

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE COMPLAINT OF
HARRIS DESIGN SERVICES,**

COMPLAINANT,

v.

CASE NO. 15-405-GA-CSS

COLUMBIA GAS OF OHIO, INC.,

RESPONDENT.

SECOND ENTRY ON REHEARING

Entered in the Journal on February 1, 2017

I. SUMMARY

{¶ 1} The Commission denies the application for rehearing filed by Harris Design Services.

II. APPLICABLE LAW

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

{¶ 3} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined therein by filing an application within 30 days after the entry of the order upon the Commission's journal.

III. PROCEDURAL HISTORY

{¶ 4} On February 25, 2015, Harris Design Services (HDS) filed a complaint against CGO. HDS stated property it owns was damaged when CGO turned off gas service to the property without proper notice. CGO filed its answer to the complaint on March 17, 2015, denying the allegations in the complaint. A hearing was held on October 30, 2015. Initial briefs were filed on January 13, 2016, and reply briefs were filed on February 3, 2016.

{¶ 5} On May 25, 2016, the Commission issued an Opinion and Order (Order) finding in favor of CGO for failure of HDS to meet its burden of proof.

{¶ 6} On June 24, 2016, HDS filed an application for rehearing in this case. Thereafter, on July 1, 2016, CGO filed a memorandum contra the application for rehearing. On July 20, 2016, the Commission granted the application for rehearing for the limited purpose of further consideration of the matters specified in the application.

IV. DISCUSSION

{¶ 7} In its application for rehearing, HDS argues several assignments of error with respect to the Commission's Order. We have reviewed and considered all of the arguments raised in HDS's application and address them below. Any argument raised on rehearing that is not specifically discussed herein has been thoroughly and adequately considered by the Commission and should be denied.

A. *Reliability of Witnesses*

{¶ 8} HDS argues that the Commission erred in finding that CGO provided adequate and reasonable notice to HDS that its gas service was disconnected. In doing so, HDS contends the Commission improperly relied on the testimony of CGO witness Ryder Long over the testimony of HDS's witnesses. At the hearing, Mr. Long testified to making two separate service calls to the HDS property and that tags were left on the door after both visits. HDS argues his testimony is not credible, as Mr. Long could not recall certain details such as the exact time of day he was on the premises or other service jobs he completed on

the same road. Further, HDS states it is unreasonable to believe that Mr. Long could remember details of specific service calls from two years prior. Conversely, HDS avers it submitted three credible witnesses that did not recall seeing tags on the door during regular visits to the property.

{¶ 9} In its memorandum contra, CGO states that HDS's application for rehearing on this issue should be denied. CGO states Mr. Long was a credible witness who was able to recall precise details about both service calls and demonstrated that CGO provided appropriate notice to HDS. Regarding the testimonies of HDS's witnesses, CGO states their recollections were vague, incomplete, and lacked specificity. Thus, CGO contends the Commission gave the witnesses' testimonies the appropriate weight.

{¶ 10} HDS's application for rehearing on this issue has no merit and should be denied. In its application, HDS does not raise a new argument and the Commission has consistently found that applications for rehearing that rely upon previously raised arguments should be denied. *In re Karl Friederich Jentgen, et al.*, Case No. 15-245-EL-CSS, Entry on Rehearing (Dec. 7, 2016) at ¶8; *In re Buckeye Energy Brokers*, Case No. 10-693-GE-CSS, Entry on Rehearing (Feb. 23, 2012) at 12; *In re Columbus Southern Power Co. and Ohio Power Co.*, Case No. 09-872-EL-FAC, et al., Fourth Entry on Rehearing (July 2, 2012) at 5-6. The credibility of the witnesses was brought up by HDS in hearing and in brief and it was thoroughly addressed by the Commission in its Order. In the Order, we stated that we "[do] not find the testimonies of the three HDS witnesses compelling enough to controvert Mr. Long's specific recollection." In doing so, we noted the explicit details that Mr. Long remembered from both events that gave his testimony credibility. We found this outweighed the passive recollections of HDS's witnesses, which, as described in the Order, lacked specificity. (Order at ¶13.) Therefore, although HDS does not raise a new argument, we find the Order appropriately considered the testimonies of all witnesses.

