

**FILE**

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**Jack Vasi,**  
Complainant,  
v.  
**Columbia Gas of Ohio, Inc.,**  
Respondent

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**Case No. 06-575-GA-CSS**

**COLUMBIA GAS OF OHIO, INC.  
MEMORANDUM CONTRA TO  
COMPLAINANT'S MOTION TO COMPEL  
AND SANCTIONS**

Now comes the Respondent, Columbia Gas of Ohio, Inc. (hereinafter “Columbia”), and files its Memorandum Contra to the Complainant’s Motion to Compel Discovery and for Sanctions filed herein on April 23, 2007. For the reasons more fully discussed below, Columbia submits that the Motion to Compel Discovery and for Sanctions should be denied.

## 1. Background

The Complaint in this case was originally filed on April 10, 2006 and Columbia's answer was filed on May 2, 2006. By entry dated October 11, 2006 the hearing in this case was originally scheduled for November 16, 2006, at 10:00 a.m. On October 17, 2006, Columbia filed, and the Commission granted, a motion for a continuance that requested only a "brief continuance" (from November 16 to November 21) due to counsel's unavailability because of

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previously scheduled medical procedures. As a result of this continuance, the hearing was rescheduled to November 29, 2006.

On November 28, 2006, one day prior to hearing, Complainant Vasi filed a motion for continuance (titled "motion for leave") to provide additional time to obtain counsel and to conduct discovery. Columbia did not oppose this motion and the Commission, by entry dated December 7, 2006, rescheduled the hearing for January 31, 2007. On January 31, 2007, the day of the hearing, Complainant Vasi made an oral request with the Commission for a continuance. Complainant Vasi's written motion for continuance was not filed until seven days after the scheduled hearing on February 7, 2007. Complainant yet again requested the continuance in order to obtain competent counsel and conduct discovery. Again Columbia did not oppose the continuance, and the hearing was rescheduled for April 3, 2007 at 10:00 a.m.

On March 16, 2007, only two and a half weeks before the scheduled hearing, Columbia received Complainant's first and only discovery request consisting of a set of interrogatories. It is this one and only discovery request which is the subject of the Complainant's Motion to Compel. On April 3, 2007, the date of the rescheduled hearing, Complainant Vasi filed another motion for continuance with the Commission at 4:47 p.m. (Note: the hearing was scheduled to begin at 10:00 a.m.) The Complainant requested the continuance because he did not have counsel and he needed additional time to receive responses to interrogatories from Columbia, which, as stated above, were not received by Columbia until March 16, 2007, and thus not yet due under the Commissions own discovery rules. *See* O.A.C. § 4901-1-17.

In compliance with the rule, Columbia sent the responses to interrogatories next day air via UPS on April 4, 2007 (See attached Exhibit A). Delivery was attempted on April 5, 2007 but

was unable to be completed because the address provided by the Complainant location was a vacant property (see attached Exhibit B). A postcard was mailed by UPS which stated that Complainant needed to contact UPS in order to pick up the responses to interrogatories. The package was returned to Columbia on April 13, 2007 due to inability to deliver. Upon receiving the returned responses to interrogatories from UPS, Columbia tried to mail the responses using certified mail (See attached Exhibit C). Columbia has yet to receive a return receipt verifying delivery. Because of the possible failure of delivery through the mail, Columbia tried another alternative, this time using Federal Express Overnight Delivery (see attached Exhibit D). Columbia sent out the responses on April 20, 2007 and the responses were delivered to Complainant Vasi's address on April 23, 2007 (See attached Exhibit E).

## ***II. Argument and Analysis***

According to the Commission rules on interrogatories and response time, a party receiving interrogatories has twenty days after service to submit answers or objections to such interrogatories. *See* O.A.C. § 4901-1-17. In calculating the twenty days from the date of service (March 16, 2007), the date on which the responses to the interrogatories were due was April 5, 2007. In this case, Columbia sent out the package on April 4, 2007 and delivery was attempted on April 5, 2007 to the address that Complainant used in his latest pleading or filing.

