(20)

FAX

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint Of Gregory T. Howard,	)	
Complainant,	)	Case No. 17-2536-GA-CSS
-vs-	)	
Columbia Gas of Ohio, Inc.,	)	
Respondent.	)	

COMPLAINANT'S MEMORANDUM CONTRA TO COLUMBIA'S MOTION TO STRIKE AMENDED COMPLAINT AND REPLY MEMORANDUM IN SUPPORT OF AND TO COLUMBIA'S MEMORANDUM IN OPPOSITION TO COMPLAINANT'S MOTION TO ADD 10-DAY DISCONNECTION NOTICE

Pursuant to Ohio Admin. Code rule 4901-1-06, 4901-1-12, R.C. 4905.26 and other applicable legal provisions, the Complainant hereby files his meritorious Memorandum Contra to Columbia's Motion to Strike Amended Complaint and Reply Memorandum in Support of and to Columbia's Memorandum in Opposition to Complainant's Motion to Add 10-day Disconnection Notice. Complainant understands that ignorance of the law is no excuse for not moving to amend his Complaint, as required by the Commission's rules. Moreover, the Complainant has moved contemporaneously herewith requesting that the Commission to treat his Amended Complaint and Motion to Add 10-day Notice as if they were accompanied by a motion to amend, and/or allow him to file a late motion to amend to original complaint to include his Amended Complaint and Motion to Add 10-day Disconnection Notice.

In addition, on January 25, 2018, Complainant filed his Certification that No Party objects to ruling on his Motion for Expedited Ruling on Complainant's Requested Relief. The Certification requests the issuance of an intermediate ruling. In particular, Complainant requests that the Commission issue an intermediate ruling concluding as follows:

> "Complainant has met his burden of proof relative to the allegations that Columbia Gas of Ohio Inc., has violated the Commission's rules relative to (1) Columbia's agent, Infra Source, damaged the driveway which resulted in the cement being uneven; (2) the allegations concerning the reconnection claims; and (3) that the faulty meter relocated outside the premises by Columbia's agent, Infra Source, on September 30, 2011, as of November 6, 2017, is still overstating the natural gas usage and support the claim that the billed amount on both accounts is incorrect.
> The Complainant respectfully requests that the requested relief set forth in the complaint or amended complaint alleging unfair and unjust billing practices be granted without a hearing as the Commission has authority to consider a written complaint 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.

as well as all other relief the Commission shall deem proper and just in the premises." This conclusion will not only solve the fundamental problems with complainant's original complaint but support complainant's new claims, both related to service terminations, which indeed is service-related in this case.

As fully explained below, Complainant's new claims, both related to service terminations, shows what InfraSource did wrong and why he believes InfraSource acted unlawfully or unreasonable in installation of a service line at the premises, which indeed is manifestly service-related in this case. *Corrigan v. Illum.,Co.,* 122 Ohio St. 3d 265, 2009-Ohio-2524, ¶21.

For all of these reasons, Complainant respectfully requests that the Commission deny Columbia's motion to strike his amended complaint and grant his motion to file a late motion to

amend his complaint and grant his motion to add10-day Disconnection Notice. A Memorandum in Support is attached.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. FACTS

Complainant reincorporates his [1]Motion for Imposition of Appropriate Sanctions against Columbia and/or its legal counsel and his Affidavit (Jan. 12, 2018). Complainant affirms the following statement of facts. That Columbia's actions and behavior are frivolous, harassing, and menacing in this case and was in the first case, *Howard 1*. That Columbia or its legal counsel acted frivolous pursuant to Ohio Revised Code §2323.51(A)(2)(a), §4903.24 and accordingly acted vexatious in filing its Answer and Motion to Dismiss filed herein on January 10, 2018, in filing its Reply Memo filed herein on January 18, 2018 and in filing its Motion to Strike and Memo in Opposition to Complainant's Motion to Add 10-Day Disconnection Notice filed herein on January 25, 2018. See Gregory T. Howard's Affidavit (Jan. 12, 2018) at ¶ 7, Gregory T. Howard's Updated Affidavit (Jan. 16, 2018), ¶7 and also see, Complainant's Memorandum Contra to Columbia's Motion to Strike Amended Complaint and Reply Memorandum in Support of and to Columbia's Memorandum in Opposition to Complainant's Motion to Add 10-day Disconnection Notice filed contemporaneously herewith.

