BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaints of:	)	
	)	
Katherine Lycourt-Donovan,	)	
Seneca Builders LLC, and	)	
Ryan Roth, et al.,	)	
	)	Case Nos. 12-2877-GA-CSS
Complainants,	)	13-124-GA-CSS
	)	13-667-GA-CSS
v.	)	
	)	
Columbia Gas of Ohio, Inc.,	)	
	)	
Respondent.	)	

SECOND ENTRY ON REHEARING

The Commission finds:

(1) Pursuant to R.C. 4905.26, the Commission has authority to consider written complaints filed against a public utility by any person or corporation regarding any rate, service, regulation, or practice relating to any service furnished by the public utility that is in any respect unjust, unreasonable, insufficient, or unjustly discriminatory.

(2) Columbia Gas of Ohio, Inc. (Columbia or Company) is a natural gas company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

(3) Complainants, Katherine Lycourt-Donovan (Ms. Donovan), Seneca Builders, LLC (Seneca Builders), and Ryan Roth and R&P Investments, Incorporated (Roth), filed complaints against Columbia alleging, among other things, that the Company unreasonably and unlawfully terminated gas service to all 13 homes in the Graystone Woods subdivision, which is located in Toledo, Ohio. Complainants asserted that Columbia refused to reconnect service absent remediation and demonstration that stray gas is effectively vented away from the foundations of the homes in the subdivision.

Complainants further maintained that Columbia abandoned service to the Graystone Woods subdivision by physically disconnecting and capping the line serving the subdivision from Columbia's facilities. By these actions, Complainants claimed that Columbia has violated the Ohio Revised Code and the Ohio Administrative Code, provided inadequate service, improperly and illegally abandoned the gas line serving the Graystone Woods subdivision, and discriminated against Complainants.

(4) In complaint cases before the Commission, complainants have the burden of proving their cases. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 190, 214 N.E.2d 666 (1966). Thus, in order to prevail, the complainants must prove the allegations in their complaints by a preponderance of the evidence.

(5) On January 14, 2015, after hearing and the filing of briefs and reply briefs by the parties, the Commission issued its Opinion and Order (Order) finding in favor of Columbia for failure of Complainants to sustain their burden of proof. Given the undetermined nature of the stray methane gas, the number of homes and residents involved, and the expansive list of local and state officials and entities participating in these matters, the Commission concluded that Columbia's communications with Complainants were sufficient and did not violate the Company's duty under Ohio Adm.Code 4901:1-13-10 to respond to customer/consumer complaints in a timely fashion. In addition, while Columbia was unreasonable in its unwillingness to articulate a standard that must be met before reconnection of service, the Commission found such unwillingness to articulate a standard and other factors for consideration of an inadequate service claim did not rise to a finding of Columbia providing inadequate service pursuant to R.C. 4905.22. However, the Order did instruct Columbia to provide the parameters of the standard it requires for restitution of service to Complainants within 30 days of the Order and found that the standard for reconnection would be four percent. Further, the Commission found that Columbia did not engage in unlawful discrimination under R.C. 4905.35, and that the actions of Columbia did not equate to the abandonment of service, which requires the filing of an application pursuant to R.C. 4905.20 and R.C. 4905.21. Order at 31.

(6) Pursuant to R.C. 4903.10, any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined by the Commission, within 30 days of the entry of the Order upon the Commission's journal.

(7) Applications seeking rehearing of the January 14, 2015 Order were filed on February 13, 2015, by Columbia, Ms. Donovan, and jointly by Seneca Builders and Roth (Seneca/Roth). Memoranda contra the applications for rehearing were filed on February 23, 2015, by Columbia, Ms. Donovan, and Seneca/Roth.

(8) By Entry on Rehearing issued on March 11, 2015, the Commission granted rehearing for further consideration of the matters specified in the applications for rehearing. Additionally, the Commission granted Columbia's request for an extension of time to produce the Company's reconnection standards until the Commission otherwise ordered.