The Commission, through O.A.C. § 4901-1-05, requires a party to serve all motions, pleadings, and other papers by mail or in person to the last known address. *Id.* Last known address means "the address set forth in the most recent such pleading or other paper." *Id.*

Applying the rules to the facts of this case it becomes apparent that Columbia has satisfied all of the rules and requirements of the Commission. Columbia attempted to deliver the

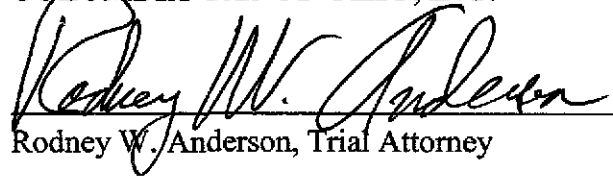
interrogatory responses within the time frame specified in the Rules to the last known address of the Complainant, but the package was returned because the address was actually vacant. When timely delivery of Columbia's discovery responses via UPS next day air failed, Columbia subsequently attempted two additional times via other means of delivery to deliver its responses to Complainant's discovery requests to the Complainant to the only address provided by the Complainant. Ultimately, the latest attempt resulted in the successful delivery of the responses to the Complainant's address. Thus, Columbia has complied with the requirements to provide responses to the Complainant's discovery requests.

Complainant Vasi's request for sanctions should be denied. The Commission's powers are conferred by statute and its authority is thereby limited. *See Smith v. Dayton Power and Light Co.*, 2004 WL 1813877 (Ohio PUC 2004). The Commission's authority includes the authority to determine if a public utility is complying with its tariff, Commission rules, regulations and orders. *Id.* It is important to note that the "Commission's jurisdiction is different from a court of general jurisdiction with the authority to award compensatory and punitive monetary damages." *Id.* As such, monetary sanctions and damages are beyond the jurisdiction of the Commission. *Id.* As a result, Complainant Vasi's request for sanctions must be denied as it is beyond the authority of the Commission.

WHEREFORE, Columbia respectfully requests the Commission to deny the Motion to Compel and Motion for Sanctions for the reasons that the Columbia has complied with all applicable Commission rules and monetary damages are beyond the Commission's jurisdiction.

Respectfully submitted by

**COLUMBIA GAS OF OHIO, INC.**

A handwritten signature in black ink, appearing to read "Rodney W. Anderson", is written over a horizontal line.

Rodney W. Anderson, Trial Attorney

Stephen B. Seiple, Lead Counsel

Rodney W. Anderson, Senior Attorney

200 Civic Center Drive

P.O. Box 117

Columbus, OH 43216-0117

Telephone: (614) 460-4645

Fax: (614) 460-6986

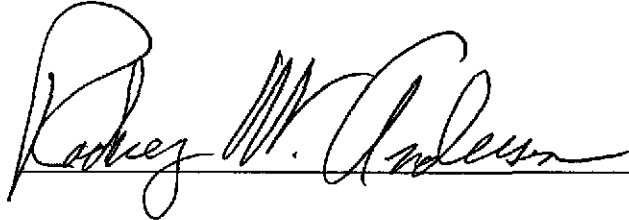
Email: [rwander@nisource.com](mailto:rwander@nisource.com)

**Attorney for Respondent**

**COLUMBIA GAS OF OHIO, INC.**

### **CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of the foregoing Memorandum Contra by mailing same by regular U.S. mail to Jack Vasi, 618 Oberlin Elyria Road, Elyria, Ohio 44035 this 3rd day of May, 2007.

A handwritten signature in black ink, reading "Rodney W. Anderson", written over a horizontal line.

Rodney W. Anderson  
**Attorney for**  
**COLUMBIA GAS OF OHIO, INC.**

- For UPS Worldwide Express, there is no limit on the number of packages that can be enclosed.

- For UPS 2nd Day Air service, weighing one pound or corresponding rates for

- Do not send cash or cash equivalents

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289 of 500



**UPS Next Day Air<sup>®</sup>**  
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# Shipping Document

See instructions on back. Visit UPS.com® or call 1-800-PICK-UPS® (800-742-5817) for additional information and Terms and Conditions.