[1] This Memo in Contra also addresses Columbia's response contained in its footnote and constitutes Complainant's Reply Memo in Support of his Motion for Sanctions and in Opposition to its footnote #1. Complainant replies that he has shown the Commission's authority to grant sanctions under R.C. 4903.24. See, Section 3 of this document which is the conclusion and which is incorporated herein by reference. Moreover, this response identifies the behavior for which he seeks sanctions. See, Facts and Section 2(C), which is incorporated herein by reference. For all of these reasons, Complainant respectfully requests that the Commission grant his Motion for Sanctions.

Columbia's legal counsel's behavior has gone beyond the bounds of advocacy and extended to the point of harassment. Id. Motion for Imposition of Appropriate Sanctions against Columbia and/or its legal counsel (Jan. 12, 2018), at page 3. Columbia's counsel's behavior encompasses those of Section 2323.51(A) 2(a)(i) and (ii) by needlessly increasing the cost of litigation by Complainant. Id. at 3 Columbia's legal counsel's behavior cannot be said to be in good faith as it is not in accordance with existing law nor is it a valid argument for extension, modification or reversal of existing law. Id. at 3.

Complainant notes that the Commission does not have jurisdiction to interpret the lease or the responsibilities thereunder. See, Howard 1, Opinion and Order ¶¶ 64, 70-71; Second Entry on Rehearing ¶19. And in accordance with R.C. §4905.61, is a matter to be decided by a court of common pleas. See, e.g., *Corrigan v. The Illum. Co.*, 122 Ohio St. 3d 265, 2009-Ohio-2524, 910 N.E. 2d 1009, ¶¶ 11-12, see also, Complainant's Notice of Administrative Appeal filed in *Howard 1*, on January 24, 2018.

On January 16, 2018, Complainant filed an Application for Third Entry on Rehearing in Case No. 15-0873-GA-CSS for the purpose of further consideration of the overlooked or misapprehended matters with respect to his sixth assignment of error contained in his Application for Rehearing (Aug. 31, 2017), ¶6. The Complainant's claims are not issue precluded as stated by Columbia. See, Motion to Strike and Memo in Opposition at 3. The Commission's holdings in Howard 1 are tentative and Complainant is not restricted from providing new allegations and evidence to reverse them. The issuance of the Third Entry on Rehearing will mark the end of the Commission's complaint process for Howard 1. See Ohio Revised Code §§ 4903.09, 4903.10.

On January 22, 2018, the Complainant filed a Complaint for Treble Damages against Columbia Gas of Ohio, Inc., in the Franklin County Court of Common Pleas, Case No. 05CVH-01-398. A true and accurate copy of page 1 of 19 pages is attached hereto as Exhibit A and incorporated herein by reference; see also, Complainant's correspondence regarding complaint case attached to the Complaint as Exhibit 1, is the Commission's Second Entry on Rehearing (Dec. 21, 2017) filed in Case No. 15-0873-GA-CSS on (Dec. 29, 2017), which is also incorporated herein by reference, and see also thorough explanation below contained in Section A of this Reply as to why it can be incorporated into the evidentiary record in this matter through a complaint or motion.

Finally, this document summarizes the main arguments in Complainant's Memorandum Contra to Columbia's Motion to Strike Amended Complaint and Reply Memorandum in Support of and to Columbia's Memorandum in Opposition to Complainant's Motion to Add 10-day Disconnection Notice and these arguments explain why they justify allowing this Complaint case to continue. In particular, Complainant explains that: "***the installation of a service line is a practice relating to service as contemplated by R.C. 4905.26 and is a service-related question within PUCO exclusive jurisdiction. *Corrigan* at 21***."

II. LAW AND ARGUMENT

A. Case No. 15-873-GA-CSS was dismissed without prejudice but the possibility remains open that complainant may file another lawsuit Case No. 17-2536-GA-CSS, on the same claims relating to the damage to his residence's driveway and disconnection during the 2014-2015 Winter Reconnect season, his new complaint or amended complaint must be approved because he has met his burden of proof relative to his same claims in the first lawsuit, as shown in detail below.