B. Adequate Notice of Gas Service Shut-off

{¶ 11} HDS next submits that the Commission unreasonably found that CGO's placement of a door tag was adequate notice that gas service was being shut off. HDS asserts that, in other circumstances surrounding a gas shut-off, CGO provides separate written notices to customers. Further, as CGO is changing its notice procedure, HDS avers that this is an acknowledgment by CGO that it knows its current notification system is ineffective. Additionally, HDS argues that CGO should have known the property was vacant and this should have alerted CGO to provide additional notice. HDS contends that, when Mr. Long placed the tag from the November 2013 repair on top of the September 2013 repair tag, it should have indicated to him that the property was vacant and CGO should have taken additional steps to provide notification. Because of this, HDS submits that the Commission erred in finding that CGO provided sufficient notice to HDS regarding its gas service.

{¶ 12} In reply, CGO disagrees with HDS and states the Commission was correct in finding that it provided reasonable notice. CGO states that providing notification via door tags has been its standard practice for decades and is compliant with its gas standards. Further, in the instances where CGO provides additional written notification, CGO states it is required to do so by Commission rules.

{¶ 13} The Commission denies HDS's application for rehearing on this issue. Again, HDS does not raise an argument that was not already addressed in the Order. In the Order, we found that placing a notice on the door is adequate notice of a disconnection after an emergency repair. In doing so, we also found that CGO complied with its internal gas standards and all regulations. Additionally, we noted that placing written notice in a conspicuous place, as CGO did here, is the required form of notice for gas companies in other, similar situations. Ohio Adm.Code 4901:1-13-09(B)(2) and 4901:1-18-06(A)(2). Thus, because this argument was already addressed and because we properly found that CGO provided reasonable notice, our Order is affirmed. (Order at ¶14.)

C. Rebuttable Presumption and Ohio Adm.Code 4901:1-13-02(F)

{¶ 14} HDS further contends that CGO wrongly asserted its compliance with state and federal regulations demonstrates that CGO provided adequate notice. HDS states that CGO, relying on Ohio Adm.Code 4901:1-13-02(F), alleges that, because CGO complied with its service standards, there is a rebuttable presumption that it provided adequate notice. According to HDS, the rebuttable presumption, in this situation, does not apply. HDS argues that, in complaints regarding adequacy of service to individual customers, the rebuttable presumption does not apply.

{¶ 15} CGO counters that HDS's argument should be denied as the Commission did not need to address the rebuttable presumption standard in Ohio Adm.Code 4901:1-13-02(F). CGO submits that HDS did not meet its burden of proof and the Commission found CGO provided reasonable and adequate notice; thus, there is no reason for the Commission to address the rebuttable presumption. CGO further states, however, that its compliance with standards does create a rebuttable presumption and the presumption is important for gas companies in order for companies to know the Commission considers their standards adequate.

{¶ 16} HDS's application for rehearing on this issue is denied. We first note that HDS does not allege an error in the Commission's Order, but instead solely focuses on CGO's argument in brief. In the Order, we did not address whether there was a rebuttable presumption; rather, we found that CGO did provide adequate notice and that HDS did not meet its burden of proof to demonstrate otherwise. Specifically, we found that CGO placed written notices on the front door of the premises on two separate occasions and, in doing so, provided adequate and reasonable notice that gas service was shut off. In supplying such notice, we found CGO furnished adequate service, as required by R.C. 4905.22. Additionally, we also found CGO was compliant with its own internal gas standards and, thus, was compliant with Ohio Adm.Code 4901:1-16-03(A).