TRACKING NUMBER  
JZ 476 646 22 1030 2579

SHIPPER'S  
UPS  
ACCOUNT  
NO. **476646**

## REFERENCE NUMBERS

NAME 20013-9302000-3601-0008 ED-00003063 TELEPHONE

Kodley Anderson  
COMPANY

**COLUMBIA GAS OF OHIO**

STREET ADDRESS

200 CIVIC CENTER DR

CITY AND STATE

**COLUMBUS**

**OH 43215-4138**

**2 EXTREMELY URGENT DELIVERY TO NAME**

TELEPHONE

COMPANY Jack Vasi

STREET ADDRESS

DEPT / FLR.

618 Oberlin Elyria Road  
CITY AND STATE (Include COUNTRY if INTERNATIONAL) ZIP CODE

ZIP CODE

Elyria, OH

44030

[illegible]

0101911202609 1/05 S

UPS COPY

International Shipping Notice — Carriage Resender may be subject to the rules relating to liability and other terms and/or conditions established by the Convention for the Unification of Certain Rules Relating to International Carriage by Air (the "Warsaw Convention"), contract for the International Carriage of Goods by Road (the "CMR Convention"). These commodities, technology or software were exported from the U.S. in accordance with the Export Administration Regulations. Diversion contrary to U.S. law prohibited.

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**UPS Standard**  
**UPS 3 Day Select®**  
**UPS Worldwide Expedited®**

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## Tracking Detail

Tracking Number: 1Z 476 646 22 1030 257 9  
Type: Package  
Status: **Returned to Shipper**  
Returned On: 04/13/2007 10:10 A.M.  
Signed by: HAIRSTON  
Location: DOCK  
Returned To: COLUMBUS, OH, US  
Shipped or Billed on: 04/04/2007  
Service Type: NEXT DAY AIR

### Package Progress

Location	Date	Local Time	Description
COLUMBUS, OH, US	04/13/2007	10:10 A.M.	RETURNED TO SHIPPER
	04/13/2007	5:19 A.M.	ARRIVAL SCAN
LOUISVILLE, KY, US	04/13/2007	4:32 A.M.	DEPARTURE SCAN
LOUISVILLE, KY, US	04/12/2007	11:41 P.M.	ARRIVAL SCAN
CLEVELAND, OH, US	04/12/2007	10:23 P.M.	DEPARTURE SCAN
	04/12/2007	8:32 P.M.	ARRIVAL SCAN
ELYRIA, OH, US	04/12/2007	8:04 P.M.	DEPARTURE SCAN
	04/12/2007	6:17 P.M.	RECEIVER'S LOCATION IS VACANT;RETURNED TO THE SENDER. THE PACKAGE WAS NOT PICKED UP AS ARRANGED
ELYRIA, OH, US	04/05/2007	7:07 P.M.	RECEIVER'S LOCATION IS VACANT;A POSTCARD HAS BEEN SENT TO THE RECIPIENT REQUESTING THAT THEY CONTACT UPS.
	04/05/2007	9:50 A.M.	THE RECEIVER HAS MOVED. UPS ATTEMPTING TO LOCATE RECEIVER TO COMPLETE DELIVERY, NO DELIVERY WAS MADE
	04/05/2007	7:00 A.M.	ARRIVAL SCAN
COLUMBUS, OH, US	04/05/2007	3:45 A.M.	DEPARTURE SCAN
COLUMBUS, OH, US	04/04/2007	9:50 P.M.	ORIGIN SCAN
	04/04/2007	7:37 P.M.	PICKUP SCAN
US	04/04/2007	8:00 P.M.	BILLING INFORMATION RECEIVED

Tracking results provided by UPS: 04/26/2007 1:18 P.M. EST (USA)



**CERTIFIED MAIL RECEIPT**

(Domestic Mail Only; No Insurance Coverage Provided)

G. Patrick

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark  
Here

Sent To **JACK VASI**  
Street, Apt. No., or PO Box No.  
**618 Oberlin Elyria Road**  
City, State, ZIP+4  
**Elyria, OH 44035**  
PS Form 3800, May 2000

