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PUCO

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint
Of Gregory T. Howard

Complainant,

-vs-

Columbia Gas of Ohio, Inc.,


Respondent.

Case No. 17-2536-GA-CSS

**COMPLAINANT'S APPLICATION TO REOPEN CASE NO. 17-2536-GA-CSS AND
REQUEST FOR A CORRECTED ENTRY**

Now comes the complainant pursuant to O.A.C. rules 4901-1-12(A) and 4901-1-34(B) and hereby moves this Commission to reopen case number 17-2536-GA-CSS to consider and determine the complainant's pending pleadings due to clerical error made in the Commission's Second Entry on Rehearing regarding severe financial hardship due to a shut-off notice of natural gas service. Complainant further states that *res judicata* does not bar him from re-litigating previously argued claims when clerical errors or a mistake of law are present as in this case, as such permits the PUCO to modify or amend, if necessary, its former orders dating back as far as to the original previously argued claims from the *First Complaint Case*.

Respectfully submitted,


Gregory T. Howard
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MEMORANDUM IN SUPPORT

Complainant has moved to reopen this proceeding in order to present additional evidence in this matter. Specifically, complainant requests that the Commission consider these new allegations or arguments presented for the PUCO's consideration and resolution regarding Columbia's failure to provide a 14-day disconnection notice for non-payment as required by O.A.C. rule 4901:1-18-06(A) on or before the date of disconnection on December 3, 2018 as this evidence could not, even with reasonable diligence, have been presented earlier in this proceeding. Therefore, complainant seeks leave at this time to file it as a late exhibit as this misapprehended or overlooked documentary evidence filed December 3, 2018 could not, even with reasonable diligence, have been presented earlier in this proceeding. Accordingly, for good cause shown, this motion requesting to reopen this proceeding should be granted pursuant to O.A.C. rules 4901-1-12(A) and 4901-1-34(B).

On May 16, 2018, the PUCO issued an Entry granting Columbia's motion to dismiss and finding that *res judicata* barred complainant from re-litigating previously argued claims from the *First Complaint Case*. On June 13, 2018, the PUCO issued an Entry granting complainant's application for rehearing filed May 17, 2018, for the purpose of further consideration of the matters specified in the application for rehearing. Columbia did not file a memorandum contra to complainant's application for rehearing. Second Entry on Rehearing dated August 8, 2018, at ¶9. On August 8, 2018, the PUCO issued a Second Entry on Rehearing denying Complainant's application for rehearing and finding that his subsequent filings to the filing of the application for rehearing is denied. As noted above, the doctrine of *res judicata* does not bar complainant from re-litigating previously argued claims when clerical errors or a mistake of law are present as in this case, as such permits the PUCO to modify or amend, its former orders dating back as far as to the original previously argued claims from the *First Complaint Case*. Accordingly, because the original Entry dated May 16, 2018, with respect to the doctrine of *res judicata* is unjust or unwarranted pursuant to R.C. 4903.10 it should be changed to state that Columbia's motion to dismiss is denied and that the doctrine of *res judicata* is inapplicable and does not bar complainant from re-litigating previously argued claims because there are clerical errors or a mistake of law are present in this instant case. Therefore, such permits this PUCO to modify or amend its former orders dating back as far as to the original previously argued claims from the *First Complaint Case*.

Because the complainant's interests were not adequately considered or resolved in this proceeding by the PUCO, the Complainant urges reversal on the grounds that the Second Entry on Rehearing dated August 8, 2018 was unreasonable or unlawful as it failed to consider and resolve all the matters including the new matters specified or raised in the May 17, 2018, application for rehearing or his allowed new allegations stemming from the events occurring subsequent to filing of his complaint in May 2015, in the *First Complaint Case*. The Supreme Court of Ohio has held that once the Commission invoked its continuing jurisdiction, the previous decisions are subject to revisions, and *res judicata* no longer applies. *State ex rel. Haddox, v. Indus. Comm.*, 2011-Ohio-3923, ¶12, as affirmed by the Supreme Court of Ohio at No. 2013-Ohio-794, (Holding: "that once the Commission invoked its continuing jurisdiction, the previous decisions are subject to revisions, and *res judicata* no longer applied;"). The PUCO invoked its continuing jurisdiction under R.C. 4903.10 on June 13, 2018, when it issued an Entry

granting complainant's application for rehearing filed May 17, 2018, for the purpose of further consideration of the matters specified in the application for rehearing. Therefore, *res judicata* does not bar complainant from re-litigating previously argued claims from the *First Complaint Case* because clerical errors or a mistake of law are present in this instant case, because such errors or mistake of law permits the PUCO to modify or amend its former orders dating back as far as to the original previously argued claims from the *First Complaint Case* based upon the authority of *State ex rel. Gross v. Indus. Comm.*, 115 Ohio St. 3d 249, 2007-Ohio-4516, 874 N.E. 2d 1162, ¶19 and *State ex rel. Riter v. Indus. Comm.*, 91 Ohio St. 3d 89, 90, 742 N.E. 2d 615 (2001) ("based upon clerical errors or on mistake of law permits it to modify or amend, if necessary, its former orders dating back as far as to the original injury"); *State ex rel. Haddox, v. Indus. Comm.*, 2011-Ohio-3923, ¶12, as affirmed by the Supreme Court of Ohio at No. 2013-Ohio-794, (Holding: "that once the Commission invoked its continuing jurisdiction, the previous decisions are subject to revisions, and *res judicata* no longer applied.").


