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May 20, 2019

18-1294-WS-AEM
18-1528-WS-AIR

*BY REGULAR U.S. MAIL*

**CHAIRMAN OF PUBLIC UTILITIES COMMISSION OF OHIO**
180 East Broad Street
Columbus, Ohio 43215

RE: ***In the Matter of the Application of Columbia MHC East LLC d/b/a Columbia Park Water and Sewer System for an Increase in Rates and Charges Case No: 2019-0347***

Dear Chairman:

Enclosed is a courtesy copy of the ***Merit Brief of Appellant Columbia MHC East LLC, d/b/a Columbia Park Water and Sewer System*** that has been filed with the Court on this date relative to the above subject matter.

If you should have any questions or concerns, please do not hesitate to contact me.

Sincerely,

**John W. Monroe**

JWM/dat
Enclosure
cc (*with a copy of the enclosure*): **John J. Rutter, Esq.**
**Jeanna M. Weaver, Esq.**

IN THE SUPREME COURT OF OHIO

| | | |
|---|---|---|
| In the Matter of the Application of Columbia MHC East LLC d/b/a Columbia Park Water and Sewer System for an Increase in Rates and Charges | ) | Case No: 2019-0347 |
| In the Matter of the Application of Columbia MHC East LLC d/b/a Columbia Park Water and Sewer System for an Increase in Rates and Charges | ) | On Appeal from the Public Utilities Commission of Ohio |
| | ) | PUCO Case Nos: 18-1294-AEM 18-1528-WS-AIR |

# MERIT BRIEF OF APPELLANT COLUMBIA MHC EAST LLC, d/b/a COLUMBIA PARK WATER AND SEWER SYSTEM


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**Assignment of Error No. 2: The PUCO unlawfully and unreasonably determined the Receiver has the right to own, control and/or operate CPWSS based on the 8th District Court of Appeals decision in Case No. CA-18-106910 when nothing in the Receivership Order provided Receiver these rights.**

**Assignment of Error No. 3: The PUCO unlawfully and unreasonably turned over operational control of CPWSS to the Receiver who lacks the lawful certificates to operate.**

## I. INTRODUCTION

Appellant, Columbia MHC East, LLC, d/b/a Columbia Park Water and Sewer System ("CPWSS" or "Appellant"), is a regulated public utility formed in October of 2001 and holds a Certificate of Public Need and Necessity, number 89-2049, issued November 16, 2004 by the Public Utilities Commission of Ohio. Kenneth C. Burnham, is the responsible person in charge of CPWSS, and has potential personal liability in complying with the laws and regulations as promulgated by PUCO and the EPA. To date, CPWSS continues to own and hold the required permits and authorizations for its continued operation. In order to finance necessary repairs to the waste water treatment plant ("WWTP"), Appellant filed an Emergency Application for Rate Increase and an Application for Permanent Rate Increase (the "Rate Applications") with the Public Utilities Commission of Ohio ("PUCO"). PUCO impermissibly dismissed both applications based on incomplete and misleading information presented by the intervening parties, M. Shapiro Real Estate Group Ohio, LLC, through Kimberly Scott (the "Receiver") and U.S. Bank National Association, as trustee for the registered holders of Merrill Lynch mortgage trust 2007-C1, commercial pass-through certificates, series 2007-C1 (the "Bank") (collectively, the "Intervenors").

## II. STATEMENT OF FACTS

On August 15, 2018 and October 9, 2018, Appellant filed the subject Rate Applications. CPWSS sough the rate increases in order to finance the repair and replacement of the WWTP that is situated within and serves approximately 1,500 residents of the Columbia Park Mobile Home Community located in Cuyahoga County, Ohio and additional properties outside of the Community. (Tr. 1 & 2). The WWTP has had ongoing environmental issues which CPWSS has

been working in good faith to resolve, but absent the adequate capital has been unable to remedy the conditions.

CPWSS efforts to resolve the environmental conditions have been further frustrated by ongoing litigation with the Intervenors pending in the Cuyahoga County Court of Common Pleas Case No. CV-17-887110 (the "Foreclosure Action"). The Foreclosure Action concerns the: (i) foreclosure of a commercial real estate mortgage upon two manufactured home communities and a retail shopping plaza located at 11800 Brookpark Road, Cleveland, Ohio, 7100 Columbia Road, Olmsted Township, Ohio, and 7060-7096 Columbia Road, Olmsted Township, Ohio (the "Real Property"), respectively; (ii) enforcement of an assignment of rents; and, (iii) foreclosure of security interest in personal property used in connection with said properties. The Bank filed its Complaint for Judgment Upon Promissory Note and Guarantees, For Foreclosure of Mortgage, Enforcement of Assignment of Rents, Foreclosure of Security Interest in Personal Property, and for Appointment of Receiver on October 9, 2017 in the Cuyahoga County Court of Common Pleas (the "Trial Court").

The Real Property is currently owned by Columbia Park East MHP, LLC ("Borrower East") and Columbia Far West, LLC ("Borrower West") as tenants in common (collectively, the "Borrowers") (Tr. 11 at Ex. E). Prior to Borrower East and Borrower West taking ownership of the Real Property, Appellant and Columbia West Investors, LC acquired the Real Property as tenants in common in 2001.

In May 2007, as part of a refinancing, Borrower West and Borrower East acquired the Real Property as tenants in common. CPWSS retained ownership of the WWTP and continued to own and operate the WWTP located on the Real Property. Borrower West and Borrower East also at this time entered into a Loan Agreement dated May 2, 2007 (the "Loan Agreement") and

Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated May 2, 2007 (the "Mortgage") (collectively the "Loan Documents") (Tr. 11 at Ex. G). CPWSS was not a party to the Loan Documents and further not a Borrower as defined therein. Id.

Subsequently, on October 17, 2017 the Bank filed its Motion for Immediate Appointment of Receiver and Memorandum in Support with Supporting Affidavits requesting that the Court enter an order appointing M. Shapiro Real Estate Group Ohio, LLC, through its designated agent Kimberly Scott (the "Receiver"), as receiver in this matter. (Tr. 11 at Ex. L). The Trial Court granted Appellee's Motion by the Order Appointing Receiver dated March 1, 2018 (the "Receivership Order") (Tr. 11 at Ex. M).

CPWSS, along with the other defendants in the Foreclosure Action, appealed the Trial Court's Receivership Order to the Eighth District Court of Appeals on March 17, 2018. On appeal, Appellants argued, amongst other issues, that the Trial Court erred by appointing a Receiver over property that is not owned by a borrower under the terms of the Loan Documents and not encumbered by the Mortgage.

Although, in its Journal Entry and Opinion dated December 20, 2018, the Eighth District Court of Appeals (the "Appellate Court") affirmed the Trial Court's Order Appointing the Receiver, the Court of Appeals found that the WWTP was not encumbered by the Mortgage. (Tr. 11 at Ex. P). However, the Court of Appeals also found that for the purposes of appointing a receiver the waste water treatment plant cannot be considered separate and apart from the mortgaged property and therefore the Trial Court was within its authority to appoint the Receiver over the property not encumbered by the Mortgage. Id.

On November 16, 2018 the Intervenors filed joint Motions to Intervene in both the emergency rate increase application and the permanent rate increase application proceedings (Tr. 4), which Appellant timely opposed (Tr. 7). Intervenors subsequently filed its Motion to Dismiss the Rate Cases on December 21, 2018 (Tr. 11) and January 4, 2019 (Tr. 12) (the "Motions to Dismiss") **prior** to the PUCO ruling on the Motions to Intervene. Intervenors failed to serve the Motions to Dismiss upon Appellant or include a certificate of service. The PUCO entered an order on January 23, 2019 (the "Order"), dismissing both the emergency rate increase application and the permanent rate increase application proceedings. (Tr. 13). In its Order, the PUCO erroneously concluded that CPWSS lacked standing to file and maintain rate increase matters due to the receivership. (Tr. 13 at Pg. 5).

## III. LAW AND ARGUMENT

### 1. Standard of Review

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. "The court will not reverse or modify a PUCO decision as to questions of fact where the record contains sufficient probative evidence to show PUCO's determination is not manifestly against the weight of the evidence and is not so clearly unsupported by the record as to show misapprehension, mistake or willful disregard of duty." *Ohio Consumers' Counsel v. Pub. Util. Co.*, 883 N.E.2d 1035 (Ohio 2008). "The appellant bears the burden of demonstrating that the PUCO's decision is against the manifest weight of the evidence or is clearly unsupported by the record." *Elyria Foundry Co. v. Pub. Util. Co.*, 888 N.E.2d 1055 (Ohio 2008). "The court will not reverse a commission order absent a

showing by the appellant that it has been or will be harmed or prejudiced by the order." *Elyria Foundry Co. v. Pub. Util. Comm.*, 888 N.E.2d 1055 (Ohio 2008).

**1. Assignment of Error No. 1: The PUCO unlawfully and unreasonably granted Intervenors' Motions to Dismiss without providing Appellant time to respond violating Appellant's due process rights.**

The PUCO unlawfully and unreasonably granted Intervenors Motion to Dismiss in its January 23, 2019 Order. In that Order the PUCO also granted Intervenors Motion to Intervene. Intervenors filed its respective Motions to Dismiss on December 21, 2018 and January 4, 2019 prior to being permitted to intervene by the PUCO on January 23, 2019. Further the Motions to Dismiss were not properly served upon Appellant. Appellant therefore did not have the opportunity to respond timely to the Motions to Dismiss. Further, even if the Motions to Dismiss had been properly served, at the time the Motions to Dismiss were filed, the Intervenors were not yet parties as the PUCO had not yet granted the Motion to Intervene. Absent a ruling from the PUCO on the Motion to Intervene, Appellant was provided no notice that a response to the Motions to Dismiss would need to be submitted.

