IN THE SUPREME COURT OF OHIO

IN THE MATTER OF THE COMPLAINTS OF: KATHERINE M. LYCOURT-DONOVAN, SENECA BUILDERS, LLC, RYAN ROTH, AND R&P INVESTMENTS, INC. Complainant-Appellant, vs. COLUMBIA GAS OF OHIO, INC. Respondent-Appellee	)	Supreme Court Case No. 16-_____ 16-0080 Appeal from the Public Utilities Commission of Ohio Public Utilities Commission Case Nos. 12-2877-GA-CSS, 13-124-GA-CSS, 13-667-GA-CSS

JOINT NOTICE OF APPEAL OF APPELLANTS KATHERINE LYCOURT-DONOVAN, SENECA BUILDERS, LLC, RYAN ROTH, AND R&P INVESTMENTS, INC.

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JOINT NOTICE OF APPEAL OF APPELLANTS
KATHERINE M. LYCOURT-DONOVAN, SENECA BUILDERS, LLC, RYAN ROTH, AND R&P INVESTMENTS, INC.

Appellants, Katherine M. Lycourt-Donovan, Seneca Builders, LLC, Ryan Roth, and R&P Investments, Inc. (collectively the "Appellants"), pursuant to R.C. 4903.11, R.C. 4903.13, S.Ct.Prac.R. 3.15, and S.Ct.Prac.R. 10.02(A), hereby give Joint Notice of Appeal to the Supreme Court of Ohio and to the Public Utilities Commission of Ohio ("Appellee" or "Commission") from the Opinion and Order, issued January 14, 2015, (Attachment A), the Entry on Rehearing issued March 11, 2015, (Attachment B) and the Second Entry on Rehearing, issued on November 18, 2015, (Attachment C) in Case Nos. 12-2877-GA-CSS, *et al.* (collectively, "Commission's Rulings"). The Commission's Rulings held in favor of Columbia Gas of Ohio, Inc. ("Columbia").

Appellants were the complainants and are all parties of record in this proceeding. On January 14, 2015, Appellee ruled in favor of Columbia and against Appellants in the Opinion and Order. Appellants timely filed Applications for Rehearing of Appellee's Opinion and Order, in accordance with R.C. 4903.10, on February 13, 2015. A rehearing was granted by Appellee on March 11, 2015. Appellee denied Appellants' assignments of error in the Second Entry on Rehearing on November 18, 2015, in favor of Columbia.

The findings in the Commission's Rulings are unlawful and unreasonable for the reasons set out in the following Assignments of Error:

1. The Commission's Rulings are unlawful because the Appellee's finding that Columbia's closure of the gas line serving Oakside Road – without filing an application for abandonment as required in R.C. 4905.21 – did not constitute abandonment is inconsistent with R.C. 4905.20.

2. The Commission's Rulings are unlawful because the Appellee's finding that Columbia's actions were not a "permanent abandonment" but were instead a "temporary measure" is not consistent with R.C. 4905.21.
3. The Commission's Rulings are unlawful because the Appellee's finding that Columbia did not abandon service under R.C. 4905.21 and R.C. 4905.20 is contrary to the plain language of those statutes.
4. The Commission's Rulings are unlawful because they are in violation of R.C. 4905.22, which states that a utility's services and facilities, in all respects, must be just and reasonable.
5. The Commission's Rulings are unlawful because the Appellee's finding that Columbia did not discriminate against the Appellants is inconsistent with R.C. 4905.35.
6. The Commission's Rulings are unlawful because the Appellee held the complainants failed to satisfy their burden of proof in support of their claims.

WHEREFORE, Appellants respectfully submit that the Commission's Rulings are unlawful, unjust, and unreasonable and should be reversed. The cases should be remanded to the Appellee with instructions to correct the errors complained of herein.

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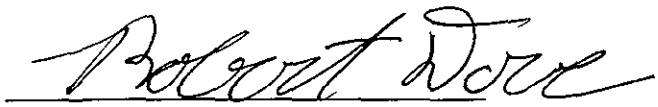
Respectfully submitted,



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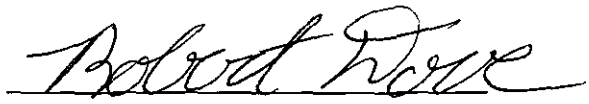
CERTIFICATE OF FILING

I hereby certify that, in accordance with S.Ct.Prac.R. 3.11(B)(2), Katherine M. Lycourt-Donovan, Seneca Builders, LLC, Ryan Roth, and R&P Investments Inc.'s Joint Notice of Appeal has been filed with the Docketing Division of the Public Utilities Commission of Ohio by leaving a copy at the office of the Commission in Columbus, Ohio, in accordance with Ohio Adm. Code 4901-1-02(A) and 4901-1-36, on January 19, 2016.



Robert Dove (0092019)
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Katherine M. Lycourt-Donovan,
Seneca Builders, LLC, Ryan Roth,
and R&P Investments, Inc.

ATTACHMENT A

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

OPINION AND ORDER

The Commission, considering the complaints, the evidence of record, the arguments of the parties, and the applicable law, hereby issues its Opinion and Order.

APPEARANCES:

Katherine Lycourt-Donovan, 2130 Oakside Road, Toledo, Ohio 43615, on her own behalf.

Williams, Allwein & Moser, LLC, 1500 West Third Avenue, Suite 330, Columbus, Ohio 43212, on behalf of Seneca Builders LLC, and Ryan Roth and R & P Investments, Incorporated.

Porter, Wright, Morris & Arthur LLP, by Eric B. Gallon and Christen M. Blend, Suite 3000, 41 South High Street, Columbus, Ohio 43215, and Nisource, by Brooke E. Leslie and Stephen B. Seiple, 200 Civic Center Drive, 13th Floor, Columbus, Ohio 43215, on behalf of the Respondent, Columbia Gas of Ohio, Inc.

OPINION:

I. HISTORY OF THE PROCEEDINGS

Columbia Gas of Ohio, Inc. (Columbia or the Company), is a natural gas company, as defined in R.C. 4905.03, and a public utility as defined in R.C. 4905.02. Katherine

Lycourt-Donovan (Ms. Donovan), Seneca Builders, LLC (Seneca Builders), and Ryan Roth and R & P Investments, Incorporated (Roth) (jointly referred to herein as Complainants) own residential properties in Graystone Woods, a residential subdivision on Oakside Road in Toledo, Ohio. Prior to May 31, 2012, Complainants' properties received natural gas service from Columbia.

On October 30, 2012, January 7, 2013, and March 14, 2013, Ms. Donovan, Seneca Builders, and Roth, respectively, filed complaints against Columbia alleging, inter alia, that the Company unreasonably and unlawfully terminated gas service to all 13 homes in the Graystone Woods subdivision. Complainants assert that Columbia has 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 maintain that Columbia has 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 claim 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.

At various times, the parties have engaged in settlement discussions, however, settlement has not been attained. Accordingly, in a September 18, 2013 Entry, the attorney examiner established the procedural schedule in these matters and set the hearing to commence on November 12, 2013. By Entry issued October 10, 2013, the hearing was rescheduled to November 19, 2013. The hearing was held on November 19 through November 21, 2013, at the offices of the Commission. Briefs and reply briefs were filed by the parties on January 10, 2014, and February 3, 2014, respectively.

II. PROCEDURAL ISSUES

On April 18, 2014, after the filing of briefs in these matters, Ms. Donovan filed a document entitled "Affidavit of Complainant Katherine M. Lycourt-Donovan" (Affidavit). The stated purpose for filing the Affidavit was "to conclusively demonstrate that Columbia withheld information during these proceedings" and that Columbia witness Christopher Kozak perjured himself at least three times during his sworn testimony at the hearing in these matters. Appended to the Affidavit was correspondence in the form of a flier addressed to Ms. Donovan at her 2130 Oakside Road address encouraging Ms. Donovan to convert her home to natural gas supplied by Columbia. Ms. Donovan asserts that this mailing she received from Columbia demonstrates that Columbia does not consider her to be a customer; a position directly contrary to the position expressed by Columbia and its witnesses during the hearing in these proceedings. Ms. Donovan concludes by requesting that the Commission consider this correspondence from Columbia when the Commission rules in these matters.

Columbia filed a memorandum contra Ms. Donovan's Affidavit on May 5, 2014. In its memorandum contra, Columbia submits that Ms. Donovan's Affidavit should be stricken as noncompliant with the Commission's procedural rules, as the only method to present additional evidence after the closing of briefing was to file a motion seeking to reopen the proceedings. Because she failed to do so, Columbia argues that Ms. Donovan's Affidavit and new evidence should be disregarded. However, even if the Commission were to treat Ms. Donovan's Affidavit as a motion to reopen the proceedings, Columbia asserts that the motion should be denied because the evidence Ms. Donovan seeks to introduce is irrelevant to her claims of abandonment that Ms. Donovan argued for the first time after the close of hearing. For these reasons, Columbia recommends the Commission strike Ms. Donovan's Affidavit or, in the alternative, deny her motion to reopen the proceedings.

Counsel for Seneca and for Roth (collectively, Seneca/Roth) filed a reply to Columbia's memorandum contra on May 12, 2014. Seneca/Roth argue that, although the record is closed, the information presented by Ms. Donovan is material to these cases, obtained subsequent to the close of the hearing, and speaks to a central issue in these cases. Therefore, according to Seneca/Roth, the Commission should overlook Ms. Donovan's failure to specifically file a motion to reopen the proceedings and consider her Affidavit as a motion to reopen the proceedings pursuant to Ohio Adm.Code 4901-1-34. In the alternative, Seneca/Roth submit the Commission should reopen the proceedings upon the Commission's own initiative and consider the information docketed by Ms. Donovan on April 18, 2014.

The Commission will treat the April 18, 2014 Affidavit as a motion to reopen the proceedings for the purpose of offering a late-filed exhibit. Upon consideration of the arguments raised regarding the April 18, 2014 Affidavit, the Commission determines that the motion to reopen the proceedings for the purpose of offering a late-filed exhibit should be denied as the Affidavit and attached flier provide speculative inferences not based on facts and, therefore, good cause for reopening the proceeding have not been stated.

The Commission will address one last procedural issue before turning to an examination of the record evidence presented in these matters. In both its reply brief as well as the memorandum contra the April 18, 2014 Affidavit, Columbia makes the argument that Ms. Donovan should be prohibited from raising abandonment as an issue because, in Columbia's view, Ms. Donovan did not raise the issue before briefing in these matters commenced. For the reasons that follow, we disagree with Columbia's position and, thus, will consider the arguments raised by Ms. Donovan that Columbia engaged in an unlawful abandonment in these cases. These three cases have been consolidated for the purposes of hearing and resolution. The assertion of unlawful abandonment was clearly set forth in the complaints filed by Seneca Builders and Roth, and inferred in the complaint by Ms. Donovan. Accordingly, the applicability of the abandonment statute was an issue

in these cases and at the hearing and will be reviewed by the Commission during the consideration of the evidence in these matters.