D. *Ability of Gas Bill to Serve as Notice*

{¶ 17} In its next argument, HDS avers gas bills showing zero consumption are not sufficient notice that gas service was shut off. HDS states CGO incorrectly argued that HDS's gas bill showing it did not consume any gas served as sufficient notice that service was shut off. According to HDS, there is no language on the bill stating that a zero consumption level may indicate that service was shut off. HDS contends its standard monthly billing charge makes it less likely that it would notice the consumption level. Further, HDS argues there are multiple reasons why a customer could register zero consumption.

{¶ 18} In its memorandum contra, CGO asserts that it is irrelevant whether the bill served as notice because the Commission found that adequate service was provided by the door tags. However, CGO states its billing statements are a key communication tool with its customers, and there should be an expectation that customers review their bills.

{¶ 19} The Commission finds no merit in HDS's argument. Again, HDS does not allege error in the Commission's Order, but instead asserts CGO's argument was flawed. In the Order, we specifically stated "placing a notice on the door is adequate notice of a disconnection after an emergency repair." Thus, while we noted that HDS did receive bills demonstrating that its property was not consuming any gas, it was not our reason for finding that HDS received adequate and reasonable notice. (Order at ¶14.)

E. *Procedural Issues*

{¶ 20} In its next assignment of error, HDS states the attorney examiner wrongfully excluded testimony and evidence from the record. According to HDS, the attorney examiner unreasonably excluded documents from evidence, ruling that they had not been properly authenticated. HDS further asserts the attorney examiner refused to allow HDS to call CGO's witnesses as upon cross-examination during HDS's case-in-chief. HDS avers

those witnesses could have authenticated the documents. Additionally, HDS contends the attorney examiner erred in not permitting HDS to recall its witnesses for rebuttal testimony.

{¶ 21} CGO requests that HDS's application on this issue be denied. CGO first submits that HDS's argument is moot, as procedural issues are to be raised either via an interlocutory appeal or in a post-hearing brief. Thus, because HDS did not file an interlocutory appeal or argue the issue in its post-hearing brief, CGO states HDS has waived its argument on these issues. CGO further argues that the attorney examiner's rulings were correct. Regarding the documents denied from evidence, CGO asserts that HDS did not lay any foundation and they were properly excluded. CGO also affirms that HDS still had an opportunity to cross-examine CGO's witnesses and could have attempted to lay a foundation at that time. Additionally, CGO contends the attorney examiner correctly did not permit HDS to present rebuttal testimony. First, CGO argues the ability to present rebuttal testimony is discretionary and not required. Moreover, CGO affirms it would have been prejudiced if HDS presented evidence that should have been introduced in the prefiled direct testimony. Therefore, CGO concludes the attorney examiner's ruling was proper and should be affirmed.

{¶ 22} The Commission finds that HDS's request for rehearing on this issue is improper and should be denied. Pursuant to Ohio Adm.Code 4901-1-15, a party who is adversely affected by an oral ruling in a hearing must either file an interlocutory appeal within five days or raise the issue on brief prior to the issuance of the Commission's opinion and order. Here, HDS did neither.

{¶ 23} Notwithstanding, HDS's argument otherwise lacks merit. First, we find the attorney examiner's decision to exclude certain documents was within his discretion and proper. We note that HDS did not attempt to introduce the documents until the conclusion of its case-in-chief and did so without laying any foundation (Tr. at 96-97). HDS's argument that it was harmed by its inability to call CGO witnesses as if on cross-examination is unpersuasive. The attorney examiner, pursuant to Ohio Adm.Code 4901-1-27, may, without