Inadequate Service Determination

(9) R.C. 4905.22 requires every public utility to furnish necessary and adequate service and facilities and that all charges made or demanded for any service rendered be just, reasonable, and not more than allowed by law or commission order.

(10) Ms. Donovan argues that the Commission's Order is unreasonable and unlawful as the Commission did not find inadequate service despite finding that Columbia acted unreasonably by not providing standards for reconnection of service to Complainants. Ms. Donovan submits that any degree of unreasonableness by any utility results in inadequate service pursuant to R.C. 4905.22. By concluding that Columbia's unreasonable practice was not inadequate service, the Commission has overstepped its authority. Therefore, Ms. Donovan requests that the Commission reverse its decision and find that Columbia provided inadequate service per R.C. 4905.22.

(11) Seneca/Roth maintain that the law requires that all utility service be provided in a reasonable manner and that R.C. 4905.22 does not allow for varying degrees of

unreasonableness. Therefore, because the Commission found Columbia's refusal to articulate a standard for reconnection as unreasonable the Commission should hold Columbia in violation of R.C. 4905.22 for providing inadequate service. Further, the Commission erred, according to Seneca/Roth, by failing to find illegal abandonment which, according to Commission precedent, constitutes inadequate service in violation of R.C. 4905.22.

(12) Columbia disputes Complainants' contention regarding inadequate service. According to Columbia, what the Commission found unreasonable was that, once remediation occurs, Columbia failed to articulate the level and duration of methane gas readings below the four percent threshold that must occur before Columbia could restore natural gas service to Complainants. The Commission did not, according to Columbia, find that the service or facilities of Columbia were inadequate. In Columbia's view, Complainants ask the Commission to hold that any action or inaction by a public utility, no matter its magnitude or effect on a utility's provision of service, violates R.C. 4905.22. Columbia argues that interpretation would inappropriately subject utilities to strict liability for any action deemed unreasonable, regardless of its relevance to the provision of service and facilities.

(13) Complainants' assignment of error concerning the allegation of inadequate service should be denied. The Ohio Supreme Court has held that inadequate service is not defined in Title 49, leaving this determination to the Commission and dependent upon the facts of each case. *Ohio Bell Tel. Co. v. Pub. Util. Comm. of Ohio,* 14 Ohio St.3d 49, 471 N.E.2d 475 (1984). Citing prior case precedent, the Commission discussed in the Order the factors that the Commission would consider in determining whether a utility has provided inadequate service. Those factors include, but are not limited to: the number, severity, and duration of the service problems; whether the service could have been corrected; and whether the service problems likely are caused by the company's facilities. The only aspect of Columbia's actions in this matter found to be unreasonable was the failure of Columbia to provide Complainants with a level and duration of methane gas readings below a threshold level in order to reestablish natural gas service. This one factor alone, when

considered with all the other facts and circumstances in this case, do not rise to the level of legally inadequate service as contemplated by R.C. 4905.22 and nothing Complainants have raised in the applications for rehearing would cause us to reach a different conclusion on rehearing.

Discrimination Determination

(14) Ms. Donovan next asserts that the Commission's Order is unreasonable and unlawful because the finding that Columbia did not discriminate against her is inconsistent with the evidence in this matter. Ms. Donovan recounts the record evidence she believes supports the argument that Columbia has discriminated against her, including that Columbia failed to disclose its policies and requirements regarding remediation until after the complaint was filed, as well as conflicting information on Columbia's policies regarding gas around the foundation of structures. Finally, Ms. Donovan restates her contention that she was held to a higher standard than other customers by Columbia.

(15) Columbia asserts that the Commission thoroughly discussed all of the evidence on the issues raised by Ms. Donovan to support her discrimination claim in the Order. Accordingly, there is nothing to rehear on this issue.

(16) The Commission thoroughly considered and addressed Ms. Donovan's arguments concerning the claim of discrimination in the Order. As Ms. Donovan has failed to raise any new arguments that the Commission has not already considered and addressed, this assignment of error should be denied.