As an initial matter, it is unclear whether Intervenors even have statutory authority to move to dismiss the Rate Cases. In Intervenors' Response to Motion for Rehearing, Intervenors argue that O.A.C. 4901-1-12 provides authority for Intervenor to file the Motions to Dismiss because O.A.C. 4901-1-12(E) provides, "For the purpose of this rule, the term 'party' includes all persons who have filed motions to intervene which are pending at the time a motion or memorandum is to be filed or served". (Tr. 15). However, O.A.C. 4901-1-12(B) only expressly provides authority for a "party" to file a memorandum contra and a reply memorandum to a previously filed motion. O.A.C. does not expressly provide authority for a "party" within the meaning of O.A.C. 4901-1-12(E) to file a dispositive motion. Therefore, Intervenors argument that O.A.C. 4901-1-12 provides

them with the authority to file the Motions to Dismiss, a dispositive motion, is a broad assumption not based on the express language of the statute.

Additionally, the PUCO should not have considered the Motions to Dismiss because they did not include a certificate of service as required by OAC 4901-1-05. The service requirements of OAC 4901-1-05 closely follow the service requirements provided in Civ. R. 5(B)(4) states that documents filed with the court shall not be considered until proof of service is endorsed thereon or separately filed. Further, courts have held that any document that does not have a certificate of service shall not be considered by the court. (*see In Matter of William Dankworth Trust*, 7th Dist. Belmont No. 14 BE 9, 2014-Ohio-5825 and *Erie Ins. Co. v. Bell*, 4th Dist. Lawrence No. 01CA12, 2002-Ohio-6139). In this case PUCO is acting as the court. Although the PUCO has promulgated its own procedural rules, these rules are silent on the repercussions of the failure to comply with OAC 4901-1-05. Therefore, the consequences for failure to abide with the service requirements of Civ. R. 5 should be applied to this set of facts and the Motions to Dismiss should not have been considered by the PUCO absent the required Certificate of Service.

By considering and ruling on the Motions to Dismiss that were improperly and untimely filed by Intervenors the PUCO denied Appellant the opportunity to refute the arguments presented by Intervenors. The PUCO based its decision to dismiss the emergency and permanent rate increase applications in large part on the representations made by Intervenors in the Motions to Dismiss which may have or may not have been accurate. Therefore, Appellant was prejudiced by the Order by not being afforded an opportunity to refute the allegations continued in the Motions to Dismiss.

2. **Assignment of Error No. 2: The PUCO unlawfully and unreasonably determined the Receiver has the right to own, control and/or operate CPWSS based on the 8th District Court of Appeals decision in Case No. CA-18-106910 when nothing in the Receivership Order provided Receiver these rights.**

The Intervenors contend that the Receivership Order authorizes the Receiver to take possession and operate the WWTP. However, the WWTP is not encumbered by the Mortgage and therefore cannot be subject to the Receivership Order because the trial court has no authority to appoint a receiver over property that is not encumbered by the Mortgage. (Tr. 11 at Ex. H) "The receiver in a mortgage foreclosure action does not have the all-encompassing powers of a general receiver of all property of the debtor, but is instead limited to taking those actions "with respect to" the property covered by the mortgage that is being foreclosed." Castlebrook, Ltd. v. Dayton Properties Ltd. P'ship, 78 Ohio App. 3d 340, 347–48, 604 N.E.2d 808, 812 (1992).

Appellant has maintained that the WWTP is not subject to the Receivership Order because the WWTP is not covered by the Mortgage. However, Receiver repeatedly demanded that Appellant turn over the property and assets of the WWTP and now collects income that belongs to CPWSS. "Pursuant to *Castlebrook,* only property specifically secured by the mortgage is within the reach of the receiver." Aetna Life Ins. Co. v. Woodhawk Apartments Ltd. P'ship, No. 68820, 1995 WL 723335, at *4 (Ohio Ct. App. Dec. 7, 1995).

The Loan Agreement defines the Columbia Park "Project" as "Columbia Park MHC and Columbia Park Retail, Olmsted Falls, Ohio and Brookpark MHC, Cleveland, Ohio, and all related facilities, amenities, fixtures, and personal property *owned by Borrower*...". (Tr. 11 at Exhibit G). Section 2.4 of the Loan Agreement goes on to provide that "the Loan shall be secured by the Mortgage creating a first lien on the Project". Id. The Mortgage provides within the definition of Mortgaged Property, "all materials, supplies, equipment, apparatus and other items of personal

*property now owned or hereinafter acquired by Mortgagor* and now or hereafter attached to, installed in or used in connection with any of the Improvements or the Land, and water, gas, electrical, storm and sanitary facilities and all other utilities whether or not situated in easements". (Tr. 11 at Exhibit H). Both of these definitions and references expressly provided that only property owned by the Borrowers is encumbered. Moreover, the Bank has failed to provide any documentation that provided Borrowers the authority to encumber property that they did not own.

The Bank has admitted that CPWSS, the owner of the WWTP, is not a note debtor under the Loan Documents and the Court of Appeals correctly concluded that the WWTP is not encumbered by the Mortgage. (Tr. 11 at Exhibit P). Further, CPWSS is not a party to the Loan Documents and therefore did not consent to the appointment of a Receiver over its assets under the Loan Documents.

However, the Appellate Court erroneously concluded that "the wastewater treatment plant cannot be considered separate and apart from the mortgaged property, at least not for the purposes of appointing the receiver." (Tr. 11 at Exhibit P). The Appellate Court based this conclusion in part on its incorrect conclusion that "the wastewater treatment plant exists solely to serve the Columbia Park Facility." Id. The Appellate Court correctly stated that the WWTP provides drinking water and sanitary service to the residents of the Columbia Park Manufactured Home Park. Id. However, it is undisputed and uncontroverted that the WWTP services additional properties that are not subject to the Loan Documents. Therefore, the WWTP does <u>not</u> exist solely to serve the Columbia Park Manufactured Home Park.

The Trial Court may not even have the jurisdiction to appoint a Receiver over the assets of CPWSS. Mandating that CPWSS is operated by an entity that does not hold the proper approvals from PUCO would be in violation of the tariff. PUCO and the Supreme Court of Ohio have

exclusive jurisdiction regarding matters involving public utilities. See State ex rel. Cleveland Elec. Illuminating Co. v. Cuyahoga Cty. Court of Common Pleas, 88 Ohio St.3d 447, 450, 727 N.E.2d 900 (2000). Moreover, a Court of Common Pleas does not have the authority to enjoin a public utility from following approved tariffs. *See* State of Ohio ex rel. Smith v. Amin Hotels, Ltd., 2012-Ohio-1317.

### 3. Assignment of Error No. 3: The PUCO unlawfully and unreasonably turned over operational control of CPWSS to the Receiver who lacks the lawful certificates to operate.

Through its Order, the PUCO effectively permitted the Receiver operational control of the WWTP in violation of Ohio law and substantially denying Appellant's property rights. Pursuant to R.C. 4933.25, no sewage disposal system company or water-works company "shall construct, install, or operate sewage disposal system facilities or water distribution facilities until it has been issued a certificate of public convenience and necessity by the public utilities commission." "Water-works company" is defined as those "engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers within this state." R.C. 4905.03(G). "Sewage disposal system company" is defined as those "engaged in the business of sewage disposal services through pipes or tubing, and treatment works, or in a similar manner, within this state." R.C. 4905.03(M). Additionally, Ohio Adm.Code 4901:1-15-05 lays out the process for obtaining a certificate of public convenience and necessity. Whoever violates R.C. 4933.25 is guilty of a misdemeanor of the fourth degree. R.C. 4933.99(B).

It is evident that the Receiver is the party currently operating CPWSS in all aspects. CPWSS "is a waterworks and sewage disposal system company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02." (Tr. 13). The Receiver, however, has not obtained a certificate of public convenience and necessity, as is required by R.C. 4933.25. The only

certificates of public convenience and necessity for CPWSS are held by CPWSS. Since the Receiver itself has not obtained a certificate of public convenience and necessity for the WWTP, she is in violation of R.C. 4933.25. Therefore, the PUCO unlawfully and unreasonably turned over operational control of CPWSS to the Intervenor, who lacks the lawful certificates to operate it.

## IV. CONCLUSION

The PUCO acted unlawfully and unreasonably when it entered the Order date January 23, 2019 dismissing both the emergency and permanent rate increase applications. The PUCO erroneously relied on Intervenors flawed Motion to Dismiss when it determined that CPWSS lacked standing and unlawfully permitted Receiver operational control of the WWTP. For these reasons and the reasons discussed above, Appellant respectfully requests that the Order be dismissed.