Accordingly, because the original Entry dated May 16, 2018, with respect to the doctrine of *res judicata* is unjust or unwarranted pursuant to R.C. 4903.10 it must be changed to state that Columbia's motion to dismiss is denied and that the doctrine of *res judicata* is inapplicable and that it does not bar complainant from re-litigating previously argued claims because there are clerical errors or a mistake of law are present in this instant case. Therefore, such permits this PUCO to modify or amend its former orders dating back as far as to the original previously argued claims from the *First Complaint Case*. Hence, the case law of *State ex rel. Gross v. Indus. Comm.*, 115 Ohio St. 3d 249, 2007-Ohio-4516, 874 N.E. 2d 1162, ¶19 and *State ex rel. Riter v. Indus. Comm.*, 91 Ohio St. 3d 89, 90, 742 N.E. 2d 615 (2001) is dispositive of case and supports reversal of the PUCO's past and current determinations. Consequently, the instant motion must be granted as a matter of law. *Id.*

Complainant also moves to correct the Commission's Second Entry on Rehearing dated August 8, 2018, regarding severe financial hardship due to a shut-off notice of natural gas service. Complainant asserts that the Second Entry on Rehearing contains a clerical error. Complainant submits that the wrong dictation was typed for this Second Entry on Rehearing. Therefore, there is a clerical error in the Second Entry on Rehearing, and thus Complainant's request for a corrected order must be granted pursuant to O.A.C. rules 4901-1-12(A), 4901-1-34(B), and R.C. 4903.10.

As such, the Complainant request relief under 4903.10 O.R.C., continuing jurisdiction. Under limited circumstances, the Commission may revisit a prior decision. Complainant urges reversal based upon a clerical error, a mistake of law or mistake of fact by the PUCO on 8/8/2018, made in its Second Entry on Rehearing. See Section 4903.10 of the Revised Code; see also, the court's decision in *State ex rel. Gross v. Indus. Comm.*, 115 Ohio St. 3d 249, 2007-Ohio-4516, 874 N.E. 2d 1162, ¶19 and *State ex rel. Riter v. Indus. Comm.*, 91 Ohio St. 3d 89, 90, 742 N.E. 2d 615 (2001) ("based upon clerical errors or on mistake of law permits it to modify or amend, if necessary, its former orders dating back as far as to the original injury"); *State ex rel. Haddox, v. Indus. Comm.*, 2011-Ohio-3923, ¶12, as affirmed by the Supreme Court of Ohio at No. 2013-Ohio-794, (Holding: "that once the Commission invoked its continuing jurisdiction, the previous decisions are subject to revisions, and *res judicata* no longer applied;") which are dispositive and supports reversal of the PUCO's past and current determinations.

For good cause shown, complainant respectfully requests that the PUCO reopen case number 17-2536-GA-CSS to consider and determine the complainant's pending pleadings due to clerical error made in the Commission's Second Entry on Rehearing regarding severe financial hardship due to a shut-off notice of natural gas service and that the PUCO find that *res judicata* does not bar him from re-litigating previously argued claims from the *First Complaint Case* because clerical errors or a mistake of law are present in this instant case, because such errors or mistake of law permits the PUCO to modify or amend, its former orders dating back as far as to the original previously argued claims from the *First Complaint Case* based upon the authority of *State ex rel. Gross v. Indus. Comm.*, 115 Ohio St. 3d 249, 2007-Ohio-4516, 874 N.E. 2d 1162, ¶19 and *State ex rel. Riter v. Indus. Comm.*, 91 Ohio St. 3d 89, 90, 742 N.E. 2d 615 (2001) ("based upon clerical errors or on mistake of law permits it to modify or amend, if necessary, its former orders dating back as far as to the original injury"); *State ex rel. Haddox, v. Indus. Comm.*, 2011-Ohio-3923, ¶12, as affirmed by the Supreme Court of Ohio at No. 2013-Ohio-794, (Holding: "that once the Commission invoked its continuing jurisdiction, the previous decisions are subject to revisions, and *res judicata* no longer applied."). Therefore, the Complainant further requests a reversal of the PUCO's past and current determinations.

Respectfully submitted,


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PROOF OF SERVICE

This is to certify that a regular copy of the foregoing of Gregory T. Howard was sent via ordinary U.S. Mail or via email, or facsimile this 17 day of January, 2019 to:

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Gregory T. Howard
Complainant-Claimant, pro-se



Case Status Form

Case Information	
Case Number 17-1750-EL-CSS	Case Name In re the City of St. Clairsville v. South Central Power Company
Case Number 17-2536-GA-CSS	Case Name Gregory T. Howard v. Columbia Gas of Ohio ✓
Case Number 18-223-VW-AEC	Case Name In re Aqua Ohio Inc. for Approval of a Water Purchase Agreement
Case Number 18-332-RR-RCP	Case Name In re Norfolk Southern Railway Company
Case Number 18-622-EL-CSS	Case Name Helena Edison v. AEP Ohio
Case Number 18-1247-EL-CSS	Case Name Donna Herring v. AEP Ohio

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The above-captioned case docket.

Anna Sanyal

Authorized Signature

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Case No(s). 17-1750-EL-CSS, 17-2536-GA-CSS, 18-0223-WW-AEC, 18-0332-RR-RCP, 18-0622-EL-CS!

Summary: Case Action Form Close Case electronically filed by Ms. Mary E Fischer on behalf of Anna Sanyal, Attorney Examiner, Public Utilities Commission

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