"Ohio law provides that court of common pleas have original jurisdiction over all justiciable matters and such powers of review of proceedings of administrative officers and

agencies as may be provided by law." See generally Section 4(B), Article IV, Ohio Constitution; R.C. §4903.13. R.C. §4903.13 states in relevant part as follows:

> "A final order made by the public utilities commission shall be reversed, vacated, or modified by the supreme court on appeal, if, upon consideration of the record, such court is of the opinion that such order was unlawful or unreasonable.***"

R.C. §4903.13 (Emphasis supplied). Respondent raises in its Reply Memo that the issuance of the Second Entry on Rehearing marks the end of the Commission's complaint process for *Howard* 1. This argument is without merit. The Commission's issuance of the Third Entry on Rehearing will mark the end of the Commission's complaint process for *Howard* 1. After that issuance of the said Entry the Complainant could then appeal the Commission's denial regarding the lease or the responsibilities thereunder set forth in the complaint against Columbia, *Howard* 1, to the Franklin County Court of Common Pleas for review of these administrative proceedings in Howard 1, regarding the lease set forth in that complaint pursuant to R.C. §2505.03(A) and Section 4(B), Article IV, Ohio Constitution. R.C. §2505.03(A), states that "Every final order, judgment, or decree of a court and when provided by law, the final order of any administrative officer, agency, board, department, tribunal, commission, or other instrumentality may be reviewed on appeal by a court of common pleas, a court of appeals, or the supreme court, whichever has jurisdiction. As noted in its Second Entry on Rehearing at 12-14, "*** the Commission has no authority to award monetary damages, which, in accordance with R.C. 4905.61, is a matter to be decided by a court of common pleas***." As such, the Commission lacks jurisdiction over complainant's lease claim, which, in accordance with R.C. §2505.03(A) and Section 4(B), Article IV, Ohio Constitution, is a matter to be decided on appeal by a court of common pleas.

Therefore, the Complainant requests that the Commission vacate its Second Entry on Rehearing with regards to third through fifth assignment of errors and find that the application for rehearing should be granted with respect to Complainant's sixth assignment of error inasmuch as Complainant has raised new arguments and has met his burden of proof relative to all other allegations of the complaint in *Howard* 1. Id.

When ruling on an application for rehearing, a Court, examine "whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been." *Matthews v. Matthews,* 5 Ohio App. 3d 140, 450 N.E. 2d 278 (10th Dist. 1981), paragraph two of the syllabus. Complainant argues that on the Commission's own motion, it should have waived Ohio Adm. Code 4901-1-34 and granted his request to consider the late-filed exhibit as his motion satisfied the spirit of Ohio Adm. Code 4901-1-34 and because Columbia completed the disconnection on April 2, 2015, the terms of the Winter Reconnect Order and the requirements of Ohio Adm. Code 4901:1-18-06 (B) applied and therefore, no disconnection should have occurred. Second Entry on Rehearing ¶¶ 20, 23.

But on the other hand the Commission also held that it agreed with Complainant that Columbia's post-hearing brief does not comply with Ohio Adm. Code 4901-1-31(B) due to the fact that it is 11 pages in length and does not contain the requisite table of contents as required by the rule, the Commission on its own motion, waived the rule in the first case as Columbia's brief satisfied the spirit of rule 4901-1-31(B). Opinion and Order (Aug. 30, 2017), ¶98. Complainant states that it was unreasonable for the Commission to waive the rule for Columbia on the basis that Columbia's brief satisfied the spirit of rule 4901-1-31(B) and not waive the rule for the Complainant in the first case when he had also satisfied the spirit of Ohio Adm. Code 4901-1-34

too. Simply put, the Commission's rulings at Order and Opinion (Aug. 30, 2017), ¶¶ 95, 97-98, Second Entry on Rehearing (Dec. 20, 2017) ¶¶ 22, 26 are unfair, unlawful, or unreasonable and should be reversed as a matter of law.