III. APPLICABLE LAW

The complaints in these proceedings were filed pursuant to R.C. 4905.26, which provides, in relevant part, that the Commission will hear a case:

> [u]pon complaint in writing against any public utility *** that any rate *** charged *** is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law *** or that any *** practice *** relating to any service furnished by the public utility *** is *** in any respect unreasonable, unjust, *** unjustly discriminatory, or unjustly preferential.

It should be noted that, 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. By a preponderance of the evidence means "the greater weight of evidence;" that is, evidence of one side outweighs that of the other. 44 Ohio Jur. 3d Evidence and Witnesses § 951 (2003).

III. DISCUSSION AND CONCLUSIONS

In this Order, we will first discuss the factual background leading up to the interruption of natural gas service to the entire Graystone Woods subdivision and then proceed to a discussion of the factual and legal arguments raised by the Complainants. Factual and legal issues for consideration include whether Columbia violated the complaint-handling procedures set forth in Ohio Adm.Code 4901:1-13-10, arguments involving whether Columbia has provided inadequate service in violation of R.C. 4905.22, claims that Columbia discriminated against Complainants pursuant to R.C. 4905.35, and whether Columbia has unlawfully abandoned the facilities providing natural gas service to the Graystone Woods subdivision in violation of R.C. 4905.20 and 4905.21. After discussion of each of the foregoing legal and factual issues, the Order will set forth a detailed Commission conclusion on the arguments raised by the parties on that issue and then move to the next issue. The Order will then conclude with an overall section summarizing the individual conclusions.

A. Background

Responding to a May 24, 2012 telephone call regarding dead vegetation in the yard from the owner (Megan Simmons) of a home at 2107 Oakside Road in the Graystone

Woods subdivision, Columbia dispatched an employee who conducted bar hole testing and confirmed the presence of natural gas in the ground near the dead vegetation. Additional testing by Columbia also disclosed a three percent concentration of gas in the ground at the foundation of Ms. Simmons' home. While attempting to determine the nature and source of the gas at 2107 Oakside Road, Columbia interrupted natural gas service to the home for safety. (CGO Br. at 2; CGO Ex. 12 at 2 and Atts. CJA-1, CJA-2.)

Additional testing of Ms. Simmons' house lines and service line on May 25 and May 29, 2012, confirmed that those lines were not leaking. Columbia employees also took gas samples from the ground at 2107 Oakside Road and from Columbia's facilities and those samples were sent to an independent third-party lab, Gas Analytical Service, for testing. The lab determined that the gas sample taken from Ms. Simmons' yard did not match the gas in Columbia's lines. (CGO Br. at 2; CGO Ex. 12 at 2 and Att. CJA-3.) On May 29, 2012, Ms. Simmons again called Columbia complaining of an odor inside her home that she believed might be natural gas. Columbia performed an odor investigation and tested the air inside Ms. Simmons' home. Those tests revealed the presence of natural gas inside the home's basement in a concentration of one percent of the lower explosive limit (LEL). (CGO Br. at 2; CGO Ex. 12 at 3 and Att. CJA-1.)

On May 29, 2012, Columbia's leakage inspector requested that a follow-up inspection order be generated. The follow-up inspection took place on May 31, 2012. (Tr. II at 371-372.) The follow-up testing included bar hole testing and gas sampling with combustible gas indicators at Ms. Simmons' house and worked outward until a zero percent reading was detected. Columbia's testing on May 31, 2012, extended to the nearest residential road (Oakhaven Road), and a nearby post office and grocery store. Columbia also surveyed 3,300 feet of intermediate pressure main and 1,800 feet of high pressure main in the area. Based upon the May 31, 2012 testing, Columbia interrupted the service to all 13 houses on Oakside Road. (CGO Br. at 3; CGO Ex. 12 at 4-5.)

Additional testing of the affected area occurred in June and September 2012. Columbia began documenting the test results in mid-June to provide those readings to customers on Oakside Road. (CGO Br. at 5; CGO Ex. 12 at 4-5.) On August 23, 2012, Columbia pressured tested the entire piping system on Oakside Road by digging up the main line that serves Graystone Woods and separating it from the rest of Columbia's system. The pressure test used air for 17 hours, and involved the main line and all service lines up to the meter set at each house on Oakside Road. (CGO Br. at 5; CGO Ex. 5 at 3-5; Tr. II at 333-335.) Currently, the line that was installed and used to provide natural gas service to Graystone Woods is now separated from the rest of Columbia's system and is not providing service (Tr. II at 335).

As further detailed below, the positions of the parties are as follows:

(1) Ms. Donovan: Ms. Donovan challenges Columbia's assertion that the initial interruption of natural gas service to all 13 homes on Oakside Road, including her residence, was necessary on May 31, 2012, as only three homes were within Columbia's self-described perimeter and Columbia has no evidence of methane gas around the foundation of her home on that date. Ms. Donovan also disputes Columbia's claim that the presence of methane gas presents a hazardous safety concern as six entities, including Columbia, have performed testing around Graystone Woods and none of these entities deemed the situation remarkable enough to warrant evacuation, elimination of ignition sources, or any further action. Ms. Donovan maintains that Columbia's actions and handling of this interruption of gas service represents inadequate service, unlawful abandonment of service, and discrimination against her. (Donovan Br. at 3-23; Donovan Reply Br. at 5-10, 23-25.)

Ms. Donovan presented two witnesses for direct examination in support of her complaint. Kathleen M. Lycourt-Donovan presented prefiled testimony and testified on her own behalf (Donovan Ex. 2; Tr. I at 193-244; Tr. II 252-269). John L. Weiss, professional engineer and certified mine foreman, provided testimony on behalf of Ms. Donovan concerning methane gas (Donovan Ex. 1; Tr. I at 125-189).

(2) Seneca/Roth: Outlining the evidence in favor of their position, Seneca/Roth argue that, in this circumstance, Columbia has unlawfully abandoned service to the Complainants and that, in doing so, Columbia has provided inadequate service and discriminated against them. Seneca/Roth maintain the Commission should order the immediate restoration of natural gas service to Graystone Woods and assess a significant forfeiture on Columbia to prohibit future violations. Additionally, Seneca/Roth recommend the Commission scrutinize and modify Columbia's policies so that customers may economically and efficiently address future issues. Finally, Seneca/Roth submit the Commission should subject the Company to treble damages so that Complainants may recover the extraordinary expenses they incurred as a result of Columbia's statutory misconduct. (Seneca/Roth Br. at 11-48; Seneca/Roth Reply Br. at 6-30.)

Mr. Ronald Hensley, owner of Seneca Builders and homeowner at 2129 Oakside Road, presented testimony at the hearing on behalf of Seneca Builders. Mr. Bruce Roth, owner of R&P Investments a company primarily engaged in managing certain rental properties, including the home at 2141 Oakside Road, presented testimony on behalf of Roth.

(3) Columbia: The Company asserts that methane gas has been detected around the foundations of every home in the Graystone Woods development and that testing by both Columbia and by a consultant hired by the developer, Seneca Builders, has confirmed the presence of methane gas in the soil at Graystone Woods. Columbia maintains that additional testing of methane gas samples taken from the soil in Graystone Woods reveals that the gas is from an undetermined source but that the gas does not have the same chemical make-up as natural gas piped through Columbia's system. Columbia further asserts that the presence of methane gas in the soil at the foundations of the homes in Graystone Woods represents a safety hazard that, according to Columbia's policies, must be remediated prior to restoration of gas service. The Company maintains that Complainants have failed to satisfy their burden of proof and failed to demonstrate that Columbia discriminated against them. Columbia also asserts that the Company did not unlawfully abandon service to Graystone Woods, did not fail to follow Commission complaint-handling procedures, and did not provide inadequate service to Complainants. Further, Columbia argues that the Company's actions have been consistent with Commission rules, Columbia's approved tariff, and Columbia's internal policies. Accordingly, Columbia requests the Commission find that Complainants have failed to sustain their burden of proof or state reasonable grounds for complaint, and dismiss Complainants' claims with prejudice. (CGO Br. at 3-26; CGO Reply Br. at 4-23.)

Columbia called three witnesses for direct examination: Curtis J. Anstead, the Operations Center Manager for the Toledo, Ohio area (CGO Ex. 12; Tr. II at 275-412); Stephen E. Erlenbach, a Project Engineer with S-E-A (CGO Ex. 14; Tr. III at 493-508); and Rob R. Smith, an Operations Compliance Manager for Ohio and employed by NiSource Corporate Services (CGO Ex. 13; Tr. II at 427-475).

B. Violation of Ohio Adm.Code 4901:1-13-10, Complaints and Complaint-handling Procedures

(1) Ms. Donovan's Position

Ms. Donovan asserts Columbia violated the complaint-handling procedures set forth in Ohio Adm.Code 4901:1-13-10. Ms. Donovan argues that Ohio Adm.Code 4901:1-13-10 requires Columbia to investigate a customer/consumer complaint and, unless otherwise agreed, provide a status report to the customer/consumer within three business days of receipt of the complaint. Additionally, the rule requires, according to Ms. Donovan, that, if an investigation is not completed within ten business days, the gas company must provide status updates, either orally or in writing, every five business days thereafter, unless otherwise agreed to. Therefore, Ms. Donovan asserts Columbia violated Ohio Adm.Code 4901:1-13-10 by failing to timely follow-up with the residents of Oakside Road, failing to make a good faith effort to settle the unresolved dispute within a reasonable time, failing to provide the customers with an update or status report within three days of their complaints, and failing to update the consumer and the Commission's Staff (Staff) orally or in writing in five-day intervals as required until the investigation was complete. (Donovan Br. at 4-5.)