Respectfully submitted,

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*Counsel for Appellant Columbia MHC East LLC*

## CERTIFICATE OF SERVICE

I hereby certify that this ***Merit Brief of Appellant*** was electronically filed on this 20th day of May 2019 and a true and correct copy was served by regular U.S. Mail upon the following:

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*Counsel for Appellant Columbia MHC East LLC*

## INDEX TO APPENDIX

THE PUBLIC UTILITIES COMMISSION OF OHIO

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| IN THE MATTER OF THE APPLICATION OF COLUMBIA MHC EAST LLC DBA COLUMBIA PARK WATER AND SEWER SYSTEM FOR AN INCREASE IN RATES AND CHARGES. | CASE NO. 18-1294-WS-AEM |
| IN THE MATTER OF THE APPLICATION OF COLUMBIA MHC EAST LLC DBA COLUMBIA PARK WATER AND SEWER SYSTEM FOR AN INCREASE IN RATES AND CHARGES. | CASE NO. 18-1528-WS-AIR |

ENTRY

Entered in the Journal on January 23, 2019

## I. SUMMARY

{¶ 1} The Commission dismisses and closes these two cases of record at this time.

## II. DISCUSSION

{¶ 2} Columbia MHC East LLC dba Columbia Park Water and Sewer System (CPWSS or Company) is a waterworks and sewage disposal system company as defined by R.C. 4905.03 and a public utility as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

{¶ 3} On August 15, 2018, as amended on October 9 and November 30, 2018, CPWSS filed an application in Case No. 18-1294-WS-AEM seeking an emergency increase in rates pursuant to R.C. 4909.16 (hereafter, emergency rate increase application). CPWSS requested that the emergency rate relief continue for 18 months or until such time as the Commission has considered the Company's forthcoming application for a permanent rate increase.

{¶ 4} On October 9, 2018, CPWSS filed an application in Case No. 18-1528-WS-AIR (hereafter, permanent rate increase application) for a small utility increase in rates pursuant to Ohio Adm.Code 4901-7-01, Appendix A, Chapter III of the Commission's standard filing requirements.

{¶ 5} An application for a permanent increase in rates is governed by and must meet the requirements of R.C. 4909.17 to 4909.19 and the Commission's standard filing requirements set forth in Ohio Adm.Code Chapter 4901-7. The Commission will endeavor to conclude its review of an application that satisfies the requirements of R.C. 4909.17 to 4909.19 and the Commission's standard filing requirements within 275 days as set forth in R.C. 4909.42.

{¶ 6} Included within the Company's October 9, 2018 permanent rate increase application was a request for waiver of certain rate base schedules involving plant-in-service, depreciation accrual rates, and jurisdictional reserve balances as well as a fully allocated cost of service study for the addition of a new customer class.

{¶ 7} Pursuant to Ohio Adm.Code 4901-7-01, Appendix A, Chapter III(A)(4)(e), a waiver request not granted by the Commission within 30 days of its filing shall be considered denied. The Company's waiver request was denied pursuant to Ohio Adm.Code 4901-7-01, Appendix A, Chapter III(A)(4)(e).

{¶ 8} On November 20, 2018, Staff sent CPWSS a letter stating its permanent rate increase application filed on October 9, 2018, did not comply with the standard filing requirements covered in Ohio Adm.Code 4901-7-01, Appendix A, Chapter III and that Staff did not receive enough information to begin its review of the application. Staff's letter detailed the information CPWSS must provide in order to complete the permanent rate increase application.

{¶ 9} Pursuant to Ohio Adm.Code 4901-7-01, Appendix A, Chapter III(A)(4)(c), within 60 days of an application for permanent increase in rates being filed, the Commission will issue an entry indicating whether the application complies with the Commission's standard filing requirements. In light of the deficiencies outlined in the Staff's November 20, 2018 letter, the Commission issued an Entry on December 5, 2018, finding that the permanent rate increase application of CPWSS filed on October 9, 2018, was not in

compliance with the Commission's standard filing requirements at that time for purposes of calculating the time period set forth in R.C. 4909.42.

{¶ 10} On November 30, 2018, CPWSS filed supplemental information to support its permanent rate increase application. The Commission stated in the December 5, 2018 Entry that we would review this supplemental information and thereafter make a determination whether the supplemental information renders the permanent rate increase application in substantial and technical compliance with the standard filing requirements.

{¶ 11} On November 16, 2018, in both the emergency rate increase application and the permanent rate increase application proceedings, M. Shapiro Real Estate Group Ohio, LLC, through Kimberly Scott (the court-appointed receiver), and U.S. Bank National Association, as trustee for the registered holders of certain commercial pass-through certificates (Bank) (collectively, Movants), filed joint motions to intervene in both the emergency and permanent rate increase application proceedings.[1] Movants claim to have a direct, real, and substantial interest in issues and matters involved in both proceedings, and are so situated as the court-appointed receiver and mortgagee of the subject waste water treatment plant assets and real property that the disposition of this proceeding may, as a practical matter, impair or impede their abilities to protect their respective interests. Further, Movants assert that their participation will not unduly prolong or delay these matters and that the legal positions advanced directly relate to the merits of the Company's ability to pursue the emergency and permanent rate increase applications. As a final matter, Movants claim that their interests will not be represented by other parties to these proceedings.

[1] Movants assert that the waste water treatment plant and waterworks system (collectively, WWTP) is included in a loan agreement whereby Columbia Park East MHP, LLC (Columbia Park East) and Columbia Far West, LLC, as part of a first mortgage fixture filing, refinanced the subject property for $55,000,000. CPWSS is the sole member of borrower Columbia Park East and Kenneth C. Burnham is the president of CPWSS as well as a member and shareholder of two entities that own CPWSS.

{¶ 12} On November 30, 2018, CPWSS, through counsel, filed comments opposing the Movants' motion to intervene in the emergency rate increase proceeding. In the comments, the Company asserts that Movants have established no right to intervene in this matter. CPWSS further asserts that there is no contract or agreement between the Movants and the Company. Finally, CPWSS states that intervention by Movants will cause undue delay in the implementation of the Company's emergency rate increase proceeding. CPWSS did not file a memorandum contra opposing Movants intervention in the permanent rate increase proceeding.

{¶ 13} Having fully reviewed the arguments of the parties concerning the issue of intervention, the Commission finds that Movants have satisfied the requirements for intervention in these matters as outlined in R.C. 4903.221 and Ohio Adm.Code 4901-1-11. Intervention is, therefore, granted to Movants in both the emergency and permanent rate increase application proceedings.

{¶ 14} On December 21, 2018, Movants filed a motion seeking to dismiss the emergency rate increase application. On January 4, 2019, in the permanent rate increase application, Movants filed a similar motion to dismiss. In both proceedings, Movants assert that CPWSS lacks standing to file, let alone maintain, the emergency and permanent rate increase applications pursuant to a valid and effective state court order. In fact, Movants maintain that the court-appointed receiver possesses exclusive authority with respect to the waste water treatment plant facilities at this time.

{¶ 15} In support of the motions to dismiss, Movants recount that on October 9, 2017, the Bank commenced Cuyahoga County Court of Common Pleas (the Court) Case No. CV-17-887110 in order to, among other things, enforce payment of the matured $55,000,000 promissory note, foreclose its mortgage, fixture filing, and other security interests in the Columbia Park Mobile Home Community (Community) including the waste water and waterworks system operated by CPWSS within the boundaries of the Community, and

appoint a receiver to manage and control the subject property. On March 1, 2018, the Court entered its Order Appointing Receiver (Receivership Order) wherein the Court appointed the receiver and authorized the court-appointed receiver "to take immediate possession and full control of the Receivership Property and...to exercise full control over, to prevent waste, and to preserve, manage, secure, and safeguard the Receivership Property."[2] According to Movants, the Receivership Order grants receiver authority to manage and control all "Receivership Property," which is defined as including all real estate that is subject to the mortgage, all personal property located thereon, all fixtures attached to or used in connection with the use and operation of the Community, and all improvements thereon. CPWSS and related defendants commenced an appeal of the Receivership Order in the Eighth District Court of Appeals on March 7, 2018, asserting that the WWTP is not subject to the Bank's mortgage and therefore cannot be subject to the Receivership Order. On December 20, 2018, the Eighth District Court of Appeals entered its judgment affirming the Receivership Order in all respects. The appellate court agreed that the WWTP constitutes a fixture upon the Columbia Park real estate, is therefore subject to the mortgage, is part of the mortgaged property, and is thus subject to the Receivership Order. Accordingly, Movants seek a Commission order finding that CPWSS lacks standing to file and maintain rate increase matters due to the receivership and dismiss both the emergency and permanent rate increase applications.

{¶ 16} No memoranda contra the motions to dismiss have been filed.

{¶ 17} The Commission determines that, in light of the Receivership Order and proceedings in state court, only the receiver, acting on behalf of CPWSS, has standing to pursue both emergency and permanent rate increase applications. As the receiver, acting

[2] Journal Entry and Order Appointing Receiver, Court of Common Pleas Cuyahoga County, Case No. CV-17-887110, (Mar. 1, 2018).

on behalf of CPWSS, has requested dismissal of both the emergency and permanent rate increase applications, the Commission finds that both applications should be dismissed.

## III. ORDER

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That, in accordance with Paragraph 17, Case Nos. 18-1294-WS-AEM and 18-1528-WS-AIR be dismissed and closed of record. It is, further,

{¶ 20} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

M. Beth Trombold

Thomas W. Johnson

Lawrence K. Friedeman

Daniel R. Conway

JRJ/mef

Entered in the Journal
JAN 23 2019

Tanowa M. Troupe
Secretary

**RULE 5. Service and Filing of Pleadings and Other Papers Subsequent to the Original Complaint**

**(A) Service: When Required.** Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties. Service is not required on parties in default for failure to appear except that pleadings asserting new or additional claims for relief or for additional damages against them shall be served upon them in the manner provided for service of summons in Civ. R. 4 through Civ. R. 4.6.