See Reverse for Instructions

PLACE STICKER AT  
TO THE RIGHT OF  
FOLD LINE  
**CERTIFIED**9228 8628  
5267 8628  
7000 1670 0003  
7000 1670 0003**U.S. Postal Service****CERTIFIED MAIL RECEIPT**

(Domestic Mail Only; No Insurance Coverage Provided)

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark  
Here

Sent To **JACK VASI**  
Street, Apt. No., or PO Box No.  
**618 Oberlin Elyria Road**  
City, State, ZIP+4  
**Elyria, OH 44035**  
PS Form 3800, May 2000

See Reverse for Instructions

**FedEx** USA Airbill  
Express Tracking Number 8456 3497 1179

From Please print and press hard  
Date 4-20-07 Sender's FedEx Account Number 1190-4400-6

Sender's Name Rodney Anderson Phone 644 1460-4645

Company COLUMBIA GAS OF OHIO

Address 200 CIVIC CENTER DR

City COLUMBUS State OH ZIP 43215-4157

**Your Internal Billing Reference**

To Recipient's Name Jack Vasi

Phone ( )

Company

Address 615 Oberlin Elyria RD.

Address

City Elyria State OH ZIP 44035

Depot/Room/Station

Try online shipping at [fedex.com](http://fedex.com)

By using this Airbill you agree to the service conditions on the back of this Airbill and in our current Service Guide, including terms that limit our liability. Questions? Visit our Web site at [fedex.com](http://fedex.com)

0272230716

**4a Express Package Service**

☐ FedEx Priority Overnight ☒ FedEx Standard Overnight

Delivery commitment may be later in some areas. Earlier next business morning delivery to select the entire.

☐ FedEx 2Day ☐ FedEx Express Saver

**4b Express Freight Service**

☐ FedEx 1Day Freight\* ☐ FedEx 2Day Freight ☐ FedEx 3Day Freight

**3 Packaging**

☒ FedEx Envelope\* ☐ FedEx Pak\* ☐ Other

**6 Special Handling**

☐ Saturday Delivery ☐ HOLD Weekend at FedEx Location ☐ HOLD Saturday at FedEx Location

☐ No ☐ Yes ☐ Dry Ice ☐ Cargo Aircraft Only

**7 Payment Bill to:**

☒ Sender ☐ Recipient ☐ Third Party ☐ Credit Card ☐ Cash/Check

Total Packages Total Weight Total Declared Value\*

**8 Release Signature**

Signature of Shipper or Authorized Agent

By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.

447

Track Shipments  
Detailed Results Quick Help

<b>Tracking number</b>	845634971179	<b>Reference</b>	00012-930120000
<b>Signed for by</b>	Signature release on file		-3601-080
<b>Ship date</b>	Apr 20, 2007		
<b>Delivery date</b>	Apr 23, 2007 2:38 PM	<b>Delivered to</b>	Residence
		<b>Service type</b>	Standard Envelope
		<b>Weight</b>	1.0 lbs.

**Status** Delivered**Signature image available** No

Date/Time	Activity	Location	Details
<b>Apr 23, 2007</b>	2:38 PM <b>Delivered</b>		Left at front door. Package delivered to recipient address - release authorized
	7:57 AM On FedEx vehicle for delivery	LORAIN, OH	
	7:25 AM At local FedEx facility	LORAIN, OH	
	1:54 AM At dest sort facility	CLEVELAND, OH	
<b>Apr 22, 2007</b>	8:54 PM At local FedEx facility	CLEVELAND, OH	
	10:38 AM Departed FedEx location	INDIANAPOLIS, IN	
<b>Apr 21, 2007</b>	5:05 AM In transit	INDIANAPOLIS, IN	
	2:04 AM Arrived at FedEx location	INDIANAPOLIS, IN	
<b>Apr 20, 2007</b>	10:56 PM Left origin	COLUMBUS, OH	
	3:25 PM Picked up	COLUMBUS, OH	

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Delivery updates

English

English

English

English

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Add personal message:

Not available for Wireless or