In support, Ms. Donovan claims she had three written communications from Columbia before the Company removed her account from its billing system and abandoned service to her home on August 23, 2012. Ms. Donovan claims she was informed of the interruption of her natural gas service by Columbia through a letter taped to her front door dated May 31, 2012. (Donovan Ex. 2 at 9; Donovan Ex. 5; Tr. I at 215.) That letter directed Ms. Donovan to contact Ron Hensley, co-owner of Seneca Builders and developer of the Graystone Woods subdivision, with questions (Donovan Ex. 2 at 9; Donovan Br. at 4). Columbia was not listed as a point of contact in the May 31, 2012 letter. In fact, Ms. Donovan testified that, when Complainants called Columbia, the Company's response was to direct them back to the developer, Mr. Hensley. (Donovan Ex. 2 at 12.) Columbia's first contact with the Oakside Road homeowners following the interruption of natural gas service was a meeting held at Ms. Donovan's house on the morning of June 11, 2012, which took place at the homeowners request (Donovan Ex. 2 at 14). Those present at the June 11, 2012 meeting were Ms. Donovan, John Weiss, most of the affected Oakside Road residents, and Chris Kozak, communications and community relations manager for Columbia's Toledo Operations Center (Donovan Ex. 2 at 14; Tr. I at 226-231). Mr. Kozak left that meeting with a list of 33 questions to which Columbia provided written answers on June 12, 2012 (Tr. I at 232-233). The final written communication from Columbia was a letter dated August 23, 2012, providing notice that her account with the Company would be removed effective August 27, 2012 (Donovan Ex. 2, Att. KLD-030).

(2) Seneca/Roths' Position

Seneca/Roth similarly argue that, throughout this situation, Columbia has poorly communicated with residents of Oakside Road. Referring to the May 31, 2012 letter initially notifying the residents of the interruption of gas service, Seneca/Roth point out that this letter failed to explain why the gas had been shut off, potential safety issues for residents, how the situation could be remediated, and a timeframe for potential resolution. Additionally, Columbia made it exceedingly difficult to communicate with the appropriate representatives of the Company by repeatedly not offering contact information in their limited communications. Instead, when Oakside Road residents attempted to contact Columbia for more information, they were referred back to the developer, Mr. Hensley. (Roth Ex. 2 at 2-4; Seneca/Roth Br. at 38-39.) Columbia's first individualized communication with residents of Oakside Road was a letter dated June 15, 2012, that contained a diagram and a methane gas reading performed around the foundation of the individual property. This June 15, 2012 letter suffered many of the same problems as the May 31, 2012 letter. The final written communication with the residents of Oakside Road was the August 23, 2012 letter informing the customers that they had been removed from Columbia's system so that they would no longer receive monthly statements from the Company. (Roth Ex. 2 at 6-8; Seneca/Roth Br. at 38-41.)

(3) Columbia's Position

Columbia responds that, throughout the detection and investigation of the stray gas situation at Graystone Woods, Columbia kept in communication with the Complainants and other Oakside Road residents (CGO Ex. 12 at 6). On May 31, 2012, Mr. Kozak and Curtis J. Anstead, Columbia's Operations Center manager for the Toledo area, went door-to-door and discussed with several Oakside Road residents the interruption of gas service (CGO Ex. 12 at 6; Tr. II at 421). For customers who were not home, such as Ms. Donovan, Columbia left a letter at each house on Oakside Road explaining that Columbia had interrupted gas service to protect the residents' safety while the Company further investigated the matter (CGO Ex. 12 at 6; Tr. II at 292). Also on May 31, 2012, Mr. Kozak and Mr. Anstead met with Mr. Hensley to discuss the interruption of gas. During those discussions, Mr. Hensley offered to serve as the contact for the Oakside Road residents. (CGO Ex. 12 at 7; Tr. III at 524-525.) After May 31, 2012, Columbia claims that it had regular contact with Mr. Hensley and Oakside Road residents by electronic mail, letter, and telephone regarding the situation (CGO Br. at 7; CGO Ex. 12 at 7; Tr. III at 566).

Mr. Kozak next met with several Oakside Road residents at Ms. Donovan's house on the morning of June 11, 2012, and provided written responses to the residents' 33 questions on June 12, 2012 (CGO Ex. 12 at 7; Tr. I at 151, 227-231). Those answers described how Columbia had detected methane gas in the soil near the foundations of the Oakside Road houses, why Columbia had interrupted service, and what steps needed to

be taken in order for natural gas to be reestablished (CGO Br. at 8; CGO Ex. 12 at 7). On June 15, 2012, Columbia followed up with letters to each customer on Oakside Road reiterating the reasons for interrupting gas service and stating that, consistent with its policies, the Company would not reestablish service until the stray gas was remediated and gas readings at the foundation of the homes were zero percent. Additionally, attached to the June 15, 2012 letter was a diagram showing the locations and the results of bar hole testing conducted at each house on June 14, 2012, along with consent forms for the local public safety official and the homeowners to sign once the stray gas situation was remediated. (CGO Br. at 8-9; CGO Ex. 12 at 7; Donovan Ex. 2, Att. KLD-006.) After receiving phone calls from multiple Oakside Road residents concerning receiving bills even after the gas service was interrupted, Columbia sent a letter to its customers in Graystone Woods on August 23, 2012, informing the customers that their accounts were being removed from Columbia's system (CGO Br. at 9; Donovan Ex. 2, Att. KLD-030; Tr. III at 529-530, 558).

In late September 2012, Mr. Kozak called each home in Graystone Woods and spoke with residents in 11 of the affected houses. Mr. Kozak offered each resident a face-to-face meeting, but only one resident took him up on his offer. (CGO Br. at 9; Seneca Ex. 19; Tr. III at 551, 573-574.) Columbia communicated the Company's requirements for reestablishment of gas service once again to Ms. Donovan in a letter dated October 3, 2012 (CGO Br. at 9; Donovan Ex. 2, Att. KLD-051; Tr. I at 242). Mr. Anstead also testified concerning Columbia's communications with local and state governmental authorities including the city of Toledo and Toledo Environmental Services, the Toledo Fire Department and Fire Chief, the Ohio Environmental Protection Agency (Ohio EPA), and the Commission. Columbia first notified governmental authorities on May 24, 2012, following the initial observation of methane gas in the soil at 2107 Oakside Road. This notice was then followed by a letter on May 31, 2012, confirming observation of stray gas from an unknown source and that the perimeter of the stray gas appeared to be the 13 homes on Oakside Road. On June 14, 2012, Columbia participated in a conference call with representatives of Toledo Environmental Services, Ohio EPA, the Commission, and the Toledo Fire Department to discuss the stray gas situation and how it could be resolved. (CGO Ex. 12 at 9-10.) About this same time, Columbia appeared before Toledo City Council in response to an invitation from Steve Herwat, the deputy mayor for the city of Toledo (CGO Br. at 10-11; Tr. III at 516, 554, 560).

(4) Conclusion - Violation of Ohio Adm.Code 4901:1-13-10, Complaints and Complaint-handling Procedures

The underlying rationale for adoption of Ohio Adm.Code 4901:1-13-10 is to ensure that gas or natural gas companies respond to informal customer complaints and inquiries whether made directly to the company by the customer or forwarded to the company by the Commission. Undoubtedly, the circumstances involving the disconnection of an entire

residential subdivision, based on the detection of methane gas around the foundations of the subdivision homes, presents a challenging situation not only for the affected customers but also for Columbia. Based upon the evidence of record, we determine that Columbia has met the spirit, if not the letter, of Ohio Adm.Code 4901:1-13-10. Initially, there is no record evidence setting forth when Complainants initiated the informal complaint procedures triggering the responsive timeframe obligations for Columbia as set forth in this rule. Moreover, the record reveals that, between late May and October 2012, Columbia communicated with Complainants on a number of occasions in either written or in person discussions. For example, the record reveals that, on May 31, 2012, Columbia personnel had face-to-face discussions with customers concerning the interruption of their natural gas service. For those customers who were not at home, like Ms. Donovan, the Company left a letter on the resident's door. While it would have been much clearer if the letter had listed Columbia contact information rather than contact information for Mr. Hensley, the developer, we do not find that this factor alone amounts to inadequate service.

The record also reveals that a Columbia representative, Chris Kozak, attended a meeting at the home of Ms. Donovan on June 11, 2012, in an effort to address the residents' concerns. Mr. Kozak left the meeting with a written list of 33 questions the residents posed to the Company. Columbia responded the next afternoon, June 12, 2012. Columbia next communicated via letter dated June 15, 2012, with each resident on Oakside Road by providing methane gas readings around the foundation of each resident's home that was documented by the Company on June 14, 2012. This letter also outlined the steps the customers needed to take in order for Columbia to restore natural gas service to those homes, as well as two forms to be completed. On August 23, 2012, in response to phone calls from various customers, Columbia notified the customers by letter that the Company removed those customers from the Columbia billing system so the customers would no longer receive monthly statements from the Company. In late September 2012, Mr. Kozak called each home in Graystone Woods and spoke with 11 of the 13 residents of the affected houses and offered a face-to-face meeting. The record also reveals a series of emails with Ms. Donovan in early October 2012.

Not only did Columbia have communications with residents of Graystone Woods, but the record reveals that the Company was also in communications with local and state governmental authorities including the city of Toledo and Toledo Environmental Services, the Toledo Fire Department and Fire Chief, the Ohio EPA, and Staff. About this same time, Columbia also appeared before Toledo City Council to discuss the situation in Graystone Woods in response to an invitation from the deputy mayor for the city of Toledo. 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, we determine that Columbia's communications with Complainants was sufficient and did not violate Ohio Adm.Code 4901:1-13-10.

C. Inadequate Service

(1) Ms. Donovan's Position

Ms. Donovan states that Columbia has an obligation to provide service that is adequate and just pursuant to R.C. 4905.22. While Columbia claimed to have turned the gas off for safety, the Company repeatedly stated that they are not stray gas experts. No fewer than six entities including Columbia, Toledo Fire Department, Toledo Environmental Services, the Ohio EPA, TTL Associates, Inc., and Hull and Associates (Hull) performed additional testing throughout Graystone Woods between May 31, 2012, and September 25, 2012, yet none of these entities deemed the situation remarkable enough to warrant evacuation, elimination of ignition sources, or any further action. In fact, Hull, the engineering firm Columbia recommended to Seneca Builders for additional testing, wrote in an interim summary report that the natural gas service should be restored and testing continued while the natural gas service was on. Hull's report stated that the Graystone Woods' methane situation was a complex issue with many variables and potential sources of methane; therefore, Hull desired to use a process of elimination to ensure that the gas line was not contributing to the methane concentrations observed. Further, from this testing, it may be determined that the gas service can remain on for residential use. (Donovan Br. at 6; Donovan Ex. 2, Att. KLD 034-042.) Columbia rejected Hull's recommendation and refused to restore service and further monitor the situation, according to Ms. Donovan (Donovan Br. at 6).