**(B) Service: how made.**

**(1) Serving a party; serving an attorney.** Whenever a party is not represented by an attorney, service under this rule shall be made upon the party. If a party is represented by an attorney, service under this rule shall be made on the attorney unless the court orders service on the party. Whenever an attorney has filed a notice of limited appearance pursuant to Civ.R. 3(B), service shall be made upon both that attorney and the party in connection with the proceedings for which the attorney has filed a notice of limited appearance.

**(2) Service in general.** A document is served under this rule by:

(a) handing it to the person;

(b) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(c) mailing it to the person's last known address by United States mail, in which event service is complete upon mailing;

(d) delivering it to a commercial carrier service for delivery to the person's last known address within three calendar days, in which event service is complete upon delivery to the carrier;

(e) leaving it with the clerk of court if the person has no known address; or

(f) sending it by electronic means to a facsimile number or e-mail address provided in accordance with Civ.R. 11 by the attorney or party to be served, in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person served.

**(3) Using court facilities.** If a local rule so authorizes, a party may use the court's transmission facilities to make service under Civ.R. 5(B)(2)(f).

**(4) Proof of service.** The served document shall be accompanied by a completed proof of service which shall state the date and manner of service, specifically identify the division of Civ.R. 5(B)(2) by which the service was made, and be signed in accordance with Civ.R. 11. Documents filed with the court shall not be considered until proof of service is endorsed thereon or separately filed.

**(C) Service: numerous defendants.** In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

**(D) Filing.** Any paper after the complaint that is required to be served shall be filed with the court within three days after service. The following discovery requests and responses shall not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry on land, and requests for admission.

**(E) Filing with the court defined.** The filing of documents with the court, as required by these rules, shall be made by filing them with the clerk of court, except that the judge may permit the documents to be filed with the judge, in which event the judge shall note the filing date on the documents and transmit them to the clerk. A court may provide, by local rules adopted pursuant to the Rules of Superintendence, for the filing of documents by electronic means. If the court adopts such local rules, they shall include all of the following:

(1) Any signature on electronically transmitted documents shall be considered that of the attorney or party it purports to be for all purposes. If it is established that the documents were transmitted without authority, the court shall order the filing stricken.

(2) A provision shall specify the days and hours during which electronically transmitted documents will be received by the court, and a provision shall specify when documents received electronically will be considered to have been filed.

(3) Any document filed electronically that requires a filing fee may be rejected by the clerk of court unless the filer has complied with the mechanism established by the court for the payment of filing fees.

[Effective: July 1, 1970; amended effective July 1, 1971; July 1, 1984; July 1, 1991; July 1, 1994; July 1, 2001; July 1, 2012; July 1, 2015; July 1, 2016; July 1, 2018.]

**Staff Note (July 1, 2018 Amendment)**

**Division (B)(1): Serving a Party; Serving an Attorney.**

This and other July 1, 2018 amendments to the Ohio Rules of Civil Procedure encourage attorneys to assist pro se parties on a limited basis without undertaking the full representation of the client on all issues related to the legal matter for which the attorney is engaged. By these amendments, the Supreme Court seeks to enlarge access to justice in Ohio's courts as recommended by a 2006 Report of the Court's Task Force on Pro Se & Indigent Litigants and by a 2015 Report of the Court's Task Force on Access to Justice.

The amendment to Civ.R. 5(B)(1) makes clear that when a notice of limited appearance has been filed by an attorney, an opposing party shall continue serving documents upon the party throughout the duration of the limited appearance while also serving the attorney. The purpose of the amendment is to assure appropriate service upon counsel to represented parties, but also to assure that a client being represented on a limited basis has copies of all key documents in the litigation.

**Staff Note (July 1, 2016 Amendments)**

Division 5(D) of this rule, the general rule for the time for filing, is amended to conform the language to the 2007 stylistic changes to Fed.R.Civ.P. 5(d) to the extent that the substance of the Ohio and Federal Rules are the same.

**Staff Note (July 1, 2015 Amendments)**

The rule is amended by adding a new division Civ.R. 5(B)(3) permitting a party to use a court's transmission facilities to serve other parties by electronic means if so authorized by local rule, and the subsequent division of the rule is renumbered accordingly.

The amendment eliminates a duplication of effort resulting from the 2012 amendments to Civ.R. 5(B) which permitted a party to use electronic means to fulfill the party's Civ.R. 5 duty to serve all other parties but did not authorize the party to use the facilities of a local court's electronic filing system to perform that duty—even though, under local rules, the court's facilities nevertheless serve by electronic means all parties participating in the electronic filing system. The new provision is virtually identical to Fed.R.Civ.P. 5(b)(3).

**Staff Note (July 1, 2012 Amendment)**

**Rule 5(B)**

Rule 5(B) is amended (1) to permit service of documents after the original complaint to be made by electronic means and by commercial carrier service and (2) to conform the format and language of the rule to the December 1, 2007 amendments to Fed.R.Civ.P. 5(b).

Rule 5(B)(2)(d) permits service of a document by delivering it to a commercial carrier service for delivery within three calendar days. Rule 5(B)(2)(f) adopts the language of Fed.R.Civ.P. 5(b) stating that service by electronic means is not effective if the serving party learns that the document did not reach the person to be served. Rule 5(B)(3) emphasizes a party's duty to provide a proof of service that states the date and specific manner by which the service was made, specifically identifying the division of Civ.R. 5(B)(2) by which service was made.

**Rule 5(D)**

The provisions of Civ.R. 5(D) relating to the duty to provide a proof of service have been moved to Civ.R. 5(B)(3) and amended to require that a serving party specifically identify the division of Civ.R. 5(B)(2) by which the service was made. Additional changes are made to substitute "document" for "paper" for consistency with other Rules of Civil Procedure.

**Staff Note (July 1, 2001 Amendment)**

**Civil Rule 5(E) Filing with the court defined**

The amendments to this rule were part of a group of amendments that were submitted by the Ohio Courts Digital Signatures Task Force to establish minimum standards for the use of information systems, electronic signatures, and electronic filing. The substantive amendment to this rule was the amendment of the second sentence and the addition of the last sentence of division (E), and the addition of divisions (E)(2) and (E)(3). Comparable amendments were made to Civil Rule 73 (for probate courts), Criminal Rule 12, Juvenile Rule 8, and Appellate Rule 13.

As part of this electronic filing and signature project, the following rules were amended effective July 1, 2001: Civil Rules 5, 11, and 73; Criminal Rule 12; Juvenile Rule 8; and Appellate Rules 13 and 18. In addition, Rule 26 of the Rules of Superintendence for Courts of Ohio was amended and Rule of Superintendence 27 was added to complement the rules of procedure. Superintendence Rule 27 establishes a process by which minimum standards for information technology are promulgated, and requires that courts submit any local rule involving the use of information technology to a technology standards committee designated by the Supreme Court for approval.

# 4901-1-05 Service of pleadings and other papers.

(A) Unless otherwise ordered by the commission, the legal director, the deputy legal director, or an attorney examiner, all pleadings or papers filed with the commission subsequent to the original filing or commission entry initiating the proceeding shall be served upon all parties, no later than the date of filing. Such pleadings or other papers shall contain a certificate of service. The certificate of service shall state the date and manner of service, identify the names of the persons served, and be signed by the attorney or the party who files the document. The certificate of service for a document served by mail or personal service shall also include the address of the person served. The certificate of service for a document served by fax shall also include the fax number of the person to whom the document was transmitted. The certificate of service for a document served by e-mail shall also include the e-mail address of the person to whom the document was sent.

(B) If an e-filing is accepted by the docketing division, an e-mail notice of the filing will be sent by the commission's e-filing system to all persons who have electronically subscribed to the case. The e-mail notice will constitute service of the document upon the recipient. Upon receiving notice that an e-filing has been accepted by the docketing division, the filer shall serve copies of the document in accordance with this rule upon all other parties to the case who are not served via the e-mail notice. A person making an e-filing shall list in the certificate of service included with the e-filing the parties who will be served by e-mail notice by the commission's e-filing system and the parties who will be served by traditional methods by the person making the filing. The certificate of service for an e-filed document shall include the following notice: The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties: (list the names of the parties referenced on the service list of the docket card who have electronically subscribed to the case).

(C) If a party has entered an appearance through an attorney, service of pleadings or other papers shall be made upon the attorney instead of the party. If the party is represented by more than one attorney, service need be made only upon the "counsel of record" designated under rule 4901-1-08 of the Administrative Code. . If no counsel of record is listed for a party with multiple counsel then service shall be made on the first-listed counsel in the initial pleading.

(D) Service upon an attorney or party may be personal or by mail, by fax, or e-mail under the following conditions:

(1) Personal service is complete by delivery of the copy to the attorney or to a responsible person at the office of the attorney. Personal service to a party not represented by an attorney is complete by delivery to the party or to a responsible person at the address provided by the party in its pleadings.

(2) Service by mail to an attorney or party is complete by mailing a copy to his or her last known address. If the attorney or party to be served has previously filed and served one or more pleadings or documents in the proceeding, the term "last known address" means the address set forth in the most recent such pleading or document.

