**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of the Application of Columbia Gas of Ohio, Inc. for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Gas Services and Related Matters.  In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of an Alternative Form of Regulation.  In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of a Demand Side Management Program for its Residential and Commercial Customers.  In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Change Accounting Methods. | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | Case No. 21-637-GA-AIR  Case No. 21-638-GA-ALT  Case No. 21-639-GA-UNC  Case No. 21-640-GA-AAM |

**REPLY TO COLUMBIA’S MEMORANDUM CONTRA OCC’S MOTION FOR A LOCAL PUBLIC HEARING IN TOLEDO**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

On September 1, 2022, OCC filed a motion for the PUCO to hold a local hearing in Toledo for public testimony. On September 2, 2022, Columbia filed a pleading opposing OCC’s motion. Today the PUCO issued an Entry granting OCC’s motion and setting a local public hearing for Toledo as required by R.C. 4903.083. However, in its Entry, the PUCO commented that “Columbia’s arguments are well taken.”[[1]](#footnote-2) OCC is exercising its right, per O.A.C. 4901-1-12(B)(2), to reply to Columbia’s meritless (and anti-consumer) arguments in opposition to OCC’s motion.

Columbia’s memorandum contra OCC’s motion wrongly fails to concede the obvious – that R.C. 4903.083 requires the hearing for Columbia’s consumers in Toledo because Toledo’s population is over 100,000 people. It’s the law. It’s been the law for decades. There was no real legal point for Columbia to argue in the first place.

Columbia was also wrong to blame OCC for the lack of a hearing in Toledo. OCC did not write the Entries for local hearings that excluded Toledo. And OCC did not prevent Columbia, a giant utility with legal and regulatory relations resources, from informing the PUCO that the law requires a hearing in Toledo.

Columbia claimed that “OCC has forfeited its rights under statute.” That’s wrong on two counts. OCC may raise this procedural issue per O.A.C. 4901-1-14. More importantly, it’s the *right of the public* to have this hearing, per R.C. 4903.083. The public did not forfeit its rights. It’s the law.

Indeed, Columbia should be defending the rights of its consumers to have their statutorily guaranteed hearing. After all, Columbia’s proposal is for a $212 million rate increase that would dramatically increase the fixed charges that residential consumers pay. Columbia’s proposal is for $46.31 (up from $16.75) monthly now and then an increase to $80 per month at the end of five years.

The authority cited by Columbia is also off-base. Columbia first cites *Liberty Hwy. Co. v. Pub. Util. Com.*, 128 Ohio St. 586, 193 N.E. 407 (1934). That case held that transportation companies waived objections to competing certificates of public convenience and necessity by waiting ***two years and seven months*** to challenge the certificates ***after they were granted***. Here, the proceedings concerning Columbia’s proposed rate increase are still pending. The evidentiary hearing in this case is not scheduled to begin until October 18, 2022 – almost six weeks from now. And the local hearing could even be held after the evidentiary hearing. The PUCO has issued no order on Columbia’s application to increase rates. There is still time for the PUCO to set and for Columbia to publish notice of the required local public hearing in Toledo, as the PUCO scheduled today.

Columbia next cites *In re Buckeye Wind, L.L.C.*, 148 Ohio St.3d 69, 2016-Ohio-5664. That case doesn’t apply either. Columbia itself states that *Buckeye Wind* stands for the proposition that a party “forfeits its statutory arguments if it fails to raise those arguments at a time when the Commission or Board can act on them.”[[2]](#footnote-3) However, in *Buckeye Wind* – as Columbia acknowledges – the objection in question was not raised until the application for rehearing stage,[[3]](#footnote-4) which is *after* the evidentiary hearing and order.

Columbia also relies on *Parma v. Pub. Util. Comm.*, 1999-Ohio-141, but there too, the objection at issue was not raised until the application for rehearing stage.[[4]](#footnote-5)

Columbia’s reliance on *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 2010-Ohio-6239 is also misplaced. That case involved OCC’s challenge to a Vectren public notice that did not convey the substance of Vectren’s proposed straight fixed variable rate design.[[5]](#footnote-6) The Ohio Supreme Court held that OCC forfeited its objection to Vectren’s public notice by not challenging it in time for the PUCO “to cure any error when it reasonably could have.”[[6]](#footnote-7)But here, OCC’s motion for a local public hearing in Toledo does not challenge in any way the public notices the PUCO issued for the previous local public hearings. Rather, OCC’s motion simply requests that the PUCO comply with the law by setting an additional local public hearing in Toledo. Unlike the facts in in the cases Columbia cites, there is adequate time for the PUCO “to cure any error” through setting an additional local public hearing in Toledo.

Finally, Columbia’s suggestion that the Bowling Green local public hearing “satisf[ies] the statute’s intent”[[7]](#footnote-8) is plainly wrong. Columbia repeatedly references that Bowling Green is only 20 miles from Toledo. But again, that does not satisfy the PUCO’s duty under R.C. 4903.083 to hold a local public hearing in Toledo.[[8]](#footnote-9) Further, a 20-mile distance and travel time may inconvenience consumers, such as those who lack personal transportation, those who rely on public transportation, and those with family obligations among other things. In this regard, the poverty rate in Toledo exceeds 25%. The law gives consumers in Toledo a local public hearing. Columbia’s arguments are beside the point.

For the reasons set forth above and in OCC’s motion, OCC’s motion for a local hearing in Toledo is well made.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply was served on the persons stated below via electronic transmission, this 9th day of September 2022.

*/s/ Angela D. O’Brien*  Angela D. O’Brien

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

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1. Sept. 9, 2022 Entry, at ¶ 23. [↑](#footnote-ref-2)
2. Columbia Memo Contra, at 3. [↑](#footnote-ref-3)
3. *Id.* [↑](#footnote-ref-4)
4. *Id.* [↑](#footnote-ref-5)
5. *Ohio Consumers’ Counsel*, 2010-Ohio-6239, ¶ 14. [↑](#footnote-ref-6)
6. *Ohio Consumers’ Counsel*, 2010-Ohio-6239, ¶ 18. [↑](#footnote-ref-7)
7. Columbia Memo Contra, at 2. [↑](#footnote-ref-8)
8. Columbia Memo Contra, at 1, 2, and 4. [↑](#footnote-ref-9)