tariff, and regulatory violation claims should be dismissed because they are not

properly before the Commission, and reiterates the reasons previously set forth in its July 23, 2014 motion to dismiss.

- (6) The attorney examiner sua sponte finds that USAA's complaint may be amended pursuant to Ohio Adm.Code 4901-1-06. Further, the attorney examiner finds that the portions of Respondents' July 23, 2014 motion to dismiss conceded by USAA, including that NiSource be removed from the action, and that the strict liability and breach of contract claims be removed from the complaint, are moot, as the amended complaint has removed these portions.
- (7) Additionally, at this time, the attorney examiner finds that the matter should be scheduled for a settlement conference. The purpose of the settlement conference will be to explore the parties' willingness to negotiate a resolution of this complaint in lieu of an evidentiary hearing. In accordance with Ohio Adm.Code 4901-1-26, any statements made in attempt to settle this matter without the need for an evidentiary hearing generally will not be admissible to prove liability or invalidity of a claim. An attorney examiner from the Commission's Legal Department will facilitate the settlement process; however, nothing prohibits either party from initiating settlement discussions prior to the scheduled settlement conference.
- (8) Accordingly, a settlement conference shall be scheduled for October 6, 2014, at 1:00 p.m., in Hearing Room 1247 in the offices of the Commission, 12th Floor, 180 East Broad Street, Columbus, Ohio 43215. If a settlement is not reached at the conference, an attorney examiner will conduct a discussion of procedural issues. Procedural issues for discussion may include discovery dates, possible stipulations of facts, and potential hearing dates.
- (9) Pursuant to Ohio Adm.Code 4901-1-26(F), the representatives of the public utility shall investigate the issues raised in the complaint prior to the settlement conference, and all parties attending the conference shall be prepared to discuss settlement of the issues raised and shall have the requisite authority to settle those issues. In addition, parties attending the settlement conference should bring with them all documents relevant to this matter.

- (10) As is the case in all Commission complaint proceedings, the complainant has the burden of proving the allegations of the complaint. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966).

It is, therefore,

ORDERED, That USAA's amended complaint be accepted in accordance with Finding (6). It is, further,

ORDERED, That the settlement conference be held in accordance with Findings (7) and (8). It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

s/Mandy W. Chiles

---

By: Mandy Willey Chiles  
Attorney Examiner

GAP/sc

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**8/26/2014 3:16:51 PM**

**in**

**Case No(s). 14-1176-GA-CSS**

Summary: Attorney Examiner Entry scheduling a settlement conference for 10/06/2014, 1:00 p.m. at the offices of the Commission, 180 E. Broad St., 12th Flr., Rm. 1247, Columbus, Ohio. - electronically filed by Sandra Coffey on behalf of Mandy Willey Chiles, Attorney Examiner, Public Utilities Commission of Ohio