Ms. Donovan believes that Columbia wants the subdivision residents to accept as true that their natural gas service was interrupted because the introduction of natural gas, in conjunction with pilot lights or other potential ignition sources, represents a danger that could ignite the stray gas found against the foundations of the homes in the subdivision (Donovan Br. at 6; Seneca Ex. 16; Tr. III at 535). Yet Columbia, through Mr. Kozak, recommended that the residents and the builder, Mr. Hensley, replace natural gas by procuring alternative forms of energy such as propane or electricity, which could also serve as sources of ignition (KLD Ex. 1 at 15). Ms. Donovan continues that this is not a policy of safety, but rather a demonstration that Columbia is only concerned with its own liability. It is unreasonable to think that Ms. Donovan or any of the other subdivision residents were made safer by the substitution of alternative energy which utilizes the same ignition sources. Accordingly, by withholding natural gas service, Ms. Donovan argues that Columbia provided inadequate service and should be found in violation of R.C. 4905.22. (Donovan Br. at 7.)

(2) Seneca/Roths' Position

Seneca/Roth maintain that the failure to follow Ohio's statutorily mandated abandonment process represents the provision of inadequate service pursuant to R.C. 4905.22. In support, Seneca/Roth cite *In re Investigation of Buzz Telecom*, Case No. 06-1443-TP-UNC, Opinion and Order (Oct. 3, 2007), where the Commission found that Buzz Telecom provided inadequate service because it failed to properly end its service according to law and rule by filing an abandonment application prior to ceasing telephone service. Therefore, Seneca/Roth continue, Columbia's actions in the present matters constitute inadequate service and have created substantial harm to Complainants. For instance, customers without gas service need to make other plans and secure alternative service to heat their homes and working appliances. A formal abandonment proceeding would have provided a clear signal to customers, well in advance of actual abandonment, the impacts to them and would have provided time to plan accordingly. Moreover, Ohio's abandonment procedures place the burden of proving the necessity and public good of the abandonment on the utility who has the most information about the reasons for the abandonment and the resources to fully educate the Commission and the public on the need for the action, so the Commission can render a decision with the best information in hand. Columbia's abandonment also necessitated huge expenses on the part of Complainants in order to achieve the results that a properly filed abandonment proceeding would achieve. Specifically, Complainants spent a large amount of time and money on attorneys, experts, and their own research reviewing issues that should have been presented in a properly filed abandonment application by the Company. Although inadequate service is a question left to the Commission depending on the facts of each individual case, Seneca/Roth assert that significant evidence has been presented by Complainants to substantiate a finding of inadequate service against Columbia in this instance. (Seneca/Roth Br. at 27-30.)

(3) Columbia's Position

Columbia disputes Ms. Donovan's contention that the Company did not act out of a valid concern for her safety when interrupting natural gas service to her home at 2130 Oakside Road. Columbia asserts that Ms. Donovan has no first-hand knowledge of the initial interruption of natural gas service on May 31, 2012, as the she was "nowhere near Oakside Road on the 31st" (CGO Reply Br. at 21; Tr. II at 293). Columbia maintains that, just because the May 31, 2012 letter taped to Ms. Donovan's door and the May 31, 2012 letter to the Chief of the Toledo Fire Department do not mention 2130 Oakside Road directly, does not mean that stray gas was not found around the foundation of Ms. Donovan's home on that date. In fact, Mr. Anstead testified that the letter to the Toledo Fire Chief was drafted and sent late morning or early afternoon on May 31, but by the time Columbia finished its investigation of the homes on Oakside Road that day, methane gas had been detected at the foundations of all 13 homes in the Graystone Woods subdivision.

(CGO Reply Br. at 21; Tr. II at 419-420.) Further, Columbia claims that there is contemporaneous evidence, in the form of an email from Mr. Anstead to Steve Sylvester,[1] that Columbia detected gas readings at the foundations of all 13 homes in Graystone Woods that day (CGO Reply Br. at 21; Seneca Ex. 8).

Columbia presented the testimony of Stephen Erlenbach, a Certified Fire and Explosion Investigator and a professional engineer, to testify concerning the potential for natural gas in the soil outside a home to infiltrate the home. Mr. Erlenbach further opined on the potential explosion hazards associated with natural gas infiltration. The witness, citing to a U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration publication call a *Guidance Manual for Operators of Small Natural Gas Systems*, testified that natural gas is flammable in a 4 to 14 percent natural gas in air mixture and that, in a confined space, a 4 to 14 percent mixture can be explosive. (CGO Ex. 14, Att. SEE-5.)

Additional testing by Columbia around the foundations of Complainants' homes occurred on June 14, June 28, and September 25, 2012. Those readings reveal that, on June 14, 2012, Columbia obtained readings around the foundation of Ms. Donovan's home, 2130 Oakside Road, as high as nine percent and as low as zero percent. On that same date, readings around 2120 Oakside Road, owned by Seneca, were as high as eight percent and as low as zero percent while the property owned by Roth, 2141 Oakside Road, had high and low readings of eight percent and zero percent. Likewise, on June 28, 2012, high and low readings at Ms. Donovan's property were four percent and zero percent, at Seneca's property were three percent and 1.5 percent, and at the Roth property were 11 percent and eight percent. Lastly, on September 25, 2012, readings obtained by Columbia were zero percent at Ms. Donovan's residence, 1.5 percent at the Seneca property, and four percent at the Roth home. (CGO Ex. 12, Atts. CJA-4, CJA-5, and CJA-6.)

Contrary to Ms. Donovan's argument that no agency or entity considered the presence of methane gas to be a hazardous condition, Columbia opines that there is no evidence that any governmental agency or private entity is willing to offer an opinion that it is safe to reestablish natural gas service to the Graystone Woods subdivision. Columbia points out that Toledo Deputy Mayor Herwat informed Mr. Kozak that the city of Toledo would not assume responsibility or liability (CGO Reply Br. at 21; Seneca Ex. 14). Additionally, the Ohio EPA and the Toledo Fire Department each informed Columbia that the methane gas situation on Oakside Road was outside their jurisdiction (CGO Reply Br. at 21; CGO Ex. 12 at 9). The Company also disputes Ms. Donovan's contention that the city of Toledo deems the homes on Oakside Road as safe for occupancy due to the continued issuance of occupancy permits after May 31, 2012. Columbia notes that the letter accompanying the occupancy permits points out the issuance of a certificate of

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1 Mr. Sylvester was identified as the general manager/vice president of Columbia with responsibilities for Ohio and Kentucky at the time this email was written.

occupancy means only that the structure meets the building and mechanical codes of the city of Toledo and, by referenced authority, those of the state of Ohio (CGO Reply Br. at 21; Seneca Ex. 2, Att. 2). There is no evidence that the occupancy permits contemplate the presence of methane gas at the foundations of the homes in Graystone Woods or otherwise affirm the ongoing safety of those homes (CGO Reply Br. at 21).

Columbia next discounts the qualifications of Ms. Donovan's expert to opine on the migration of methane gas in the residential context and the overall safety of the residence at 2130 Oakside Road. Columbia submits that, while Ms. Donovan's expert, John Weiss, has some experience with methane gas in coal mines, Mr. Weiss has never before used the testing equipment he utilized in these cases to check for methane gas around Ms. Donovan's home and he admits that he has no personal experience with methane remediation in a residential context and is not a soil expert. (CGO Reply Br. at 22; Tr. I at 144, 148.) In fact, documenting Mr. Weiss' involvement in these matters, Columbia observes that Mr. Weiss is more a co-litigant that an expert and his testimony on the safety of the home should be dismissed as such (CGO Reply Br. at 22). Finally, Columbia labels as mere speculation Ms. Donovan's argument that the Company's concern for its legal liability and Mr. Kozak's purported recommendation that the residents of Graystone Woods procure alternative forms of energy for continuing to provide gas service to the residents of Graystone Woods relates in any way to the safety of continuing to provide such service. Columbia submits that the Ohio Supreme Court has rejected such speculative arguments like Ms. Donovan's in *In re Complaint of Smith v. Ohio Edison, Co.*, 137 Ohio St.3d 7, 2013-Ohio-4070. Columbia continues that, even if Ms. Donovan's interpretation of Mr. Kozak's recommendation were valid, and she offers no evidence to support it according to Columbia, it would not prove her contention that it is safe to provide natural gas service to her home. Accordingly, Columbia recommends the Commission deny Ms. Donovan's inadequate service claim. (CGO Reply Br. at 22-23.)

(4) Conclusion - Inadequate Service

R.C. 4905.22 defines inadequate service, in part, as "[E]very public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable ***." While "inadequate service" in a complaint proceeding is not specifically defined in R.C. Title 49, the Commission has discussed, in a number of cases, the factors the Commission will 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. *In re Complaint of Wilson v. AT&T Comm. of Ohio, Inc.*, Case No. 03-2294-TP-CSS, Opinion and Order (June 2, 2004) at 7; *In re Carpet Color Systems v. The Ohio Bell Tel. Co.*, Case No. 85-1076-TP-CSS, Opinion and Order (Oct. 9, 1987), and *In re State*

Alarm, Inc. v. Ameritech Ohio, Inc., Case No. 95-1182-TP-CSS, Opinion and Order (Mar. 25, 1999), Entry on Rehearing (Nov. 30, 2000). We will analyze these factors in turn.

The first factor is the number, severity, and duration of the service problems involved. There is no dispute that the termination of gas service has affected all of the residents of the Graystone Woods subdivision and that this interruption in gas service has been ongoing since May 31, 2012. However, given the record evidence that supports Columbia's concern that there could be a hazardous situation if service were continued without remediation, the Commission cannot find that the Company's actions in interrupting natural gas service were unreasonable. The evidence of record reveals that the levels of methane gas recorded around the foundations of Complainants' residential dwellings, albeit varying from time-to-time, represents a verifiable safety hazard that warrants the interruption of natural gas service until such time as remediation occurs. Readings as high as 11 percent have been registered around the foundations of Complainants' homes. In a confined space, a 4 to 14 percent mixture can be explosive. Moreover, the record reveals that gas can and does migrate in soil and through openings in foundations of homes through cracks and around utility conduits such as water and sewer lines. Thus, under the circumstances presented by this case where stray gas at explosive limits have been recorded around the foundations of Complainants' homes and where stray gas can and does migrate in soil and through openings in foundations of homes, we determine that Columbia was justified in shutting off the natural gas service to the Complainants' residences due to a verifiable safety hazard that exists.

As for whether the hazardous condition could be rectified, the record indicates that, should appropriate remediation take place in conjunction with signed written orders from someone with authority over public safety or signed consent from an accredited engineering expert in the remediation of methane along with a signed form from the homeowner authorizing the restoration of service and agreeing to maintain the remediation system in good working order, the service could be turned back on and the residents could receive gas service from Columbia. However, this is where the difficulty lies. While Columbia continues to state that remediation must take place before service is resumed, once remediation is complete, Columbia has failed to provide any information as to the level and duration of such level that the residents must meet in order for the Company to consider the situation resolved so as to enable the restitution of natural gas service to the residents. Of note, Columbia's employees testify that the concentration of methane around the foundation of a house should be zero yet Columbia's own expert witness that testified on the potential explosion hazards associated with natural gas infiltration stated that natural gas is flammable and can be explosive in a 4 to 14 percent natural gas in air mixture. Therefore, the standard for reconnection will be 4 percent. Within 30 days of this Order, Columbia must provide the parameters on where and when the measurements must be taken to meet this standard and to restore service. Accordingly, while we find Columbia's unwillingness to articulate a standard that must be

met before reconnection of service to be unreasonable in this circumstance, we do not find that such unwillingness is tantamount to the provision of inadequate service.