Abandonment Determination

(17) R.C. 4905.20 states, in relevant part, that no public utility furnishing service or facilities within this state shall abandon or be required to abandon or withdraw any main pipe line or gas line, or the service rendered thereby, that has been open and used for public business, nor shall any such facility be closed for service except as provided in R.C. 4905.21.

R.C. 4905.21 states, in relevant part, that any public utility desiring to abandon or close, or have abandoned, withdrawn, or closed for service, all or any part of any line referred to in

R.C. 4905.20 shall file an application with the Commission. The Commission shall cause reasonable notice of the application to be given stating the time and place for a hearing regarding the application. After considering the facts of the case, if the Commission is satisfied that the proposed abandonment or closing for service is reasonable, having due regard for the welfare of the public and the cost of operating the service or facility, the Commission may allow such abandonment or closing; otherwise the application shall be denied, or, if the facts warrant, the application may be granted in a modified form.

(18) Ms. Donovan argues that the Commission's Order is unreasonable and unlawful because the finding that Columbia's actions were not a permanent abandonment but instead a temporary measure is not consistent with R.C. 4905.21, which is the law governing abandoning, withdrawing, or closing service. Ms. Donovan asserts that the preponderance of evidence in this matter reflects that Columbia has no desire to reestablish service. Therefore, the closing of the line serving Graystone Woods could only be accomplished legally after filing an application and obtaining Commission approval pursuant to R.C. 4905.21, which was not done in this case. Because Columbia closed the line for service without following the requirements of R.C. 4905.20 and R.C. 4905.21, and the Commission did not rule that such actions equated to inadequate service or abandonment, Ms. Donovan maintains that the Order is unreasonable and unlawful.

(19) Seneca/Roth assert that the Commission erred when it ruled that there was insufficient evidence to support a finding that Columbia improperly and illegally abandoned service in violation of R.C. 4905.21. Seneca/Roth point to multiple pieces of evidence to support their contention that Columbia closed the line serving Graystone Woods for service without filing an application as required by R.C. 4905.21.

Seneca/Roth continue that R.C. 4905.21 requires an application be filed anytime a public utility plans on closing or abandoning a line, regardless of whether the closure or abandonment will be permanent. R.C. 4905.21 makes a distinction between abandonment and permanent

abandonment, but that distinction does not alter the filing requirement according to Seneca/Roth. The Commission incorrectly inferred that only permanent abandonment requires a filing when, in fact, any abandonment or closure for service requires a written application to the Commission. Continuing, Seneca/Roth assert that, because the legislature included the language "permanent abandonment" in addition to merely "abandonment" or "closure for service," the General Assembly contemplated varying types of abandonment or closures within the statute. By distinguishing between an undefined abandonment or closure for service that does not need an application filed and permanent abandonment which does require the filing of an application, the Commission violated R.C. 1.47(B) which states that "[I]n enacting a statute *** the entire statute is intended to be effective," claims Seneca/Roth. Such a conclusion, Seneca/Roth assert, is a mistaken interpretation of the statute.

Seneca/Roth's final argument on the issue of abandonment is that R.C. 4905.21 requires an application be filed with the Commission whenever a company "desires" to abandon or close a line for service. Seneca/Roth assert that the evidence reveals that more than a month after digging up and separating the main line serving the Graystone Woods subdivision from the rest of Columbia's system, the Company was involved in internal discussions regarding a "complete abandonment" of the main line, yet Columbia still failed to file an abandonment application as required by the statute. Seneca/Roth request that the Commission modify, abrogate, and reverse its original Order to ensure Columbia's compliance with Ohio laws, to protect Commission authority, and to protect Ohio's residential utility customers from such blatant disregard of Ohio's laws.

(20) Columbia states that the issue at the heart of Complainants' abandonment allegations is whether a public utility may interrupt service for safety reasons, and keep service disconnected pending remediation of a safety hazard, without first filing an abandonment application under R.C. 4905.20 and R.C. 4905.21. Columbia asserts that the Commission reached the only reasonable conclusion by determining that a public utility need not file an

abandonment application every time it needs to disconnect service pending remediation of a safety hazard.