The Complainant points out that at the hearing, the parties were duly informed the briefs must comply with Ohio Adm. Code 4901-1-31(B). (Tr. at 142-143). Therefore, the Commission's Opinion and Order with respect to the Complainant's request to strike Columbia's brief was unlawful or unreasonable and must be either reversed by a higher court or vacated by the Commission. *Constellation NewEnergy, Inc. v. Pub. Util. Comm.*, 104 Ohio St.3d 530, 2004-Ohio-6767, 820 N.E.2d 885, ¶ 50.

Complainant urges that Ohio's saving statute, R.C. 2305.19, permitted him to bring his cause of action a second time and the requirements of R.C. 2305.19 applied and, therefore, the Commission's Opinion and Order should have been reheard and as a result the Commission's Opinion and Order (Aug. 30, 2017) was unlawful or unreasonable under these circumstances. Id.

"[T]he savings statute may be used only once to refile a case." *Dargart v. Ohio Dept. of Transp.*, 171 Ohio App. 3d 439, 2006-Ohio-6179, 871 N.E. 2d 608, ¶21 (6th Dist.), citing *Thomas v. Freeman*, 79 Ohio St. 3d 221, 227, 680 N.E. 2d 997 (1997). This "savings statute" applies equally to "quasi-judicial administrative proceedings" like Commission proceedings. Id. at ¶21. The commission's authority pursuant to R.C. 4905.13 over public-utility accounting practices is distinct from the ratemaking statutes in R.C. Chapter 4909. See *Consumers' Counsel v. Pub. Util. Comm.* (1983), 6 Ohio St.3d 377, 378-379, 6 OBR 428, 453 N.E.2d 673; *Dayton Power & Light Co. v. Pub. Util. Comm.* (1983), 4 Ohio St.3d 91, 104, 4 OBR 341, 447 N.E.2d 733. The Supreme Court of Ohio has upheld the commission's accounting orders when the accounting procedure did not affect current rates and the ratemaking effect of the accounting

order would be reviewed in a later rate proceeding. See *Consumers' Counsel v. Pub. Util. Comm.* (1992), 63 Ohio St.3d 522, 524, 589 N.E.2d 1267; *Dayton Power & Light Co.*, 4 Ohio St.3d at 104, 4 OBR 341, 447 N.E.2d 733.

"R.C. 4903.13 provides that a PUCO order shall be reversed, vacated, or modified by this court only when, upon consideration of the record, the court finds the order to be unlawful or unreasonable." *Constellation NewEnergy, Inc. v. Pub. Util. Comm.*, 104 Ohio St.3d 530, 2004-Ohio-6767, 820 N.E.2d 885, ¶50. Here, the Commission's orders was "unlawful and unreasonable" as to all other allegations of the complaint and as to all claims which were or might have been litigated in the first lawsuit, and was not conclusive in accordance with Ohio Adm. Code 4901:1-18-06(B) as it applied when Columbia completed the disconnection on April 2, 2015 and no disconnection should have occurred. See, e.g., *Elyria Foundry Company v. Pub. Util. Comm.*, (SCO) No. 2006-0830 (Aug. 29, 2007), at ¶13; see also, Howard 1, Opinion and Order (Aug. 30, 2017), ¶114; Second Entry on Rehearing ¶¶ 23, and 33.

Here, the first case was dismissed without prejudice in that it allowed for re-filing of the instant case. See, Howard I, Second Entry on Rehearing (Dec. 20, 2017), ¶33. What that means is that Case No. 15-873-GA-CSS is dismissed but the possibility remains open that complainant may file another lawsuit on the same claims "***stemming from events occurring subsequent to the filing of this complaint in May 2015***." Id. at ¶33. Further because the Complainant is using the savings statute to bring his claims for a second time R.C. 2305.19 applies and his claims are not barred by the statute of limitations. Therefore, this argument regarding permitting him to bring his cause of action a second time is meritorious. See Motion to Dismiss at 5.