The third and final factor for consideration as to whether inadequate service has been provided is whether the service problems likely are caused by the company's facilities. In this instance, the record reflects that the problem that triggered the disconnection of service by Columbia was methane gas, not Columbia's pipeline gas; thus, it was not the fault of the Company and was not caused by the Company's facilities.

D. Discrimination Claim

(1) Ms. Donovan's Position

To support her claim of discrimination, Ms. Donovan states that the evidence in these proceedings conclusively and undisputedly demonstrate that Columbia consistently and repeatedly held her to a higher standard than other customers. To support this position, Ms. Donovan first points to the testimony of Rob Smith, an Operations Compliance Manager for Columbia in Ohio. Mr. Smith testified regarding Columbia's requirements for restoring natural gas service stating that the customer or other responsible party must first install 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. Mr. Smith next testified that the customer or homeowner needed to sign a consent form authorizing the restoration of natural gas service and agreeing to maintain the remediation system in good working order. The third and final requirement according to Mr. Smith is that, under the 2012 version of Gas Standard (GS) 1708.080, Columbia needs to have a signed, written order from someone with authority over public safety, someone like a Mayor, Safety Director, or Fire Chief, that a system has been installed that remediates the stray gas and makes it safe for Columbia to restore service. (Donovan Br. at 20; CGO Ex. 13 at 10.) Ms. Donovan asserts that the Columbia standard referenced by Mr. Smith and appended to his testimony as Attachment 5 was not, in fact, the relevant Columbia gas standard at the time the Company interrupted her natural gas service in May 2012. Rather, the standard referenced by and appended to Mr. Smith's testimony was the gas standard effective on January 1, 2013, as GS 1708.080. The actual gas standard effective in May 2012 stated that "*** a permanent venting system designed to prevent accumulation and direct gas away from potential ignition sources is an acceptable resolution." (Donovan Br. at 20; CGO Ex. 13, Att. 1.)

Ms. Donovan next claims Columbia discriminated against her because she was not informed until June 15, 2012, more than two weeks after natural gas service had been interrupted, of the actions Columbia required before the Company would restore natural gas service. Even then one of the forms provided by Columbia was to be signed by "the

governmental authority having jurisdiction over the stray gas matter at 2130 Oakside Drive ***." (Donovan Br. at 21.) In fact, neither Columbia nor any other party is able to identify the governmental authority with jurisdiction over stray gas. Instead, as Mr. Smith testified at the hearing, Columbia's required sign-off is not from "the governmental authority with jurisdiction over stray gas," but instead someone with authority over safety. (CGO Ex. 13 at 10.) Thus, according to Ms. Donovan, Columbia required her to meet a standard that was not only higher than Columbia's stated policies, but was impossible to achieve (Donovan Br. at 21).

Ms. Donovan's next claim of discrimination is the May 31, 2012 Anstead letter to the Toledo Fire Chief (Donovan Ex. 13) where Columbia identified the perimeter of the stray gas at the foundations of three homes, yet Columbia interrupted service to her home which was not identified in the letter. In fact, Ms. Donovan asserts, there are homes located on the adjacent street, Oak Haven, that are closer in proximity to the three homes identified in the May 31, 2012 letter than her residence, yet these closer homes did not have service interrupted. (Donovan Br. at 22; Donovan Ex. 2 at 30.)

Ms. Donovan's last claims of discrimination relate to restoration of natural gas service following detection of stray gas at another location in Ohio. The customer was located at 32245 Country Club Drive in Avon Lake, Ohio where Columbia had reestablished natural gas service upon performing a reinspection and documented a zero reading for stray gas (Donovan Br. at 22; Donovan Ex. 14). Yet, when Ms. Donovan requested restoration of service following a zero reading around the foundation of her home on September 25, 2012, (Donovan Ex. 2, Att. KLD-048) Columbia refused to reestablish service. (Donovan Br. at 22; Donovan Exs. 9-10, 14.) Additionally, Ms. Donovan asserts that natural gas service was restored to the above customer without sign-off from a local safety official (Donovan Ex. 15). In fact, in this document, according to Ms. Donovan, Rob Smith requested another Columbia employee to obtain sign-off from a local safety official more than six weeks after natural gas service was restored to the property. In contrast, claims Ms. Donovan, Columbia was requiring her to procure governmental sign-off before restoring service. (Donovan Br. at 22-23.)

(2) Seneca/Roths' Position

Seneca/Roth assert that Columbia's misrepresentation of its own policies and its unwillingness to share these policies with Graystone Woods' residents constitutes inadequate and discriminatory service. In support, Seneca/Roth claim that Columbia has inconsistently represented the requirements of GS 1708.080, as the requirements of the standard have been communicated to various parties differently, and inconsistent with the actual GS 1708.080 in place at the time of the interruption of service. Columbia witness Anstead testified that Columbia has, on multiple occasions, advised the residents of Graystone Woods that the requirements for the restoration of service are: 1) the

installation of a remediation system that would lower and maintain the concentration of methane around the foundation of a house at zero; 2) a signed consent from a certified expert or a government entity stating that it is safe for Columbia to restore natural gas service; and 3) a signed consent form from the homeowner stating that the remediation system will be maintained in good working order must be provided to Columbia. (Seneca/Roth Br. at 32-33; CGO Ex. 12 at 7-8.) Columbia representative Chris Kozak, in an email to Michelle Dempsey, legislative aide to Representative Michael Ashford, in October 2012, characterized the requirement as "*** a remediation system installed that would lower and maintain the methane gas readings at zero around the foundation ***" (Seneca/Roth Br. at 33; Seneca Ex. 15; Tr. III at 520-522).

Alternatively, Columbia witness Smith characterized the requirements differently from witness Anstead, and in two different manners within his own testimony. Initially, witness Smith testified that the customer must install a remediation system to prevent gas accumulation around the foundation of the home, a form signed by the homeowner agreeing to maintain the remediation system in good working order, and a signed, written order from someone with authority over public safety that a system has been installed that remediates the stray gas and makes it safe for Columbia to restore service. (Seneca/Roth Br. at 33; CGO Ex. 13 at 10-11.) Later in his testimony, however, witness Smith characterized the customer's responsibility as "the installation of a remediation system that would result in gas readings of zero percent, as well as a signed consent from a governmental authority with jurisdiction over safety (or from an engineering or environmental company that is an expert in stray gas remediation) that it is safe to restore service and a signed consent from a homeowner accepting the risk of resuming natural gas." (Seneca/Roth Br. at 33; CGO Ex. 13 at 14.)

However, the actual Columbia Gas Standard, GS 1708.080, which was in place in 2012 at the time of the service interruption, states that a "*** permanent venting system designed to prevent the accumulation and direct gas away from potential ignition sources is an acceptable solution" (Seneca/Roth Br. at 33; CGO Ex. 13, Att. RRS-1 Section 5). Columbia modified GS 1708.080 effective January 1, 2013, to read "*** a permanent venting system designed to prevent the accumulation *around the foundation or immediate perimeter of the structure or building* and direct gas away from potential ignition sources is an acceptable solution" (emphasis added) (Seneca/Roth Br. at 34; CGO Ex. 15, Att. RRS-5, Section 5). Seneca/Roth submit that, despite what was presented by Columbia on numerous occasions to Graystone Woods' customers and to governmental authorities from June 2012, the requirements concerning the location of gas around the foundation were not added to the gas policy until January 1, 2013. Rather, the permanent venting system was solely required to prevent accumulation and direct it away from potential ignition sources. Moreover, despite what Columbia represented to the local authorities, the developer, and the residents of Graystone Woods, there has never been a requirement in either the 2012 or

2013 version of GS 1708.080 for a gas reading of zero (Seneca/Roth Br. at 34-35; Tr. II at 460-462).

Columbia is also inconsistent, claims Seneca/Roth, in its application of GS 1708.080 for the installation of a permanent venting system. In support, Seneca/Roth assert that both the 2012 and 2013 versions of GS 1708.080 clearly and consistently state that Columbia "is not responsible for the design, installation, or monitoring of the permanent venting system" (Seneca/Roth Br. at 35; CGO Ex. 13, Atts. RRS-1 Section 5, RRS-5 Section 5). Additionally, Columbia witness Smith testified that the only design requirement is that "it work" and that Columbia will not provide recommendations or advice on what remediation system a customer should install because Columbia is not expert at methane remediation (Seneca/Roth Br. at 35; CGO Ex. 13 at 10).

Seneca/Roth argue that Columbia's policy was not applied in practice. For example, Seneca Builders caused a radon mitigation system to be installed at 2107 Oakside Road in an attempt to mitigate the potential for stray gas in June 2012. This system created a seal on the sump pump and exhausted all gas through a pipe run through the roof. (Seneca/Roth Br. at 35; Seneca Ex. 2 at 7.) By design, the system was intended to prevent the accumulation of gas and direct gas away from ignition sources in the house. Yet, Columbia responded by insisting on reviewing the system for compliance after it was installed and determined that the requirement to have a remediation system that eliminated gas around the foundation was not met. (Seneca/Roth Br. at 35; Tr. II at 386-387.) Seneca/Roth assert that Columbia wants it both ways. Columbia maintains that they are not experts in the remediation of stray gas, yet they demand a final review and judgment on the remediation efforts which have been implemented. (Seneca/Roth Br. at 36.)

Another claim of discriminatory conduct made by Seneca/Roth involves Columbia's vigorous investigation on Oakside Road that was not replicated when stray gas was detected in other parts of the Company's service territory. Contrary to the procedure followed by Columbia in this case, Seneca/Roth allege that stray gas was discovered near a home a few miles away from Graystone Woods in Sylvania, also in the Toledo area served by Columbia. (Seneca/Roth Br. at 30; Tr. II at 408-409.) At the Sylvania location in July 2013, Columbia found stray gas using bar hole testing and did not set the meter. The Columbia service technician attributed the stray gas readings to hydro-seeding that had been recently sprayed on the lawn. Three days later, another Columbia service technician did not get any readings nor did testing on the house lines and service lines show any leaks. Consequently, Columbia set the meter and established service. (Seneca/Roth Br. at 30-31; Seneca Ex. 12.) Seneca/Roth argue that, contrary to the investigation at Graystone Woods, Columbia established service without requiring samples being collected and analyzed nor was any analysis performed on the stray gas to determine its chemical components (Seneca/Roth Br. at 31; Tr. II at 404; Seneca Ex. 12).