Citing to the Commission's definition of abandonment in the minimum gas service standards, Ohio Adm.Code 4901:1-13-05(A)(3)(d), Columbia argues that a line is "closed" for purposes of the abandonment statute only if it is "closed off to future use." Columbia notes that the main line serving Graystone Woods was not closed off to future use. The Company contends that the evidence of record reveals that Columbia could go back and retest and reestablish service at any time once the Graystone Woods residents complete their remediation work. Because the main line is capable of future use and will be returned to future use as soon as the residents remediate the stray gas problem, Columbia asserts that the line is not "closed" for purposes of R.C. 4905.21.

Next, Columbia maintains that Complainants are wrong regarding their interpretation that R.C. 4905.21 contemplates temporary abandonments. Pointing to Ohio Adm.Code 4901:1-13-05(A)(3)(d), Columbia asserts that the Commission defines an abandoned line as one "that was not intended to be used again for supplying***natural gas***." Columbia claims that the Commission's regulatory definition is consistent with the dictionary definition of abandon, "to cease to assert or exercise an interest, right, or title to esp. with the intent of never again resuming or reasserting it***. *Webster's Third International Dictionary* 2 (1981). Thus, under both a common understanding of the word "abandon" and the Commission's own definition of that word, the public utility's intentions are paramount and Complainants would need to demonstrate that Columbia separated the main line serving Graystone Woods with the intent of never having it reconnected. After reviewing all of the evidence, claims Columbia, the Commission found that the Company had not abandoned the line and intended to continue serving Complainants once the remediation was complete.

As a final matter regarding this issue, Columbia argues that Ohio law does not require a natural gas utility to file an abandonment application just for thinking about abandoning a line. Seneca/Roths' suggestion that a public utility must file an application even if the company is just discussing

abandonment because the statute requires an abandonment application from any public utility "desiring" to abandon a line cannot be taken seriously, claims Columbia. Pointing to R.C. 1.47(C) and case precedent, Columbia asserts that the General Assembly intended for statutes to be read to provide a "just and reasonable result***" and "not to accomplish foolish results."[1] Accordingly, the Commission must reject Complainants' interpretation of R.C. 4905.21 states Columbia.

(21) For the reasons that follow, we find that Complainants' abandonment arguments should be denied. Complainants' interpretation that R.C. 4905.21 contemplates a public utility filing an application for both a temporary and permanent abandonment is an invalid reading of the applicable statute. At the outset, we note that the actual prohibition on abandoning or closing a line to service is found in R.C. 4905.20. No where in R.C. 4905.20 is this concept of both a temporary and permanent abandonment found. The process a public utility must undergo in order to abandon or close a line or withdraw a service is found in R.C. 4905.21. Rather than Complainants' interpretation, the distinction we see in R.C. 4905.21 is whether the public utility is abandoning, withdrawing, or closing for service a single line where other lines remain open to continue service versus the abandonment of all lines or the only line serving a particular location such that all service from that utility to that location is no longer available. The latter situation would involve the permanent abandonment of service in an area. Seneca/Roth's interpretation would have a public utility file an application for abandonment whenever there is a temporary closing of a line whether for safety reasons, repair, or replacement. This could not have been the result intended by the General Assembly in adopting this provision.

We also disagree with Seneca/Roths' position that merely discussing or exploring the option of an abandonment triggers the filing of an application under R.C. 4905.21. A key component of the decision-making process when considering

---

1 *State ex rel. Barley v. Ohio Dept. of Job & Family Serv.*, 132 Ohio St.3d 505, 2012-Ohio-3329, 974 N.E.2d 1183, ¶25, *citing State ex rel. Carna v. Teays Valley Local School Dist. Bd. of Edn.*, 131 Ohio St.3d 478, 2012-Ohio-1484, 967 N.E.2d 193, ¶19, *quoting State ex rel. Saltsman v. Burton*, 154 Ohio St. 262, 268, 95 N.E.2d 377 (1950).

whether to file for abandonment is a public utility's intention or future plans to serve the area in question. As we noted in the Order, after thoroughly reviewing the evidence of record, the Commission did not find that Columbia's actions resulted in an abandonment of service. Rather, as we have repeatedly found, the record reflects Columbia's intention to resume providing natural gas service to the Graystone Woods subdivision once remediation of the methane gas situation occurs. This obligation to serve will continue until such time as Columbia files an appropriate abandonment application pursuant to R.C. 4905.21 and the application is approved by the Commission.