Furthermore, Ohio Civil Rule 10(C) states that statements in a pleading may be adopted by reference in a different part of the same pleading or another pleading or in any motion. A

copy of any written instrument attached to a pleading is a part of the pleading for all purposes. Therefore, the complainant can incorporate his filings from Case No. 15-873-GA-CSS into the evidentiary record in this matter through his complaint or adopt by reference the statements and exhibits into his amended complaint or motions filed in this matter. See Motion for Expedited Ruling (Dec. 27, 2017) attachments at Exhibits 1 and 2, which are incorporated herein by reference (showing damage to Complainant's driveway and further showing that he was reverifying his PIPP eligibility and that no payment amount had been determined in early 2015), and Certification supporting the same (Jan. 25, 2018). This "Civil Rule" applies equally to "quasi-judicial administrative proceedings" like Commission proceedings. R.C. 4123.512 (D). Accordingly, the Commission must overrule any of Columbia's objections to complainant's incorporation of his filings from Case No. 15-873-GA-CSS into the evidentiary record in this matter through his complaint or motion. See Answer (Jan. 10, 2018), ¶¶ 5-7. It is so requested in this matter pursuant to the provisions at Civ. R. 10(C). Id.

Regarding the first claim in the new complaint that Columbia's agent caused damage to the driveway at complainant's residence, complainant produced evidence of photographs showing the driveway damage and that he notified respondent or respondent's agent of the damage to the driveway. See Updated Affidavit in Support of the New Complaint and Statement of Facts, ¶¶ 3-4 (Jan. 16, 2018). Therefore, the Complainant has met his burden of proof relative to the assertions regarding the damage done to the driveway at his residence by Columbia's agent and based upon this evidence the Commission's holdings in Howard 1, as it relates to this issue should be reversed. *Grossman v.Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966).

Regarding the second claim the disconnection of complainant's service while the terms of the 2014-2015 Winter Reconnect Order applied and while he was in the process of reverifying his PIPP Plus eligibility, complainant produced evidence of Respondent's records that reflect he was in fact following his $175 payment on February 4, 2015, was as of April 14, 2015, reverifying his PIPP Plus eligibility and that no payment amount had been determined while the terms of the 2014-2015 Winter Reconnect Order applied which ended on April 15, 2015. Id. Updated Affidavit (Jan. 16, 2018), at ¶ 5; Motion for Expedited Ruling (Dec. 27, 2017) at Exhibit 2 and Certification (Jan. 25, 2018). In fact, Respondent noted on the record a customer needs to reverify before PIPP Plus can be activated. (Tr. at 122). The Ohio Development Services Agency, and not Columbia, reviews a customer's application and determines a customer's eligibility. Opinion and Order (Aug. 30, 2017), ¶38. Therefore, the Complainant has met his burden of proof relative to the assertions regarding re-enrolled in PIPP Plus and that no payment amount had been determined while the terms of the 2014-2015 Winter Reconnect Order applied which ended on April 15, 2015. *Grossman v.Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966). As such, based upon this evidence the Commission's holdings in Howard 1, as it relates to this issue should be reversed.

And with regard to complainant's third claim of Columbia's agent installation of a faulty meter at his residence, leading to overstated bills, he has produced evidence that his meter was faulty and resulting in incorrect billing on both accounts. New Complaint ¶¶ 5-7, 9, Exhibit A to his Complaint; Id. Updated Affidavit (Jan. 16, 2018), at ¶¶ 6. Therefore, the Complainant has met his burden of proof relative to the assertions regarding his claim that the outstanding balance owed is incorrect and that his meter was faulty and based upon this evidence the Commission's

holdings in Howard 1, as it relates to this issue should be reversed as well. *Grossman v.Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966).

Because Case No. 15-873-GA-CSS was dismissed without prejudice but the possibility remains open that complainant may file another lawsuit Case No. 17-2536-GA-CSS, on the same claims relating to the damage to his residence's driveway and disconnection during the 2014-2015 Winter Reconnect season, his new complaint or amended complaint must be approved because he has met his burden of proof relative to his same claims in the first lawsuit, as shown in detail above. *Portage Cty. Bd. of Commrs. v. City of Akron*, 109 Ohio St. 3d 106, 123, 2006-Ohio-954, 846 N.E. 2d 478, citing *Hapgood v. Warren*, (C.A. 6, 1997), 127 F. 3d 490, 493.