Moreover, Columbia performed no perimeter testing nor did Columbia require the property owner to hire an expensive, environmental remediation firm (Seneca/Roth Br. at 31; Seneca Ex. 12). Finally, Columbia has not returned to retest the area around the residence after the meter was set (Seneca/Roth Br. at 31; Tr. II at 407).

Seneca/Roth argue that this substantially different treatment between "similarly situated customers" with similar issues is discriminatory and violates R.C. 4905.35. Columbia witness Anstead testified that, when Columbia detects gas from an unknown source, the Company conducts an investigation and, in the case of Graystone Woods, followed the investigatory standards set forth in GS 1708.080 (Seneca/Roth Br. at 31; CGO Ex. 12). Yet, a year later, and just a few miles away, Columbia did not follow the policy on White Aspen Road that the Company invoked and burdened the customers with on Oakside Road. Columbia speculated without any specialized testing the source of the stray gas and, despite the evidence of gas from an unknown source, established service and has never returned to perform further testing (Seneca/Roth Br. at 31; Tr. II at 405).

(3) Columbia's Position

Columbia disputes the discrimination claims raised by Complainants. Initially, Columbia notes that, under Commission rules and Commission precedent, Complainants' discrimination claims should be dismissed. Citing Ohio Adm.Code 4901-9-01(B), Columbia asserts that 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. Yet, that is exactly what the Complainants have attempted to do in these proceedings according to the Company. (CGO Br. at 15-16; CGO Reply Br. at 11.) Neither the Avon Lake customer discussed by Ms. Donovan nor the Sylvania customer discussed by Seneca/Roth were mentioned or discussed with particularity in the complaints filed by Complainants in violation of Ohio Adm.Code 4901-9-01, claims Columbia (CGO Reply Br. at 11).

Moreover, the Company argues, Complainants' discrimination claims fail because Complainants have not established that Columbia's customers in Avon Lake and Sylvania are similarly situated to them as required by R.C. 4905.35(B)(1) (CGO Reply Br. at 11). Pointing to the record evidence, Columbia claims that the Sylvania customer experienced "nonstandard" gas, not methane; readings were only obtained in the area of the yard where hydro-seed had been sprayed; and the readings were not obtained at the foundation of the residence. Because the readings at the Sylvania customer's address were higher near where the hydro-seed had been applied and lower away from the hydro-seed, Columbia was "pretty confident" that the fertilizer caused the readings at the Sylvania location. (CGO Reply Br. at 11-12; Tr. II at 400, 403-405.) At Graystone Woods, on the other hand, methane gas was detected at the foundation of every home in the subdivision

and there was no evidence that hydro-seed had been applied throughout this subdivision that could have caused the readings that Columbia and third-party experts recorded (CGO Reply Br. at 12; CGO Ex. 12 at 2-6, Exs. CJA-2, CJA-4, CJA-5; Tr. I at 36-39; CGO Ex. 2; Seneca Ex. 2). Moreover, the Graystone Woods' customers were already receiving service, whereas the Sylvania customer was not. For these reasons, Columbia argues that Seneca/Roth have not shown that the Sylvania customer was similarly situated to them, or that Columbia treated the Sylvania customer differently from the Graystone Woods' customers under comparable circumstances. (CGO Reply Br. at 11-12.)

Similarly, Columbia asserts that Ms. Donovan has not established that she and the customer in Avon Lake are similarly situated. According to Columbia, the evidence indicates that the Company detected methane in the soil at or near the foundation of Ms. Donovan's home on May 31, June 14, and June 28, 2012 (CGO Ex. 12 at 4-6, Exs. CJA-4 at 8, CJA-5 at 9); while it is unclear how or when the presence of combustible gas was indicated or whether combustible gas was ever detected in the soil at or near the foundation of the Avon Lake address (CGO Reply Br. at 12; Donovan Ex. 14; Tr. II at 475). According to Columbia, Ms. Donovan also failed to establish discrimination claims regarding the sign-off by a local safety official. Pointing to Donovan Ex. 15, Columbia notes that the exhibit merely represents that Columbia sought the signature of a local safety official in order to restore the customer's property back to its original state. This exhibit does not reflect, as Ms. Donovan claims, that the Company sought sign-off from a local safety official six weeks after the reestablishment of natural gas service to the Avon Lake property. 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. (CGO Reply Br. at 12-13.)

Columbia, likewise, denies Ms. Donovan's other discrimination claims. Columbia asserts that Ms. Donovan is wrong when she argues that Columbia did not deny discrimination in its answer to the complaint. Additionally, Columbia disputes that Ms. Donovan was held to a higher and significantly stricter standard than was in the Company's Gas Standards 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." Columbia denies that the addition of these words in the 2013 version of GS 1708.080 changed the meaning of the policy that was applied to Ms. Donovan. Citing to R.C. 4905.35(B)(1), Columbia continues that, without evidence that the Company applied a less strict standard for reconnection of service by other "similarly situated consumers *** under comparable terms and conditions," Ms. Donovan has not proven or even alleged discrimination. (CGO Reply Br. at 13.) Ms. Donovan's final claim of discrimination involves the disruption of natural gas service to the entire Graystone Woods subdivision in a linear fashion while there are homes on Oak Haven Road that are physically closer to the initial gas detection point than Ms. Donovan's. Columbia asserts that, like her other

discrimination allegations, there is no evidentiary support for this allegation. In fact, Columbia claims that the only evidence on this issue reflects that methane gas was found around, near, or at the foundation of Ms. Donovan's home on May 31, 2012, while no readings were indicated at the foundation of the homes on Oak Haven Road. (Tr. II at 420; CGO Ex. 12 at 4-5.) Thus, claims Columbia, the homes on Oak Haven Road, like those in Sylvania and Avon Lake, are not similarly situated to Complainants. For all these reasons, Columbia observes that Complainants have failed to support their discrimination claims. (CGO Br. at 10; CGO Reply Br. at 13-14.)

(4) Conclusion - Discrimination

To support the claims of discrimination by Columbia, Complainants submit that the Company misrepresented and inconsistently applied its own policies and the Company's unwillingness to share these policies with Graystone Woods' customers constitutes inadequate and discriminatory service. R.C. 4905.35 prohibits, in part, any public utility from giving any undue or unreasonable preference to any person or subject any person to any undue or unreasonable prejudice or disadvantage. Additionally, a natural gas company that is a public utility must offer its regulated services to all similarly situated consumers under comparable terms and conditions.

While the record evidence does confirm that Columbia was not absolutely one hundred percent consistent in relaying the steps required to remediate the methane gas and have service reestablished pursuant to GS 1708.080, we do not find that such lack of consistency equates to undue or unreasonable prejudice or disadvantage under these circumstances. Initially, we note that neither the version of GS 1708.080 in effect in May 2012, nor the version effective January 1, 2013, requires a zero percent accumulation of gas around a structure's foundation. Nevertheless, as noted above, although fluctuating, the readings around the Complainants' foundations at various times, as recorded by Columbia, fell within the lower explosive limits of gas-to-air ratios. Moreover, we do not find any undue or unreasonable prejudice or disadvantage to Complainants resulting from Columbia's application of GS 1708.080. Columbia's expert testified that, during his time as Compliance Operations Manager (i.e., October 2010), Columbia consistently interpreted GS 1708.080 as requiring the elimination of gas around the foundation of a structure at which stray gas has previously been detected. Columbia has a similar policy (i.e., GS 1714.010) of interrupting the flow of pipeline gas when pipeline gas readings around the foundation of a structure or where gas would likely migrate to an outside wall of a building occurs. Thus, there is no indication in the record that Columbia's application of GS 1708.080 to the Complainants' circumstances represented undue or unreasonable prejudice or that Columbia treated similarly situated consumers under comparable terms and conditions in a different manner. Columbia's January 2013 modification of GS 1708.080 made Columbia's interpretation and application explicit, rather than leaving future application of the standard open to question prospectively.

Complainants' final argument in support of discrimination involves the restoration of natural gas service following detection of stray gas at other locations in Ohio. Specifically, Ms. Donovan discusses a situation involving an Avon Lake customer and Seneca/Roth describe a home a few miles away from Graystone Woods in Sylvania, Ohio. At the outset, we note that Ohio Adm.Code 4901-9-01 requires that "[I]f discrimination is alleged, the facts that allegedly constitute discrimination must be stated with particularity." A review of the complaints filed by Ms. Donovan and Seneca/Roth do not mention or discuss with particularity the Avon Lake or Sylvania situations. Notwithstanding the failure to plead with particularity the facts giving rise to their discrimination claims, the Commission does not agree that the Avon Lake and Sylvania circumstances represent similarly situated customers under comparable circumstances. The record evidence reveals that the Sylvania customer experienced elevated nonstandard gas readings away from the foundation of the residence and near where a chemical fertilizer, hydro-seed, had been applied. Columbia returned three days later and the readings had diminished and, thereafter, Columbia set the meter and established service. Likewise, the Avon Lake situation raised by Ms. Donovan does not appear to represent similarly situated customers under comparable circumstances. The record evidence reveals that, upon a further investigation, combustible gas against the foundation of the Avon Lake property was not confirmed and natural gas service was reestablished; whereas, stray gas was detected at the foundation of Ms. Donovan's home on three different occasions (i.e., May 31, June 14, and June 28, 2012).

E. Abandonment

(1) Ms. Donovan's Position

As a final matter, Ms. Donovan claims that Columbia illegally and improperly abandoned natural gas service to her property and to all the homes in the Graystone Woods subdivision. Ms. Donovan asserts that the Ohio Revised Code provides detailed and explicit definitions and descriptions for the abandonment of public utility service and facilities. Ms. Donovan contends that Columbia abandoned the natural gas service line on Oakside Road in complete disregard for the Ohio Revised Code. To support her contention, Ms. Donovan notes that Columbia witness Anstead testified that the service line supplying natural gas to the Graystone Woods subdivision, first installed pursuant to a Line Extension Agreement executed in April 2009, was disconnected from the rest of Columbia's distribution system, pressure tested, and those lines filled with air and capped on August 23, 2012. Witness Anstead confirmed that the notes on the work order reflect that the line has been "retired." Further, the witness agreed that the residents were not informed that the line was separated and closed. (Donovan Br. at 14; Tr. II at 335-337; Seneca Exs. 4, 7.) Columbia witness Kozak confirmed that the closing of the system was made known to the developer's attorney but that he did not believe the attorney fully

grasped what that meant. Witness Kozak also testified that closing off the pipeline makes it more difficult for the Oakside Road residents to be reconnected to Columbia's pipeline system. He further noted that removal of the customers' accounts from Columbia's system indicated that they are no longer Columbia's customers. (Donovan Br. at 15; Tr. III at 532-533; Seneca Ex. 17.) Columbia's own internal communications discussed the abandonment process Columbia had undertaken and witness Kozak testified that the "abandonment," as used by Columbia, was indeed being used in the context of the legal process (Donovan Br. at 15; Tr. III at 547; Seneca Ex. 19).