(3) Service of a document to an attorney or party by fax may be made only if the person to be served has consented to receive service of the document by fax. Service by fax is complete upon transmission, but is not effective if the serving party learns that it did not reach the person served .

(4) Service of a document by e-mail to an attorney or party may be made only if the person to be served has consented to receive service of the document by e-mail. Service by e-mail is complete upon transmission, but is not effective if the serving party learns that it did not reach the person served ' .

(E) For purposes of this rule, the term "party" includes, in addition to those identified in rule 4901-1-10 of the Administrative Code, all persons who have filed motions to intervene that are pending at the time a pleading or document is to be served, provided that the person serving the pleading or other document has been served with a copy of the motion to intervene.

(F) The commission or the legal director, deputy legal director, or attorney examiner may order in certain cases that pleadings or documents be served in a specific manner to expedite the exchange of information.

Effective: 06/15/2014
R.C. 119.032 review dates: 03/26/2014 and 03/26/2019
Promulgated Under: 111.15
Statutory Authority: 4901.13
Rule Amplifies: 4901.13 , 4901.18
Prior Effective Dates: 3/1/81, 6/1/83, 12/25/87, 7/10/01, 5/7/07

# 4901-1-12 Motions.

(A) All motions, unless made at a public hearing or transcribed prehearing conference, or unless otherwise ordered for good cause shown, shall be in writing and shall be accompanied by a memorandum in support. The memorandum in support shall contain a brief statement of the grounds for the motion and citations of any authorities relied upon.

(B) Except as otherwise provided in paragraphs (C) and (F) of this rule:

(1) Any party may file a memorandum contra within fifteen days after the service of a motion, or such other period as the commission, the legal director, the deputy legal director, or the attorney examiner requires.

(2) Any party may file a reply memorandum within seven days after the service of a memorandum contra, or such other period as the commission, the legal director, the deputy legal director, or the attorney examiner requires.

(C) Any motion may include a specific request for an expedited ruling. The grounds for such a request shall be set forth in the memorandum in support. If the motion requests an extension of time to file pleadings or other papers of five days or less, an immediate ruling may be issued without the filing of memoranda. In all other situations, the party requesting an expedited ruling may first contact all other parties to determine whether any party objects to the issuance of such a ruling without the filing of memoranda. If the moving party certifies that no party objects to the issuance of such a ruling, an immediate ruling may be issued. If any party objects to the issuance of such a ruling, or if the moving party fails to certify that no party has any objection, any party may file a memorandum contra within seven days after the service of the motion, or such other period as the commission, the legal director, the deputy legal director, or the attorney examiner requires. No reply memoranda shall be filed in such cases unless specifically requested by the commission, the legal director, the deputy legal director, or the attorney examiner.

(D) All written motions and memoranda shall be filed with the commission and served upon all parties in accordance with rule 4901-1-05 of the Administrative Code.

(E) For purposes of this rule, the term "party" includes all persons who have filed motions to intervene which are pending at the time a motion or memorandum is to be filed or served.

(F) Notwithstanding paragraphs (B) and (C) of this rule, the commission, the legal director, the deputy legal director, or the attorney examiner may, upon their own motion, issue an expedited ruling on any motion, with or without the filing of memoranda, where the issuance of such a ruling will not adversely affect a substantial right of any party.

(G) The presiding hearing officer may direct that any motion made at a public hearing or transcribed prehearing conference be reduced to writing and filed and served in accordance with this rule.

(H) A motion for a hearing on a long-term forecast report under division (D)(3) of section 4935.04 of the Revised Code shall be filed within forty-five days of the filing of the report.

R.C. 119.032 review dates: 03/26/2014 and 03/26/2019
Promulgated Under: 111.15
Statutory Authority: 4901.13

Rule Amplifies: 4901.13 , 4901.18, 4935.04
Prior Effective Dates: 3/1/81, 12/25/87, 4/20/01, 5/7/07

**Prior History:** (Effective: 05/07/2007
R.C. 119.032 review dates: 02/20/2007 and 09/30/2010
Promulgated Under: 111.15
Statutory Authority: 4901.13
Rule Amplifies: 4901.13 , 4901.18, 4935.04
Prior Effective Dates: 3/1/81, 12/25/87, 4/20/01 )

# 4901:1-15-05 Application for certificate of public convenience and necessity.

(A) Any person, firm, or corporation desiring to obtain a certificate of public convenience and necessity authorizing such person, firm, or corporation to construct and/or operate a waterworks system and/or a sewage disposal system or to expand the area in which such a system is operated, shall file an application in the form and with the content specified in this rule. Exhibits as described and enumerated in paragraph (D) of this rule shall be attached to and made a part of each application. The required number of copies to be filed with the commission of applications made pursuant to this rule is set forth in rule 4901-1-02 of the Administrative Code.

(B) All applications and exhibits shall be typewritten, filed electronically pursuant to paragraph (D) of rule 4901-1-02 of the Administrative Code, printed, or reproduced by some other equally legible and permanent process on good quality paper, eight and one-half inches by eleven inches nominal size. Maps and plans may be reproduced by any reasonably permanent process and shall be of such size that they can be folded to match the other documents presented.

(C) Applications and exhibits must be signed by the applicant or his/her attorney and shall show the complete post office address of the person whose signature is affixed. If the applicant is a partnership, one partner may sign for all; if a corporation, the president, a vice-president, secretary, or other duly authorized officer may sign. The applicant shall serve a copy of the application, the exhibits, and all other filings upon the Ohio environmental protection agency (OEPA) at Columbus, Ohio, and shall indicate this service on the copies filed with the commission. Any of the exhibits which are currently on file with the OEPA may be omitted.

(D) All of the following exhibits shall be filed with each application and, if a hearing is held, shall be presented as evidence at the hearing.

(1) Exhibit one

(a) If applicant is a corporation, it shall file both of the following:

(i) A list of the officers, directors, and the ten largest shareholders of the corporation, the address of each, and the number of shares held by each. If there are not as many as ten shareholders, a statement to that effect.

(ii) The nature, character, and extent of the interest, if any, of any of the above officers, directors, or shareholders in any other waterworks company and/or sewage disposal system company, or in any other partnership or corporation that holds an interest in any other waterworks company and/or sewage disposal system company.

(b) If applicant is a partnership, it shall file both of the following:

(i) Name and address of each partner.

(ii) The nature, character, and extent of the interest, if any, of any partner in any other waterworks company and/or sewage disposal system company, or in any other partnership or corporation that holds any interest in any other waterworks company and/or sewage disposal system company.

(c) If applicant is an individual, it shall file the same information for an individual owner of a waterworks company and/or a sewage disposal system company as required by paragraphs (D)(1)(b)(i) and (D)(1)(b)(ii) of this rule for a partnership application.

(d) If any person, firm, or corporation purports to guarantee the obligations of the applicant, the person, firm, or corporation shall file a disclosure including both of the following:

(i) Identification of such person, firm, or corporation by name and complete post office address.

(ii) A detailed balance sheet (net worth statement) for such person, firm, or corporation.

(e) Further, if any developer of all or part of the area for which applicant requests a certificate of public convenience and necessity has any interest in, or control over, the applicant, the developer shall file a disclosure including all of the following:

(i) Identification of such developer by name and complete post office address.

(ii) A detailed balance sheet (net worth statement) of such developer.

(iii) The nature and extent of the developer's interest in applicant and the means by which control is exercised over applicant.

(2) Exhibit two

A certified copy of the articles of incorporation and any amendments if applicant is a corporation, or a copy of the partnership agreement if applicant is a partnership.

(3) Exhibits three, three A, and three B

A financial statement (balance sheet) showing in detail applicant's assets, liabilities, and net worth as of a date no more than one month prior to the date the application was filed (exhibit three), and projected to exist as of the date when construction will be completed and the system or systems will be ready for operation (exhibit three A). If a hearing is held, applicant shall tender at the hearing a financial statement showing in detail applicant's assets, liabilities, and net worth as of the date the application was filed (exhibit three B).

(4) Exhibits four and four A

Pro forma income statements for applicant's first (exhibit four) and fifth (exhibit four A) contemplated full years of operation, showing in reasonable detail for each of those years applicant's anticipated operating revenues, expenses, and net income available for fixed charges.

(5) Exhibit five

A multi-page document (tariff) setting forth all of applicant's proposed rates, charges, and rules and regulations. This document shall be considered by the commission in its determination of applicant's ability to operate the proposed waterworks system and/or sewage disposal system at rates and charges that will produce from such operations a fair and reasonable rate of return on the statutory rate base value of the property dedicated to the service of the public. Such tariff documents tendered to the commission as exhibits to an application shall bear no issued or effective dates and their form and content shall be subject to approval by the commission.

(6) Exhibit six

A metes and bounds description of the area in which service is to be rendered pursuant to the authority sought and a map based upon the metes and bounds description. The map offered as exhibit six to any application shall be drawn or reproduced to a scale with no greater than one thousand feet equaling one inch. The scale shall be shown in a written statement or by a legend on the map. The map shall also bear a title block indicating the name of the owner of the system or systems shown, the type or types of system(s) shown, the date of preparation of the map, and the contact information of the individual responsible for its accuracy and completeness.