limitation, determine the order in which parties shall present testimony and the order in which witnesses shall be examined. Additionally, the attorney examiner may take actions to avoid delay, prevent the presentation of cumulative evidence, prevent repetitious cross-examination, and assure the hearing proceeds in an orderly and expeditious manner. Here, HDS intended to call CGO's witnesses in its case-in-chief, as if on cross-examination, even though the direct testimony of the witnesses was already prefiled. While the attorney examiner rightfully did not permit HDS to question the witnesses at that time, HDS was still able to cross-examine the same witnesses during CGO's defense and, appropriately, after their direct testimonies were introduced into the record. (Tr. at 9-10.) Additionally, HDS could have used that opportunity to introduce the excluded documents and lay a proper foundation or have the witnesses authenticate the documents. Similarly, we also find the attorney examiner's decision to deny rebuttal testimony was appropriate and within his discretion. Initially, we note the attorney examiner's July 13, 2015 Entry required all direct testimony to be prefiled seven days in advance of the hearing. At the hearing, the attorney examiner appropriately denied HDS's attempt to expand its witnesses' direct testimony. While the attorney examiner noted that HDS could later bring forward a rebuttal witness, no formal request or determination was made at that time. (Tr. at 16.) The attorney examiner's decision to deny the rebuttal witness was appropriate, as the testimony was likely to be unnecessarily cumulative. Thus, HDS's application for hearing on this issue should be denied.

F. *Burden of Proof*

{¶ 24} Finally, HDS argues the Commission erred in finding that HDS failed to meet its burden of proof. Referring back to its arguments in brief, HDS asserts the Commission's findings were erroneous, unreasonable, unlawful, and/or unjust.

{¶ 25} CGO requests the Commission reaffirm its finding that CGO provided adequate and reasonable notice and that HDS failed to meet its burden of proof. According to CGO, the Commission correctly weighed the evidence and found that CGO complied

with all regulations and service standards. CGO further avers that the Commission properly found that CGO provided adequate and reasonable notice to HDS that its gas service was shut off. Thus, CGO states the Commission should deny HDS's application for rehearing on this issue.

{¶ 26} The Commission's finding that HDS failed to meet its burden of proof is affirmed and HDS's application for rehearing is denied. As previously stated, the Commission has consistently found that applications for rehearing that rely upon previously raised arguments should be denied. Here, HDS attempts to reiterate all of its previous arguments by incorporating by reference its post-hearing brief. As described above, in ruling that CGO did provide written notice to HDS, on two separate occasions, we explained why we found the testimony of CGO witness Mr. Long more compelling than the testimonies of the HDS witnesses (Order at ¶13). In the Order, we also thoroughly examined why placing written notice in a conspicuous place constitutes reasonable and adequate notice and, thus, complies with R.C. 4905.22 (Order at ¶14). Upon a rereading of HDS's post-hearing brief, we continue to find it unpersuasive. Accordingly, HDS's application for rehearing is denied.

V. ORDER

{¶ 27} It is, therefore,

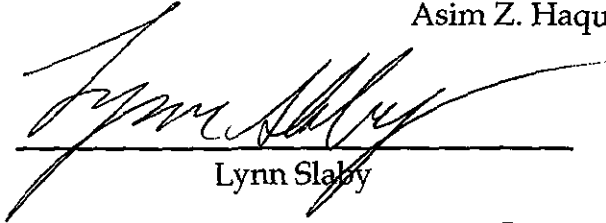
{¶ 28} ORDERED, That the application for rehearing filed by HDS be denied. It is, further,

{¶ 29} ORDERED, That a copy of this Second Entry on Rehearing be served upon each party of record.

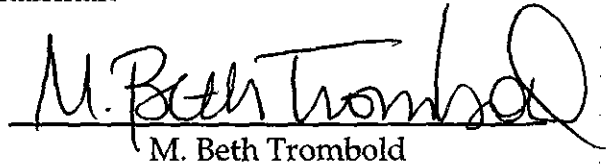
THE PUBLIC UTILITIES COMMISSION OF OHIO



Asim Z. Haque, Chairman



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~~FEB 01 2017~~Barcy F. McNeal
Secretary