Accordingly, upon due consideration of Complainant's meritorious arguments set out above, the Commission should find that those meritorious arguments call to the attention of the Commission an obvious error in its decision on the first complaint, that they raise an issue that was not considered or fully considered by this Commission when it should have been. Hence, the Commission should issue a Third Entry on Rehearing granting Complainant's application for rehearing of the August 30, 2017 Opinion and Order and issue an order that the Complainant has met his burden of proof relative to the assertions regarding his claim that the outstanding balance owed is incorrect and that his meter was faulty. See Application for Third Entry on Rehearing (Jan. 16. 2018) Case No. 15-873-GA-CSS which is incorporated herein by reference. *Grossman v.Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966).

B. Damage Columbia's agent caused to the driveway at Complainant's residence and Columbia's agent installation of the faulty meter at the Complainant's residence, leading to overstated bills.

Complainant asserts that, on September 30, 2011, Infra Source was at the premises working on the installation of a service line. Damage to the driveway occurred when Infra

Source improperly utilized heavy equipment in replacing a service line, resulting in the cement being uneven. Complainant submits that Infra Source was verbally notified of the driveway damage. Infra Source did not restore the driveway to its prior state. The relevant sections of the Ohio Administrative Code show that installation of a service line is manifestly service-related. *Corrigan v. Illum.,Co.,* 122 Ohio St. 3d 265, 2009-Ohio-2524, ¶21. R.C. 4905.26 specifically confers exclusive jurisdiction upon PUCO to determine whether any service provided by a public utility is in any respect unjust, unreasonable, or in violation of the law. *State ex rel. Columbia Gas of Ohio, Inc. v. Henson,* 102 Ohio St. 3d 349, 2004-Ohio-3208, 810 N.E. 2d 953, at ¶16. Therefore, the installation of a service line is a practice relating to service as contemplated by R.C. 4905.26 and is a service-related question within PUCO exclusive jurisdiction. *Corrigan* at 21. Accordingly, these claims are related to service termination at the complainant's residence on June 2017 and a 10-day notice of disconnection delivered to his premises in January 2018.

Further, Complainant references a photograph attached to a motion for expedited ruling on his requested relief at Exhibit 1 (Dec. 27, 2017) and in his Certification on (Jan. 25, 2018), he also references a photograph attached to a June 26, 2015 filing, as noted above, the complainant can incorporate his filings from Case No. 15-0873-GA-CSS into the evidentiary record in this matter through his complaint or adopt by reference the statements and exhibits into his amended complaint or motions filed in this matter. See Complainant's unopposed Motion for Expedited Ruling on his Requested Relief (Dec. 27, 2017) attachment at Exhibit 1, which is incorporated herein by reference (showing damage to complainant's driveway); also see, Amended Complaint ¶¶ 3, 5. Complainant relies on *Corrigan v. Illum.,Co.,* 122 Ohio St. 3d 265, 2009-Ohio-2524, ¶21, as the primary reason for why R.C. 4905.26 specifically confers exclusive jurisdiction upon PUCO to determine whether any service provided by a public utility is in any respect unjust,

unreasonable, or in violation of the law. Complainant further asserts that the Commission must base its decision on the evidentiary record in this matter brought through complainant's complaint or adopted by reference which includes statements and exhibits into his amended complaint or motions filed in this matter. *Tongren v. Pub. Util. Comm.*, 85 Ohio St. 3d 87, 706 N.E. 2d 1253 (1999). Accordingly, the Complainant has sustained his burden of proof with respect to his damage to the service location driveway claim. *Grossman v.Pub. Util. Comm.*, 5 Ohio St. 2d 189, 214 N.E. 2d 666 (1966).

In the amended complaint (Jan. 18, 2018), the Complainant further asserted an event of his gas service termination of June 2017 at his residence occurring *after* May 2015, complaint proceedings. See Amended Complaint ¶2 (Jan. 18, 2018). As such, paragraph 2 of the amended complaint provides justification for the continuation of this case and the denial of Columbia's Motion to Dismiss (Jan. 10 2018). Complainant's Amended Complaint also asserts that Columbia's agent Infra Source caused the damage to the driveway at his residence and the Columbia agent relocated the faulty meter outside the premises on behalf of Columbia. See Amended Complaint (Jan. 18, 2018), ¶¶ 1, 3-4 and attached to it Updated Affidavit in Support of New Complaint and Statement of Facts (Jan. 16, 2018), ¶¶ 3-4, 6; Second Entry on Rehearing ¶15.