(7) Exhibit seven

(a) A written description of the proposed waterworks system and/or sewage disposal system and the component parts of the system prepared by a registered engineer licensed to practice in Ohio. For a waterworks system, the description shall show the engineer's estimate of the maximum hour, maximum day, and average day demands on the waterworks system and shall compare such demand estimates with the corresponding capabilities of all the components of the proposed waterworks system. For a sewage disposal system, the description shall include, but not be limited to, statements of the design capacities of the components of the sewage disposal system facilities and of the maximum hourly and average inflows to the facilities which are anticipated.

(b) A description of the type of pipe to be used in the water distribution system or in the sewage collection and transmission system. This description shall include the type of material from which the pipe is to be fabricated and the type or types of joints to be used.

(8) Exhibit eight

A statement evidencing that, in the case of a waterworks system, the proposed facilities are capable of providing a minimum static pressure of thirty-five pounds per square inch at normal operating conditions at all curb stops.

(9) Exhibit nine

A statement evidencing that the company's system of mains shall be of adequate size to permit the installation and proper operation of public fire hydrants. Except as provided in rule 4901:1-15-30 of the Administrative Code, such public fire hydrants need be installed only if they are paid for by the proper public authority, agency, or entity ordering the installation for both the capital cost and the cost of maintaining and operating the hydrants.

(10) Exhibit ten

A statement evidencing that the company will avoid dead ends in the distribution mains so far as possible. If such dead ends exist, the waterworks company shall provide facilities for flushing.

(11) Exhibit eleven

A statement evidencing that, in the case of a sewage disposal system, the mains and laterals proposed are of adequate size and are to be laid with such flow lines as to permit an expeditious flow from the point of the origin at the customer's premises to the point of treatment or disposal. If land contours are not such as to permit transport of the outflow by gravity, adequate lift stations or other adequate facilities shall be provided as a part of the applicant's system. If, in lieu of or as an adjunct to such lift stations, force pumps are proposed to be installed to move sewage discharge away from a customer's premises, a full description of the equipment and of the manner and means of its operation shall be included.

(12) Exhibit twelve

(a) An estimate(s) in full detail of the cost of construction of the waterworks system and/or sewage disposal system shown and described in paragraph (D) of this rule, in exhibits six and seven. This estimate shall be prepared and signed by the person who prepared and presented exhibit seven.

(b) Upon the request of the commission, the cost of feasible alternatives to the proposed waterworks and/or sewage disposal system such as connection to an existing system or use of alternate processes and material shall be presented, together with reasons for the choice which was selected.

(13) Exhibit thirteen

A statement of the financing plan by which applicant proposes to fund the construction or acquisition of its proposed waterworks system and/or sewage disposal system and to secure working capital. Such statement shall show the amount of equity capital applicant expects to have or to secure by the issuance of equity securities; the amount of capital it expects to secure by the issuance of notes or bonds; the source and terms of the equity funds; the terms of the notes or bonds; and any sums that applicant expects will be voluntarily contributed.

(14) Exhibit fourteen

A statement evidencing that applicant has in its treasury sufficient unobligated paid-in capital or internally generated funds and/or has commitments from a responsible financial organization, satisfactory to the commission, which will enable it to secure through the issuance of securities, approved by the commission, all additional financing necessary to complete construction of and place into operation its proposed utility system. Sufficient unobligated paid-in capital or internally generated funds is presumed to be that equal to at least forty per cent of the estimated cost of construction of the utility plant. To overcome such presumption, the applicant

must show by competent evidence that it otherwise has sufficient unobligated paid-in capital funds and satisfactory financial commitments to complete construction of and place into operation its proposed system.

(15) Exhibit fifteen

A statement evidencing that, at the rates proposed in applicant's tariff as filed with the application and based upon a pro forma income statement also filed with the application, applicant will have sufficient revenues to enable it to meet its operating and maintenance expenses, to begin establishing a depreciation reserve, to pay all taxes, to establish an adequate reserve for contingencies, and to pay interest on any outstanding debt.

(16) Exhibit sixteen

If OEPA approval is necessary for the construction of the facilities described in the application, a written statement to the commission from an official of the OEPA, stating that the OEPA has approved general plans for the proposed waterworks system and/or sewage disposal system and that it would approve acceptable final detail plans upon notification that the commission has granted to the applicant a certificate of public convenience and necessity for the construction and operation of the system or systems. In the event that approval of final detail plans is not readily available or cannot be obtained from the OEPA, the commission may grant a certificate of public convenience and necessity contingent upon approval by the OEPA of final detail plans.

(17) Exhibit seventeen

(a) A proposed construction and installation schedule stating in number of days of expected elapsed time of both of the following:

(i) The time between the issuance of the certificate as applied for and the start of active and continued construction of the facilities.

(ii) The time between the date upon which active and continued construction is started and the date of its completion in condition to render the proposed service.

(b) A statement that the applicant will complete all waterworks system and/or sewage disposal system facilities required to adequately serve the entire area for which the certificate of public convenience and necessity is sought and that the completion date will be as stated in paragraph (D) (17)(a)(ii) of this rule, unless work is interrupted by weather or by other conditions beyond applicant's control.

(18) Exhibit eighteen

A statement that there is a present and continuing need by the public in the area encompassed by the application for facilities and services of the type which applicant proposes to provide.

(19) Exhibit nineteen

A statement evidencing that no existing agency, publicly or privately owned or operated, would or could economically and efficiently provide the facilities and services needed by the public in the area which is the subject of the application.

(20) Exhibit twenty

A statement describing the public convenience to be served by means of granting a certificate of public convenience and necessity to applicant, and a list of the counties and any municipal corporations proposed to be served in whole or in part.

(21) Exhibit twenty-one

A proposed legal notice containing all the information required by paragraphs (C)(2)(d)(i) to (C)(2)(d)(v) of rule 4901:1-15-04 of the Administrative Code.

The proposed notice shall set forth the rates proposed to be charged and collected, and describe the specific area to be served by the applicant under the certificate being applied for. The proposed description need not be stated in terms of metes and bounds; however, it shall be in sufficient detail to enable a member of the public to locate the service areas and determine their boundaries.

(22) Exhibit twenty-two

An affidavit attesting to and adopting all filings submitted with the application. The affiant shall not be the applicant's attorney, but may be any other person qualified to sign the application pursuant to paragraph (C) of this rule.

Effective: 11/2/2017
Five Year Review (FYR) Dates: 8/17/2017 and 08/17/2022
Promulgated Under: 111.15
Statutory Authority: 4905.04
Rule Amplifies: 4905.06, 4933.25
Prior Effective Dates: 2/3/77, 6/1/77, 12/12/91, 3/24/03, 2/11/05, 8/22/08

# 4903.13 Reversal of final order - notice of appeal.

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. The proceeding to obtain such reversal, vacation, or modification shall be by notice of appeal, filed with the public utilities commission by any party to the proceeding before it, against the commission, setting forth the order appealed from and the errors complained of. The notice of appeal shall be served, unless waived, upon the chairman of the commission, or, in the event of his absence, upon any public utilities commissioner, or by leaving a copy at the office of the commission at Columbus. The court may permit any interested party to intervene by cross-appeal.

Effective Date: 10-01-1953 .

# 4905.02 Public utility defined.

(A) As used in this chapter, "public utility" includes every corporation, company, copartnership, person, or association, the lessees, trustees, or receivers of the foregoing, defined in section 4905.03 of the Revised Code, including any public utility that operates its utility not for profit, except the following:

(1) An electric light company that operates its utility not for profit;

(2) A public utility, other than a telephone company, that is owned and operated exclusively by and solely for the utility's customers, including any consumer or group of consumers purchasing, delivering, storing, or transporting, or seeking to purchase, deliver, store, or transport, natural gas exclusively by and solely for the consumer's or consumers' own intended use as the end user or end users and not for profit;

(3) A public utility that is owned or operated by any municipal corporation;

(4) A railroad as defined in sections 4907.02 and 4907.03 of the Revised Code;

(5) Any provider, including a telephone company, with respect to its provision of any of the following:

(a) Advanced services as defined in 47 C.F.R. 51.5;

(b) Broadband service, however defined or classified by the federal communications commission;

(c) Information service as defined in the "Telecommunications Act of 1996," 110 Stat. 59, 47 U.S.C. 153(20);

(d) Subject to division (A) of section 4927.03 of the Revised Code, internet protocol-enabled services as defined in section 4927.01 of the Revised Code;

(e) Subject to division (A) of section 4927.03 of the Revised Code, any telecommunications service as defined in section 4927.01 of the Revised Code to which both of the following apply:

(i) The service was not commercially available on September 13, 2010, the effective date of the amendment of this section by S.B. 162 of the 128th general assembly.

(ii) The service employs technology that became available for commercial use only after September 13, 2010, the effective date of the amendment of this section by S.B. 162 of the 128th general assembly.

(B)

(1) "Public utility" includes a for-hire motor carrier even if the carrier is operated in connection with an entity described in division (A)(1), (2), (4), or (5) of this section.

(2) Division (A) of this section shall not be construed to relieve a private motor carrier, operated in connection with an entity described in division (A)(1), (2), (4), or (5) of this section, from compliance with either of the following:

(a) Chapter 4923. of the Revised Code;

(b)

Rules governing unified carrier registration adopted under section 4921.11 of the Revised Code.

Amended by 132nd General Assembly File No. TBD, HB 49, §101.01, eff. 9/29/2017.

Amended by 129th General AssemblyFile No.127, HB 487, §101.01, eff. 6/11/2012.