Ms. Donovan asserts that it is abundantly clear that Columbia was fully aware of the abandonment efforts and, in doing so, openly violated R.C. 4905.21 by not submitting an application to the Commission in writing so that the Commission could ascertain whether abandonment was reasonable. Moreover, Columbia denied Complainants and the other residents of Oakside Road an opportunity to challenge the abandonment through the publication of legal notice. In fact, Ms. Donovan opines, Columbia's abandonment of the service line on Oakside Road was a deliberate maneuver to shift the burden of proof away from Columbia and instead place such burden upon Complainants and others. Further, Columbia should have known that the Oakside Road service line was not eligible for abandonment as the line had not been in service for five years as required by R.C. 4905.21. Given the undisputable acknowledgement of abandonment evidenced by the testimony and evidence in this matter, Ms. Donovan urges the Commission to find that Columbia improperly and illegally abandoned service to Oakside Road and assess Columbia the full penalty as allowed by law. (Donovan Br. at 15-16.)

(2) Seneca/Roths' Position

Seneca/Roth maintain that the undisputed evidence of record reveals that Columbia has abandoned the facilities and service of the customers and of the development on Oakside Road in violation of Ohio law. The evidence demonstrates, and Columbia does not dispute, claims Seneca/Roth, that Columbia dug up the four-inch plastic intermediate pressure main serving Graystone Woods, separated it from the rest of Columbia's system, and capped it (Tr. II at 333-336). Columbia witness Anstead agreed that "service is not being provided to the customers through those facilities" (Tr. II at 319). Witness Anstead also agreed that the line is now "closed for service" (Tr. II at 335). Columbia's own field workers recorded the four-inch plastic intermediate pressure main serving Oakside Road as "retired" (Seneca Ex. 7). This "retired" line no longer provides natural gas service to the homes on Oakside Road and is filled with air (Tr. II at 336). Thus, argues Seneca/Roth, Columbia's closure, separation, and service termination of the four-inch main gas line serving Oakside Road is the type of activity for which Ohio law requires an application to the Commission to obtain the Commission's permission. Columbia filed no such application states Seneca/Roth. (Seneca/Roth Br. at 16-17.)

Seneca/Roth continues that Columbia abandoned the main service line in Graystone Woods at the same time that the remediation firm recommended by Columbia to Complainants, Hull, requested the temporary restoration of natural gas service in order to continue Hull's investigation on an iterative basis through a process of elimination (Donovan Ex. 2, Part 3, Att. KLD-042; Seneca Ex. 2 at 6). Instead of agreeing to the remediation expert's request, however, Columbia denied the request and, on the same day Columbia denied the request, the Company made an internal decision to close the line providing natural gas service to Graystone Woods (Tr. II at 328-330). This decision by Columbia demonstrates bad faith on the part of the Company claims Seneca/Roth. (Seneca/Roth Br. at 19.)

In fact, Seneca/Roth assert that Columbia expressed a desire within a week of first interrupting service to abandon service to Graystone Woods. In support of this position, Seneca/Roth point to a June 7, 2012 email from Columbia employee Chris Kozak summarizing a conversation with Ron Hensley, principal of Seneca Builders, where Mr. Kozak asked the developer if he had considered other energy sources for the homes in Graystone Woods, such as propane or electric, and then recommended that he should look at such sources (Seneca Ex. 18; Tr. III at 540). Additionally, Columbia had several conversations with FirstEnergy about converting the Graystone Woods community into an all-electric neighborhood (Tr. III at 570). Columbia's desire to abandon service to Graystone Woods is also evident from the Company's correspondence claims Seneca/Roth. Specifically, in an email exchange regarding the abandonment process, Mr. Kozak admitted that Columbia was considering, and actively discussing with Staff, filing for formal abandonment of the development (Tr. III at 547-548). The email also noted at that time that the abandonment process would continue in-house (Seneca/Roth Br. at 20-22; Seneca Ex. 19).

Seneca/Roth conclude by asserting that Columbia's actions regarding abandonment of service violate Ohio law and Commission precedent. Seneca/Roth submit that, had the Company followed the statutory abandonment process outlined in R.C. 4905.20 and 4905.21,[2] Columbia should have filed an abandonment application with the Commission, provided customers with notice that the abandonment was being considered, participated in a public hearing on the abandonment application where the Company, not the Complainants, had the burden of convincing the Commission that the abandonment was appropriate, and, ultimately, the Commission would rule on the Company's abandonment application. Moreover, Columbia's actions are contrary to long-standing Commission precedent and previous Commission orders. In support, Seneca/Roth cite to *In re Complaint of Steve Bowman, et al., v. Columbia Gas of Ohio, Inc., et al.*, Case No. 83-1328-GA-CSS (*Steve Bowman*), Opinion and Order (Feb. 17, 1988) at 3-4. In this case, Seneca/Roth assert, the Commission found that "[t]he purpose of the Miller Act is to

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2 R.C. 4905.20 and 4905.21 are also known as the Miller Act.

protect consumers from unreasonable abandonment of service." The Commission also noted that, when a utility is providing service to customers, "it must seek approval from the Commission to abandon service." They further opined that "the Miller Act not only applied to the abandonment of facilities, but also to the abandonment of service" (*Steve Bowman* at 3-4.) The *Steve Bowman* holding has been repeated in subsequent Commission cases involving Columbia, states Seneca/Roth.[3] Accordingly, Seneca/Roth urge the Commission to determine that Columbia has violated R.C. 4905.20 and 4905.21. (Seneca/Roth Br. at 22-24.)

(3) Columbia's Position

In response to Complainants' abandonment claims, Columbia initially responds that such arguments should be rejected as Complainants raised the issue of abandonment for the first time in their post-hearing briefs. Throughout these proceedings, Columbia asserts, the focus of Complainants' claims have been on allegations involving inadequate service and discrimination. Neither Ms. Donovan nor Seneca Builders pled abandonment in their complaints claims Columbia. Continuing, the Company notes that Roth did plead that "Columbia Gas has effectively abandoned the service to 2141 Oakside Road, in violation of Ohio law" yet there was no indication that Roth was specifically referencing Columbia's temporary disconnection of the main line serving Graystone Woods, or Ohio's utility line abandonment statutes. In fact, Columbia argues, Roth's complaint cites R.C. 4905.22 (regarding necessary and adequate service) and R.C. 4905.35 (prohibiting discrimination between similarly situated consumers), but does not cite R.C. 4905.20 or R.C. 4905.21, which relate to abandonment. Thus, Columbia maintains, the Commission should not rule on claims that were never properly put before it (CGO Reply Br. at 4-5).

Columbia also observes that it would be unfair and inappropriate for Complainants to be permitted to shift the burden of proof to the Company after the presentation of evidence was completed. The Complainants were advised well in advance of the hearing that they had the burden of proof. *See, In re Lycourt-Donovan v. Columbia Gas of Ohio, Inc.*, Case No. 12-2877-GA-CSS, Entry (Nov. 2, 2012) citing *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 214 N.E.2d 666 (1966). Additionally, the Commission's *Formal Complaint Procedures* brochure, which was mailed to each Complainant after their complaint was filed, also notified Complainants of their responsibility to prove the claims made in the complaint. Complainants did not challenge that assignment of the burden of proof nor have Complainants cited any previous cases in which the Commission shifted the burden of proof after the hearing. In fact, according to Columbia, 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, Steve Bowman*, Entry on Rehearing (July 16, 1987) at ¶7. (CGO Reply Br. at 5-6.)

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[3] *See, In re Columbia Gas of Ohio, Inc.*, Case No. 91-190-GA-ABN, Opinion and Order (Sept. 3, 1992) and *In re Columbia Gas of Ohio, Inc.*, Case No. 94-435-GA-ABN, Opinion and Order (June 1, 1994).

Next, as Ms. Donovan herself points out, Columbia could not have filed an abandonment application as R.C. 4905.21 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 Br. at 17-18). According to Columbia, the evidence of record reflects that the Line Extension Agreement for Graystone Woods was not executed until April 2009 and the main line running down Oakside Road into Graystone Woods was installed towards the end of 2009 (Tr. II at 313). Therefore, Columbia asserts, the Company could not have filed an abandonment application until the end of 2014 at the earliest (CGO Reply Br. at 6).

Finally, and most importantly according to Columbia, the Company never abandoned the main line serving Graystone Woods. There is no definition of "abandon" in either R.C. 4905.20 or R.C. 4905.21. However, the Commission's minimum gas service standards, Ohio Adm.Code 4901:1-13-05(A)(3)(d), define "abandoned" to mean "pipe that was not intended to be used again for supplying gas or natural gas, including a deserted pipe that is closed off to future use." Pursuant to this definition, the main line serving Graystone Woods and the service lines serving Complainants' properties were not "abandoned" states Columbia. Rather, the Company claims that it 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 issue. At hearing, Columbia's witnesses said the same thing. (CGO Rely Br. at 6-8.) Witness Kozak testified that, throughout this process, the goal of the Company was to have the Graystone Woods residents' natural gas service restored (Tr. III at 555). Witness Anstead testified that Columbia continued to perform bar hole testing within the Graystone Woods development into September 2012 and that the Company was prepared to reestablish service if the remediation requirements were fulfilled (Tr. II at 394). Witness Anstead reiterated that the main line serving Graystone Woods was "temporarily disconnected and pressure tested" but could be "tied back in at any time." Further, he testified that Columbia would have to go back out to Graystone Woods and do at least some minimal additional work in order to abandon the main line serving Graystone Woods (CGO Reply Br. at 8-9; Tr. II at 322, 335-337).