Disconnection/Reconnection Determination

(22) In its application for rehearing, Columbia requests that the Commission clarify, or rule on rehearing, that the Company may disconnect a customer's natural gas service if it detects any natural gas in the soil at or near the foundation of a customer's home in Graystone Woods. Columbia also requests that the Commission clarify, or rule on rehearing, that Columbia may decline to reconnect Complainants' natural gas service if their efforts to eliminate stray gas completely (including the installation of remediation systems) are unsuccessful.

In support of its application for rehearing, Columbia asserts that the Commission should not adopt a threshold for disconnection or reconnection of natural gas service at Graystone Woods that presumes that there is a safe level of stray gas at the foundation of a customer's residence. According to Columbia, the National Fire Protection Association's 2011 *Guide for Fire & Explosion Investigations* states that fuel gases can migrate along buried sewer lines into basements and then explode. Moreover, both the American Gas Association's Gas Piping Technology Committee and Columbia's own policy reveal that any stray gas at a home's foundation represents a Grade 1 leak and must be treated as a hazard warranting service disconnection. Thus, according to the Company, there is no safe level of stray gas above a zero percent concentration at the foundation of a building.

Columbia also urges the Commission to reconsider the determination that stray gas in the soil or near the foundation of Complainants' homes would no longer represent a safety hazard if it were found at a concentration of less than four percent. As demonstrated by the record,[2] Columbia argues that stray gas concentrations in the Graystone Woods subdivision fluctuate naturally over time; therefore, the fact that stray gas concentrations at a location are below the lower explosive limit (i.e., four percent) on a given day does not mean stray gas concentrations at that location will not exceed the lower explosive limit the next day, week, or month. Given that stray gas concentrations in the soil at the Graystone Woods subdivision naturally rise and fall, a standard for reconnection that permits stray gas to remain at the foundation of Complainants' homes in concentrations up to 3.99 percent would not, according to the Company, adequately protect Columbia's customers.

(23) Ms. Donovan opposes Columbia's position that the Commission should not adopt a threshold for disconnection or reconnection of natural gas service at Graystone Woods that presumes there is a safe level of stray gas at the foundation of a customer's residence. Ms. Donovan asserts that Columbia's position on rehearing supports her discrimination claim that she was treated differently than the vast majority of Columbia customers throughout Ohio. The Company presumes that safe conditions exist at the vast majority of 1.4 million Columbia customers that have never been tested for stray gas, yet at her service address where zero concentrations of stray gas have been registered the situation is deemed unsafe by the Company. Ms. Donovan asserts that, if the Commission agrees with Columbia's presumption of safety arguments, then the Company should be ordered to perform stray gas testing at the foundations of all 1.4 million service locations where testing has not been performed.

Next, Ms. Donovan claims that Columbia is blatantly, inappropriately, and deceptively attempting to redefine the

---

2 Evidence in the record established that methane gas is flammable and can be explosive at a level of between four and fourteen percent methane gas to air ratio with four percent being the lower explosive limit and fourteen percent being the upper explosive limit. Order at 16.

Commission's directive to the Company on reconnecting service by taking portions of the words used by the Commission, applying Columbia's desired context, and then presenting the Company's version as the findings of the Commission. As a result, Ms. Donovan asserts that Columbia's application for rehearing should be denied.