Amended by 128th General AssemblyFile No.43, SB 162, §1, eff. 9/13/2010.

Effective Date: 09-17-1996 .

# 4905.03 Public utility company definitions.

As used in this chapter

, any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, is:

(A) A telephone company, when engaged in the business of transmitting telephonic messages to, from, through, or in this state;

(B) A for-hire motor carrier, when engaged in the business of transporting persons or property by motor vehicle for compensation, except when engaged in any of the operations in intrastate commerce described in divisions (B)(1) to (9) of section 4921.01 of the Revised Code, but including the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories;

(C) An electric light company, when engaged in the business of supplying electricity for light, heat, or power purposes to consumers within this state, including supplying electric transmission service for electricity delivered to consumers in this state, but excluding a regional transmission organization approved by the federal energy regulatory commission;

(D) A gas company, when engaged in the business of supplying artificial gas for lighting, power, or heating purposes to consumers within this state or when engaged in the business of supplying artificial gas to gas companies or to natural gas companies within this state, but a producer engaged in supplying to one or more gas or natural gas companies, only such artificial gas as is manufactured by that producer as a by-product of some other process in which the producer is primarily engaged within this state is not thereby a gas company. All rates, rentals, tolls, schedules, charges of any kind, or agreements between any gas company and any other gas company or any natural gas company providing for the supplying of artificial gas and for compensation for the same are subject to the jurisdiction of the public utilities commission.

(E) A natural gas company, when engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within this state. Notwithstanding the above, neither the delivery nor sale of Ohio-produced natural gas or Ohio-produced raw natural gas liquids by a producer or gatherer under a public utilities commission-ordered exemption, adopted before, as to producers, or after, as to producers or gatherers, January 1, 1996, or the delivery or sale of Ohio-produced natural gas or Ohio-produced raw natural gas liquids by a producer or gatherer of Ohio-produced natural gas or Ohio-produced raw natural gas liquids, either to a lessor under an oil and gas lease of the land on which the producer's drilling unit is located, or the grantor incident to a right-of-way or easement to the producer or gatherer, shall cause the producer or gatherer to be a natural gas company for the purposes of this section.

All rates, rentals, tolls, schedules, charges of any kind, or agreements between a natural gas company and other natural gas companies or gas companies providing for the supply of natural gas and for compensation for the same are subject to the jurisdiction of the public utilities commission. The commission, upon application made to it, may relieve any producer or gatherer of natural gas, defined in this section as a gas company or a natural gas company, of compliance with the obligations imposed by this chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923. of the Revised Code, so

long as the producer or gatherer is not affiliated with or under the control of a gas company or a natural gas company engaged in the transportation or distribution of natural gas, or so long as the producer or gatherer does not engage in the distribution of natural gas to consumers.

Nothing in division (E) of this section limits the authority of the commission to enforce sections 4905.90 to 4905.96 of the Revised Code.

(F) A pipe-line company, when engaged in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, either wholly or partly within this state, but not when engaged in the business of the transport associated with gathering lines, raw natural gas liquids, or finished product natural gas liquids;

(G) A water-works company, when engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers within this state;

(H) A heating or cooling company, when engaged in the business of supplying water, steam, or air through pipes or tubing to consumers within this state for heating or cooling purposes;

(I) A messenger company, when engaged in the business of supplying messengers for any purpose;

(J) A street railway company, when engaged in the business of operating as a common carrier, a railway, wholly or partly within this state, with one or more tracks upon, along, above, or below any public road, street, alleyway, or ground, within any municipal corporation, operated by any motive power other than steam and not a part of an interurban railroad, whether the railway is termed street, inclined-plane, elevated, or underground railway;

(K) A suburban railroad company, when engaged in the business of operating as a common carrier, whether wholly or partially within this state, a part of a street railway constructed or extended beyond the limits of a municipal corporation, and not a part of an interurban railroad;

(L) An interurban railroad company, when engaged in the business of operating a railroad, wholly or partially within this state, with one or more tracks from one municipal corporation or point in this state to another municipal corporation or point in this state, whether constructed upon the public highways or upon private rights-of-way, outside of municipal corporations, using electricity or other motive power than steam power for the transportation of passengers, packages, express matter, United States mail, baggage, and freight. Such an interurban railroad company is included in the term "railroad" as used in section 4907.02 of the Revised Code.

(M) A sewage disposal system company, when engaged in the business of sewage disposal services through pipes or tubing, and treatment works, or in a similar manner, within this state.

(C) **[As added by 129th General Assembly File No.127, HB 487, §101.01 ]**As used in this section:

(1) "Gathering lines" has the same meaning as in section 4905.90 of the Revised Code.

(2) "Raw natural gas liquids" and "finished product natural gas liquids" have the same meanings as in section 4906.01 of the Revised Code.

Amended by 129th General AssemblyFile No.125, SB 315, §101.01, eff. 9/10/2012.

Amended by 129th General AssemblyFile No.127, HB 487, §101.01, eff. 6/11/2012.

Amended by 128th General AssemblyFile No.43, SB 162, §1, eff. 9/13/2010.

Effective Date: 01-01-2001 .

# 4933.25 Issuing certificate of public convenience and necessity.

No sewage disposal system company established after September 19, 1961, or expanding after October 2, 1969, or water-works company established or expanding after October 2, 1969, shall construct, install, or operate sewage disposal system facilities or water distribution facilities until it has been issued a certificate of public convenience and necessity by the public utilities commission. The commission shall adopt rules prescribing requirements and the manner and form in which sewage disposal system companies and water-works companies shall apply for such a certificate. Before the commission issues a certificate of public convenience and necessity, it may hold a public hearing concerning the issuance of the certificate. Notice of the hearing shall be given to the board of county commissioners of any county and the chief executive authority of any municipal corporation to be served by a sewage disposal system company or water-works company. As used in this section, "sewage disposal system company" and "water-works company" have the same meanings as in section 4905.03 of the Revised Code and include only "public utilities" as defined in section 4905.02 of the Revised Code.

Effective Date: 05-06-1998 .

# 4933.99 Penalty.

(A) Whoever violates section 4933.16 of the Revised Code is guilty of a misdemeanor of the third degree.

(B) Whoever violates section 4933.20, 4933.22, 4933.24, or 4933.25 of the Revised Code is guilty of a misdemeanor of the fourth degree.

(C) Whoever violates section 4933.21 or 4933.23 of the Revised Code is guilty of a misdemeanor of the first degree.

(D) Whoever violates division (E) of section 4933.28 of the Revised Code is guilty of a misdemeanor of the fourth degree. Each day of a violation of that division constitutes a separate offense.

Effective Date: 07-01-1996 .

| | | |
|---|---|---|
| In the Matter of the Application of Columbia MHC East LLC d/b/a Columbia Park Water and Sewer System, for an Increase in Rates and Charges | ) ) ) ) | Case No. 18-1294-WS-AEM<br>Case No. 18-1528-WS-AIR |

**Application-Motion for Rehearing of Journal Entry made by the Public Utilities Commission of Ohio January 23, 2019**

Columbia Park Water and Sewer System ("CPWSS") is in receipt of the Journal Entry of January 23, 2019 ("Journal Entry") issued by the Public Utilities Commission of Ohio with respect to the above rate cases. Pursuant to O.R.C. 4903.10 the interests of the Applicant were not adequately addressed during the hearing or deliberation which resulted in the Journal Entry, and Applicant is entitled to a rehearing;

**Applicants application for a waiver discussed in Paragraph #6-#8 of the Journal Entry.**

In the review of similar Rate Case applications for small utilities made by other applicants in Ohio to the Public Utilities Commission, it is apparent that these waivers are routinely given. It is also noted that a formal granting of the waived has not been routinely NOTICED OR DOCKETED in each similar case. CPWSS in fact, mirrored one of these applications, Carroll Township Treatment Services, filed on May 17, 2018 ("Carroll"), wherein a waiver request was granted with respect to

the requirements in Section 4909.18 (A) through (E).

No notice was given by the PUCO that the instant application would be treated differently than that of Carroll, and no Data Request was received from the PUCO staff asking for the schedules required under Section 4909.18 (A) through (E). No waiver was granted/docketed to Carroll for their Rate Case, yet the PUCO is considering this application under the waiver.

It should be noted that Applicant received four different Data requests from the PUCO staff, all of such requests were complied with on a timely basis. No mention was made in these Data Requests of the need for the schedules which are excluded under the waiver. No mention was made of the contention that the waiver was denied because no formal notice was given of its granting.

It is grossly unfair, discriminatory and inequitable that the application of CPWSS is being treated differently than similar applications made to the PUCO. It is inequitable that the lack of a formal notice by PUCO within 30 days of the granting of the waiver is being used by PUCO as an excuse to deny or dismiss the application.

**CPWSS disagrees with assertions made in paragraph #12 of the Journal Entry.**

Applicant CPWSS referenced and incorporated into its Rate Case No. 18-1528-WS-AIR ALL of the filings Case No. 18-1294-WS-AEM. This included

its opposition to the intervention of US Bank and the Receiver.

**CPWSS Never Received Notice of any Motion to Dismiss, the Motions were filed prematurely and in violation of the rights of Due Process of CPWSS and its principals:**

One of the criteria for the granting of a rehearing is that Applicants interests were not represented in the initial hearing. According to the Journal Entry Motions to Dismiss were made by "Movants" on **December 21, 2018** on 18-1294-WS-AEM and **January 4, 2019** on Case No. 18-1528-WS-AIR.