Furthermore, Complaint (Dec. 21, 2017) Exhibit A is material because a qualified repairman has determined that past the shut-off valve for the dryer is a service line where there are no leaks and that the appliance is deemed safe to use. Columbia Gas red tag that informed the Complainant that the gas to the dryer has been shut-off because its use is unsafe due to leaks past the shut-off valve was clearly erroneous and caused the Complainant needless expenses in light of the qualified repairman's determination set forth above. The evidence which is referenced in

paragraph 9 of the Complainant's New Complaint and attached to it as Exhibit A, is pertinent because it demonstrates that the meter is faulty since there are no leaks past the shut-off valve which leads to the faulty gas meter relocated outside the premises by Infra Source. Therefore, Columbia's arguments are misplaced and should be rejected. Reply Memo (Jan. 18, 2018), at 3-4; Motion to Strike and Memo in Opposition to Motion to Add 10-day disconnection Notice (Jan. 25, 2018), at 1-3, (these documents further shows once more, why the criteria for appropriate sanctions against Columbia or its legal counsel as set forth in Ohio Revised Code §2323.51 has been satisfied).

Subsequent to the amended complaint (01/18/2018), which included a service termination at complainant's residence on June 2017, Complainant filed a Motion to Add 10-day disconnection notice scheduled 02/02/2018 to this complaint proceeding (01/22/2018) both events "actually" occurring after May 2015, which is incorporated herein by reference. See, Columbia's Motion to Strike and Memo in Opposition to Motion to Add 10-day disconnection Notice (Jan. 25, 2018), at 2 (agreeing that those service terminations are events that actually occurred after the filing of Complainant's complaint in *Howard I*). Which amounts to further justification for continuation of this case and the denial of Columbia's motion to dismiss (Jan. 10, 2018) and its motion to strike (Jan. 25, 2018). Accordingly, Complainant seeks a ruling that he is not responsible for the outstanding balance on his account, since the outstanding balance owed is incorrect, due to the faulty meter in question pursuant to his Certification filed herein on January 25, 2018.

As a result, the Complainant has presented new evidence to support his claims of damage Columbia's agent caused to the driveway at his residence, that the outstanding balances owed is incorrect, and of the faulty meter at his residence. See New Complaint at ¶9, see also, Exhibit A

attached to Complainant's New Complaint. Therefore, the Complainant submits that he has met his burden of proof relative to the claims that the outstanding balance(s) owed is incorrect, that Columbia's agent is responsible for damage caused to his driveway and the faulty meter. As noted above, the new allegations or service terminations claims regarding the respondent's agent in the new complaint or amended complaint occurred subsequent to the filing of the May 2015 complaint, and was not addressed in the May 2015 complaint, but addressed in the January 2018, amended complaint. Accordingly, in the end, the Commission must base its decision on the evidence of record, this substantial evidence as provided here in this action. Second Entry on Rehearing ¶19.

C. The Complainant is legally entitled to appropriate sanctions against Respondent.

The Complainant's motion for sanctions should be set for hearing pursuant to R.C. 2323.52(B)(1) to determine whether Respondent's or its legal counsel's conduct is frivolous, whether this Complainant's was adversely affected by respondent's conduct, and if so, the amount of damages for that conduct. Complainant incorporates by reference his Updated Affidavit (Jan. 16, 2018), ¶7 which supports that on January 10, 2018, Columbia filed an Answer to the Complaint, a Motion to Dismiss, and on January 18, 2018, a Reply Memorandum in Support of its Motion to Dismiss and now a Motion to Strike and Memo in Opposition to Motion to Add 10-day disconnection Notice (Jan. 25, 2018), the information contained in the four documents satisfies the criteria for appropriate sanctions as set forth in Ohio Revised Code §2323.51. Accordingly, the Commission should find that motion to impose appropriate sanctions against Columbia or its legal counsel for its frivolous conduct in this matter as required by Ohio Revised Code §2323.51(B)(4), should be granted.

In reaching this determination, the Commission should agree with the Complainant that he was adversely affected by respondent's conduct, and conduct hearing pursuant to R.C. 2323.52(B)(1) to determine whether Respondent's or its legal counsel's conduct is frivolous, and determine the amount of damages for that conduct.