(24) Seneca/Roth urge the Commission to reject Columbia's attempt to relitigate and have the Commission adopt a standard for reconnection that the Commission specifically considered and rejected in the Order. Likewise, Seneca/Roth maintain that the Commission should reject Columbia's position seeking complete elimination of stray gas at or near the foundation of Complainants' homes as a burdensome and unnecessary requirement for reconnection. Seneca/Roth note that, if any clarification is needed, it should be on how the remediation, if any, is defined. Seneca/Roth assert that a radon-type mitigation system coupled with a combustible gas leak detector would satisfy Columbia's 2012 gas policy and would be within the economic reach of the homeowners in Graystone Woods. This mitigation system should be more than sufficient to safely commence the restoration of gas service to the homes in Graystone Woods, claims Seneca/Roth.

Regarding Columbia's last minute motion for an extension of the standard for reconnection, Seneca/Roth maintain that the motion should be denied for failing to comply with the provisions of Ohio Adm.Code 4901-1-13(B) and the Company should be ordered to immediately comply. For failing to comply with the Commission's order and filing a last-minute motion for an extension of time, Seneca/Roth assert that Columbia should be assessed a forfeiture pursuant to R.C. 4905.54.

(25) Having thoroughly considered the arguments raised by the Company and Complainants, the Commission determines that Columbia's application for rehearing should be granted and the Order modified for the reasons discussed below. Citing the explosive limits of methane gas (i.e., four to fourteen percent concentration of gas to air ratio), the Commission determined in the Order that a stray gas reading below four percent around the foundation of a structure would be an acceptable threshold

for reestablishing natural gas service. While the record indicates four percent as a possible cutoff, the record does not clearly indicate whether all safety concerns are eliminated with a four percent cutoff.

For example, the record also includes portions of a *Guidance Manual for Operators of Small Natural Gas Systems (Guidance Manual)* published by the United States Department of Transportation, Pipeline and Hazardous Materials Safety Administration. Within the *Guidance Manual* is a copy of the "Leak Classification and Action Criteria" of the American Gas Association's Gas Piping Technology Committee (GPTC). The GPTC classifies "any gas readings at the outside wall of a building, or where gas would likely migrate to an outside wall of a building," as a "Grade 1" leak, meaning the leak "represents an existing or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous." (CGO Ex. 14, Att. SEE-5, at IV-15.) Columbia's Leakage Classification and Response Policy GS 1714.010 similarly treats any indication of gas which has migrated or could likely migrate to an outside wall of a building as a "Grade 1" leak representing an existing or probable hazard to persons or property that requires immediate repair or continuous action until the conditions are no longer hazardous (CGO Ex. 13, Att. RRS-2). Additionally, we note that all Ohio natural gas companies similarly classify and treat "Grade 1" leaks in accordance with GPTC's guidance.

Given this uncertainty in the record in these cases, we find Columbia's request for rehearing on this issue should be granted and the measurement should be zero, rather than four percent. While we recognize the hardship this situation places on Complainants, on balance, we choose the safety of the residents of Graystone Woods as paramount in this matter. Accordingly, in order to reestablish natural gas service to the Graystone Woods subdivision, Columbia should follow its gas policy, GS 1708.080, which addresses the resolution and restoration of service once potentially hazardous stray gas situations are discovered.

(26) To the extent not specifically addressed herein, all other arguments raised in the applications for rehearing are denied.

(27) Based upon the determination above that Columbia should follow its gas policy, GS 1708.080 in order to reconnect gas, it is no longer necessary to rule on Columbia's request for an extension of time to produce its reconnections standards.

It is, therefore,

ORDERED, That the applications for rehearing filed by Ms. Donovan and Seneca/Roth be denied for the reasons specified in this Second Entry on Rehearing. It is, further,

ORDERED, That Columbia's application for rehearing be granted in accordance with Finding (25). It is, further,

ORDERED, That to the extent not specifically addressed herein, all other arguments raised in the applications for rehearing are denied. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Andre T. Porter, Chairman

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

Thomas W. Johnson

JRJ/vrm

Entered in the Journal
NOV 18 2015

Barcy F. McNeal
Secretary