As these Motions were filed **BEFORE** Movants were granted status as intervenors in the Cases, they should have been rejected by PUCO out of hand. The Public Utilities Commission ("PUCO") was in error when on the SAME DATE IT GRANTED INTERVENOR STATUS, **January 23, 2019** it decided the untimely filed Motions to Dismiss. The obvious effect of these actions was not to allow CPWSS time to respond and oppose.

Movants never provided any Notice to CPWSS of these Motions. The attorneys for the Movants had always provided e-mail copies of any filings on the various cases to the principal of CPWSS, Kenneth C. Burnham, but in this instance chose not to.

Additionally, Mr. Burnham had a number of contacts with Dorothy Bremer of the PUCO during this time period; and although Ms. Bremer had provided Mr. Burnham with copies of prior filings, she never copied

Mr. Burnham on the Motions to Dismiss, or mentioned them.

We view Movants actions to make these Motions prematurely and also to conceal these Motions from CPWSS as unethical and intentional. CPWSS would have responded if it knew of these Motions to Dismiss and that they were being considered even though these motions were made prior to being granted intervenor status.

A rehearing is necessary so that CPWSS can present its contentions, allegations and defenses and debunk the factual inaccuracies in the allegations of the Movants.

**Nothing in the Receivership Order gives the Receiver any right to own, control or operate CPWSS.**

The Receiver has the right to act for those parties who are and were subject to the Loan Agreement. In its decision on the Appeal of CV-17-887110 the 8th Circuit Court of Appeals found that US Bank admitted that the assets of CPWSS were not encumbered by the mortgage. Further CPWSS was not a party to the Loan Agreement. CPWSS, the owner of the Waste Water Treatment Plant ("WWTP"), received no monies from the loan, and signed none of the Loan Documents.

Despite the tortured arguments of the Movants, just because CPWSS had improvements on the land of Columbia Park which the Court considered fixtures, does not pledge these fixtures under any fixture filing, loan or lien of the Movants. CPWSS was not signatory to

any fixture filing, lien or loan, nor received monies from the loan.

**The effects of this Journal Entry are far reaching and affect every utility in the State of Ohio.**

Every public utility in Ohio has "fixtures" located on property it does not own. These could be transformers, pump stations, transmission lines, poles and the wiring, piping and the like. This Journal Entry effectively declares that these fixtures are subject to lien as a function of being located on those properties and subject to the various loan agreements encumbering those properties.

As stated prior, Eight Circuit Court of Appeals **found** that CPWSS **was not** a party to the loan agreement encumbering Columbia Park, and that US Bank admitted that the assets of CPWSS were not encumbered by the mortgage.

The Court of Appeals erred in finding that he WWTP and water system served Columbia Park only, which is factually inaccurate. The service area of CPWSS serves other unrelated properties and customers.

The Journal Entry was based on the tortured and factually inaccurate arguments of the Movants, and thus led to a flawed Decision. A rehearing is required as CPWSS did not have the opportunity to present these and other arguments.

**The Journal Entry purports to turns over operational control of CPWSS to the Movants, who lack the lawful Certificates to operate.**

## " 4933.25 Issuing certificate of public convenience and necessity.

No sewage disposal system company established after September 19, 1961, or expanding after October 2, 1969, or water-works company established or expanding after October 2, 1969, shall construct, install, or operate sewage disposal system facilities or water distribution facilities until it has been issued a certificate of public convenience and necessity by the public utilities commission. The commission shall adopt rules prescribing requirements and the manner and form in which sewage disposal system companies and water-works companies shall apply for such a certificate. Before the commission issues a certificate of public convenience and necessity, it may hold a public hearing concerning the issuance of the certificate. Notice of the hearing shall be given to the board of county commissioners of any county and the chief executive authority of any municipal corporation to be served by a sewage disposal system company or water-works company. As used in this section, "sewage disposal system company" and "water-works company" have the same meanings as in section 4905.03 of the Revised Code and include only "public utilities" as defined in section 4905.02 of the Revised Code.

Effective Date: 05-06-1998"

The Journal Entry is invalid as a matter of law.

**APPEAL to the Supreme Court of the State of Ohio:**

Notice is given hereby that, absent the granting of a rehearing, the Journal Entry and the underlying cases cited by the Journal Entry:

CV-17-887110
Appeal to the 8th Circuit of CV-17-887110

have been, or will be appealed to the Supreme Court of the State of Ohio. Pending the outcome of that appeal the Journal Entry should be stayed. It should be noted that the Journal entry was untimely and premature in that it considered the Receivership Order in CV-887110 and the Appellate Court decision prior to the time frame for filing the aforementioned Supreme Court Appeal.

*** CPWSS moves that the PUCO withdraw or re-consider the Journal Entry.

**The Journal Entry is factually inaccurate:**

The Eight Circuit Court of Appeals found that CPWSS was not a party to the Loan Agreement becasue the Lender – US Bank admitted that the assets were unencumbered by such Agreement. This is in direct conflict with the findings recited in the Journal Entry.

*** CPWSS moves that the PUCO withdraw or re-hear the Journal Entry

**JURISDICTION:**

The law is well settled in the State of Ohio. PUCO has been granted the sole authority by the State of Ohio Legislature to establish and set rates for Public Utilities in the State and use its expertise to decide any issues associated therewith. The decisions and rate making process of the PUCO are reviewable solely by the Supreme Court of the State of Ohio.

## 4903.12 Jurisdiction.

No court other than the supreme court shall have power to review, suspend, or delay any order made by the public utilities commission, or enjoin, restrain, or interfere with the commission or any public utilities commissioner in the performance of official duties. A writ of mandamus shall not be issued against the commission or any commissioner by any court other than the supreme court.

Precedent cases are conclusive in that the Court of Common Pleas may decide public utility cases only involving pure contract matters, such as a utility owing an invoice under a contract to a laundry supply company; but such Court cannot consider matters involving the rate making process, or needing the expertise of the PUCO. **There is no contract of any kind or**

**nature between the Movants and CPWSS as admitted by US Bank.**

This was by the affirmed Eight Circuit Court of Appeals. They found that the assets of CPWSS were not encumbered by the Loan Agreement, thus no contract existed.

" Subject-matter jurisdiction connotes the power to hear and decide a matter upon its merits. *Cheap Escape Co., Inc. v. Haddox, LLC*, 120 Ohio St.3d 493, 2008-Ohio-6323, ¶ 6. The Public Utilities Commission ("commission") has exclusive jurisdiction over matters involving public utilities, such as rates and charges, classifications, and service, effectively denying to all Ohio courts (except the Supreme Court) any jurisdiction over such matters. *State ex rel. Cleveland Elec. Illuminating Co. v. Cuyahoga Cty. Court of Common Pleas*, 88 Ohio St.3d 447, 450 (2000); *see also Kazmaier Supermarket, Inc. v. Toledo Edison Co.*, 61 Ohio St.3d 147, 150-51 (1991) ("The General Assembly has by statute pronounced the public policy of the state that the broad and complete control of public utilities shall be within the administrative agency, the Public Utilities Commission.")."

*DiFranco v First Energy*, 969 N.E. 2d 1241, 2011 " Further, according to the standard announced in *Hull*, 110 Ohio St.3d 96, 2006-Ohio-3666, 850 N.E.2d 1190, a pure contract claim is one *having nothing to do with the utility's service or rates*—such as a dispute between a public utility and one of its employees or a dispute between a public utility and its uniform supplier. By noting these examples, the Supreme Court obviously meant to convey that for a claim to be properly considered as a pure contract claim, the contract at issue must be completely unrelated to the utility's service or rates."
In *Hull v. Columbia Gas of Ohio*, 110 Ohio St.3d 96, 2006-Ohio-3666, 850 N.E.2d 1190, the Supreme Court "[C]asting the allegations in the complaint to sound in tort or contract is not sufficient to confer jurisdiction upon a trial court" when the basic claim is one that the commission has exclusive jurisdiction to resolve.' * * * [T]he dispute in this case is the antithesis of the pure contract case envisioned by the exception to the PUCO's jurisdiction. A pure contract case is one *having nothing to do with the utility's service or rates*—such as perhaps a dispute between a public utility and one of its employees or a dispute between a public utility and its uniform supplier."

The PUCO should not base its Journal Entry on an Order wherein the jurisdiction of the issuing Court has reasonably been called into question.

**** For the reasons stated above the Journal Entry should be re-heard, withdrawn, modified or stayed.

Columbia Park Water and Sewer System
1080 Pittsford-Victor Road #202
Pittsford, New York 14534
585-586-2828

BY: _____ Kenneth C, Burnham

STATE OF NORTH CAROLINA )
COUNTY OF WAKE )ss.:

On January ___, 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Kenneth Burnham, personally known to me, subscribed to the within instrument under oath and acknowledged to me that the allegations contained herein are truthful, and that he executed the same.

SHANNON HOWELL
NOTARY PUBLIC
Wake County
North Carolina
My Commission Expires 8/18/2020

_____
Notary Public

BY: _____, Jeff DeVoesick ; attorney representing CPWSS

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

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**Case No(s). 18-1294-WS-AEM, 18-1528-WS-AIR**

Summary: App for Rehearing Application for Rehearing by Columbia MHC East LLC electronically filed by Mr. Jeffrey F DeVoesick on behalf of Columbia MHC East LLC