Also, pursuant to R.C. §4905.26, there are reasonable grounds for motion to impose appropriate sanctions against Columbia or its legal counsel in that Columbia or its legal counsel frivolous conduct in this matter violates a specific statute, that is Ohio Revised Code §2323.51 and Ohio Revised Code §4903.24. And reasonable grounds for the amended complaint and motion to add 10-day disconnection notice as the Commission has exclusive jurisdiction over service-related questions regarding claims asserting damage to complainant's driveway caused by InfraSource who was added as a respondent to this action, and as the issue preclusion does not bar complainant from modifying his original claims and pursuing it in a new case. *Portage Cty. Bd. of Commrs. v. City of Akron,* 109 Ohio St. 3d 106, 123, 2006-Ohio-954, 846 N.E. 2d 478, citing *Hapgood v. Warren,* (C.A. 6, 1997), 127 F. 3d 490, 493. Therefore, Complainant has standing to bring a claim for the driveway damage against the Respondent's agent, Infra Source.

III. CONCLUSION

Complainant has provided a clear legal or evidentiary basis for abrogating or modifying the portion of the Commission's Opinion and Order in case number 15-873-GA-CSS which states "In regard to all other allegations of the complaint, the Commission determined that Complainant had failed to meet his burden of proof." The issuance of the Third Entry on Rehearing will mark the end of the Commission's complaint process for Howard 1. See Ohio Revised Code §§ 4903.09, 4903.10.

As explained above, at the hearing in Case No. 15-873-GA-CSS, the Complainant entered a motion concerning frivolous conduct on behalf of the attorneys involved in this case. (Tr. 139-142). Columbia and/or its attorneys has continued its frivolous and abusive conduct before this Commission, as shown in detail above. In order to minimize the burden that Columbia's filings place on Complainant in the future, Complainant respectfully requests that the Commission consider its authority under Ohio Revised Code §4903.24, which says that all fees, expenses, and costs of or in connection with any hearing may be imposed by the Commission on any party to the record or may be divided among any parties to the record in such proportion as he Commission determines. Complainant doesn't imagine that the Commission's expenses for the hearing in the first case are very large, but he think it would send a message to Columbia or its legal counsel that the manner in which it litigated its answer and motion to dismiss, reply memo here is unacceptable and that the consequences of its actions will be imposed upon them.

For the reasons provided above, Complainant respectfully requests that the Commission grant the Complainant's motion to impose appropriate sanctions against Columbia or its legal counsel, deny Columbia's motion to strike his amended complaint and grant his motion to file a late motion to amend his complaint and grant his motion to add10-day Disconnection Notice and reverse its Opinion and Order which states "In regard to all other allegations of the complaint, the Commission determined that Complainant had failed to meet his burden of proof."

Respectfully submitted,

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PROOF OF SERVICE

This is to certify that a regular copy of the foregoing of Gregory T. Howard was sent via ordinary U.S. Mail or via email, or facsimile this 26 day of January, 2018 to:

Columbia Gas of Ohio
A NiSource Company
290 W. Nationwide Blvd.
Columbus, Ohio 43215
emacdonald@nisource.com
Facsimile to: (614) 460-8403

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Gregory T. Howard
Plaintiff-Claimant, pro-se

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

Gregory T. Howard, 381 S. Detroit Ave. Toledo, Ohio 43609-2068	H H H	Case No. Judge:
Plaintiff	H	Trial by Jury Requested
-vs-	H	
Columbia Gas of Ohio, Inc.,	H	
Defendant.	H	

COMPLAINT FOR TREBLE DAMAGES AGAINST COLUMBIA GAS OF OHIO, INC.,

Now Comes Plaintiff Gregory T. Howard, without the assistance of an attorney for his Complaint against Columbia Gas of Ohio, Inc., and hereby states as follows:

JURISDICTION

1. Plaintiff brings this action under R.C. §4905.61.

2. This Court has jurisdiction pursuant to the following statutes or rule(s):

a. R.C. 4905.22 provides that every public utility shall furnish service and facilities that are adequate, just, and reasonable and that all charges made or demanded for any service be just, reasonable, and not more than allowed by law or by order of the Commission.

EX "A"