Nor does Complainants' other purported evidence support the abandonment theory says Columbia. Witness Kozak's suggestion to Seneca Builders that it consider alternative sources of energy for the homes in Graystone Woods was made only after the developer, Mr. Hensley, refused to accept Columbia's stray gas findings relying instead on testing done by TTL that reflected a lower concentration of stray gas in the soil in the Graystone Woods subdivision (Tr. III at 538-540; Seneca Ex. 2, Att. RWH-6; Seneca Ex. 18). Complainants' assertion that Columbia acted in bad faith when it denied Hull's request to restore service to Graystone Woods was denied, according to Columbia, because the

question Hull was trying to answer by reestablishing service (i.e., whether "the gas line is *** contributing to the methane concentrations observed") had already been answered and confirmed that the gas was not the same chemical make-up as Columbia's pipeline gas. Further, the results of the Company's leak survey throughout the subdivision were negative. (CGO Reply Br. at 9; Seneca Ex. 2, Att. RQH-9 at SEN000058 to 59; Seneca Ex. 5 at COH01985.) Complainants also note Columbia's discussions with Staff about filing an abandonment application, but, as discussed previously, Columbia was not legally able to make such a filing even if it wanted to. Finally, Complainants point to Columbia's conversations with FirstEnergy about converting Graystone Woods into an all-electric community, yet the evidence does not support that contention says the Company. The evidence reflects, according to Columbia, that Ron Hensley of Seneca Builders reached out to FirstEnergy about converting Graystone Woods to an all-electric community and that Columbia's discussions with FirstEnergy were regarding the fact that Seneca Builders had failed to share the results of its stray gas testing with FirstEnergy. (Seneca Ex. 2 at 8; Tr. III at 570-573.) Columbia concludes that Complainants have offered no evidence to support their contentions; therefore, the Commission should reject Complainants' newly developed, and entirely unsupported, abandonment arguments (CGO Reply Br. 6-10).

(4) Conclusion - Abandonment

Complainants allege that both the facts and the law support their contention that Columbia has unlawfully and improperly abandoned natural gas service to the Graystone Woods' subdivision. Complainants point out that the four-inch intermediate main line serving the subdivision has been capped and filled with air. Moreover, Complainants assert, Columbia's own records reflect that the main line has been retired and Columbia's witness Chris Kozak testified that closing the line means that it is more difficult to reconnect them to the Columbia pipeline system. Additionally, Complainants point out that Columbia has removed the customers' accounts from the Company's billing system. Seneca/Roth argue that Columbia's actions took place at the same time the remediation firm, Hull, recommended temporarily restoring gas service so that it could continue its investigation of the stray gas situation through a process of elimination. Seneca/Roth also point to the conversations the Company had with FirstEnergy about converting the subdivision to an all-electric neighborhood to support that Columbia, from the outset, has been interested in abandoning service to the Graystone Woods' subdivision. Finally, Complainants assert that Commission precedent supports their contention that Columbia should have been required to file an abandonment application with the Company and Columbia should have had the burden of convincing the Commission that abandonment was appropriate, not the Complainants.

The Commission determines that the evidence of record does not support a finding that the August 23, 2012 separation of the four-inch intermediate main serving Graystone Woods equated to a permanent abandonment of service for which Columbia needed to file

an application under R.C. 4905.20 and R.C. 4905.21. Rather, it appears from reviewing correspondence among Company employees in early August 2012, that the separation and capping of the four-inch main line serving Graystone Woods was a temporary measure taken so that the Company could pressure test its facilities on the main line and all the service lines in the subdivision to ensure that Columbia's facilities were not leaking. Moreover, the record also reveals that, once remediation work was completed, Columbia was prepared to retest and reestablish service as well as reactivate the customers' accounts in the Company's billing system.

Nor do we find that removing the customer accounts from Columbia's billing system proves that Columbia intended to abandon this subdivision. The Company explained that the motivation for removing the customer accounts was so that the Graystone Woods' residents no longer received a monthly statement for a service they were not receiving at that point. The record also reveals that, in the months leading up to the removal of the customer accounts from the billing system, several Graystone Woods' homeowners called to complain of the continued billing. In fact, the record reflects that terminating the monthly billing statement led to a decrease in the number of telephone calls to Columbia's customer service personnel.

Columbia's refusal to reestablish gas service to each of the homes in Graystone Woods, as requested by Hull, also does not establish that the Company intended to abandon service to the subdivision. Hull's interim recommendation to reestablish service was made at a time when the four-inch main and the service lines were still pressurized with natural gas. Turning gas service on at the residences was not necessary in order to test to see if natural gas was contributing to the stray gas issues around the foundations of the homes in the subdivision. Turning the gas service on at the meters would have allowed for pilot lights to be relit, thus, reestablishing an ignition source and contributing to the safety concerns that initially led to the service interruption in May 2012. Moreover, the record reveals that Columbia had already tested samples of the stray gas detected around the foundations of homes in the subdivision and such tests revealed that the stray gas had a different chemical make-up than natural gas provided by the Company.

Regarding alternative fuel sources, Columbia's witness Kozak explained that the background for his discussion with the developer, Mr. Hensley, concerning alternative fuel sources was premised on Mr. Hensley's giving more credence to the stray gas readings being reported by TTL and less credence to Columbia's measurements for the level of stray gas around the foundations of the homes in Graystone Woods. Mr. Kozak also explained that his conversations with FirstEnergy personnel have been focused on Columbia's test results for stray gas. The witness testified that Columbia viewed such information as it would a customer's bill. Thus, it was incumbent upon the individual homeowner to provide those readings or for someone like Mr. Hensley to obtain the readings from the homeowners and present them as a group.

Complainants' final argument is that Columbia's actions in these matters represent an abandonment of service in violation of Ohio law and Commission precedent. While it may appear that Columbia's disconnection and capping the pipe serving the Graystone Woods subdivision indicated abandonment of service under the statute, the record in these cases clearly reflects the Company's intent to continue serving Complainants once the remediation of the situation was complete. Thus, Columbia is obligated to provide gas service to Complainants once they remediate the situation to the standard articulated by Columbia as we have required previously in this Order. Accordingly, under the circumstances presented in these cases, as set forth in the record, we find that the actions of Columbia do not equate to the abandonment of service, which would require the filing of an application in accordance with R.C. 4905.20 and R.C. 4905.21.

CONCLUSION:

In conclusion, as set forth above, the Commission finds that, 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, Columbia's communications with Complainants was sufficient and did not violate Ohio Adm.Code 4901:1-13-10. Regarding the claims of inadequate service, while we find Columbia's unwillingness to articulate a standard that must be met before reconnection of service to be unreasonable, we do not find that such unwillingness, in conjunction with the other factors for consideration of an inadequate service claim, is tantamount to the provision of inadequate service pursuant to R.C. 4905.22. However, as we directed previously in this Order, we find that the standard for reconnection shall be 4 percent and that Columbia must provide the parameters of where and when the measurements must be taken for restitution of service to Complainants within 30 days of this Order. Further, for the reasons articulated herein, we do not find that Columbia has engaged in unlawful discrimination under R.C. 4905.35. Finally, under the circumstances presented by these cases, as set forth in the record, we find that the actions of Columbia do not equate to the abandonment of service, which requires the filing of an application in accordance with R.C. 4905.20 and R.C. 4905.21. Based upon the above findings, the Commission concludes that this matter be decided in favor of the respondent for failure of Complainants to sustain the burden of proof.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

(1) Columbia is a natural gas company, as defined in R.C. 4905.03, and is a public utility as defined by R.C. 4905.02.

(2) On October 30, 2012, January 7, 2013, and March 14, 2013, Ms. Donovan, Seneca Builders, and Roth filed complaints against Columbia.

(3) Columbia filed answers to the complaints on November 16, 2012, January 28, 2013, and April 3, 2014, respectively.

(4) The hearing in this matter was held on November 19 through November 21, 2013.

(5) Briefs and reply briefs were filed by the parties on January 10, 2014, and February 3, 2014, respectively.

(6) The burden of proof in complaint proceedings is on the complainants. *Grossman v. Pub. Util. Comm.*, 5 Ohio St.2d 189, 190, 214 N.E.2d 666 (1966).

(7) There is insufficient evidence to support a finding that Columbia violated Ohio Adm.Code 4901:1-13-10, provided inadequate service pursuant to R.C. 4905.22, improperly and illegally abandoned service, pursuant to R.C. 4905.20 and R.C. 4905.21, or discriminated against Complainants in violation of R.C. 4905.35.

ORDER:

It is, therefore,

ORDERED, That this matter be decided in favor of the respondent for failure of the Complainants to sustain the burden of proof. It is, further,

ORDERED, That Columbia provide the parameters of the standard it requires for restitution of service to Complainants as discussed herein within 30 days of this Order. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon all parties and interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Thomas W. Johnson, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

JRJ/vrm

Entered in the Journal

JAN 14 2015

Barcy F. McNeal

Barcy F. McNeal
Secretary

ATTACHMENT B

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

ENTRY ON REHEARING

The Commission finds:

(1) On January 14, 2015, the Commission issued its Opinion and Order (Order) finding in favor of the Respondent, Columbia Gas of Ohio, Inc. (Columbia), for failure of the Complainants, Katherine Lycourt-Donovan (Ms. Donovan), Seneca Builders, LLC (Seneca Builders), and Ryan Roth and R&P Investments, Incorporated (Roth), to sustain the burden of proof. The Order did, however, instruct Columbia to provide the parameters of the standard it requires for restitution of service to Complainants within 30 days of this Order.

(2) 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.

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

(4) The Commission finds that sufficient reason has been set forth by the parties in their applications for rehearing to warrant further consideration of the matters specified in the applications for rehearing. Accordingly, the applications for rehearing filed by the parties should be granted for further consideration of the matters specified in the applications for rehearing.

(5) In its application for rehearing, Columbia has requested that the Commission reconsider or clarify on rehearing the threshold for disconnection and reconnection. Accordingly, included as part of Columbia's February 13, 2015 application for rehearing was a motion for an extension of time requesting that Columbia have 30 days after the Commission provides the requested clarification to produce the Company's reconnection standards. Ms. Donovan and Seneca/Roth urged the Commission to deny Columbia's request for an extension of time in their memoranda contra filed on February 23, 2015.

(6) The Commission determines that Columbia's request for an extension of time should be granted until the Commission rules on the applications for rehearing or until such time as the Commission otherwise orders.

It is, therefore,

ORDERED, That the applications for rehearing filed by Columbia, Ms. Donovan, and Seneca/Roth be granted for further consideration of the matters specified in the applications for rehearing. It is, further,

ORDERED, That Columbia's request for an extension of time be granted in accordance with Finding (6). It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO

Thomas W. Johnson, Chairman

Steven D. Lesser

Lynn Slaby

M. Beth Trombold

Asim Z. Haque

JRJ/vrm

Entered in the Journal
MAR 11 2015

Barcy F. McNeal
Secretary

ATTACHMENT C

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

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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

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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

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joiny Notice of Appeal of Appellants Katherine M. Lycourt-Donovan, Seneca Builders, LLC, Ryan Roth, and R&P Investments Inc.*, was served upon the Chairman of the Public Utilities Commission of Ohio by leaving a copy at the Office of the Chairman in Columbus and upon all parties of record via electronic transmission this 19th day of January 2016.

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