

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Complaint of Jack Vasi,)	
)	
Complainant,)	
)	
v.)	Case No. 06-575-GA-CSS
)	
Columbia Gas of Ohio, Inc.,)	
)	
Respondent.)	

ENTRY

The attorney examiner finds:

- (1) This case is set for hearing on May 24, 2007.
- (2) On April 23, 2007, Jack Vasi submitted a motion to compel and for sanctions against Columbia Gas of Ohio, Inc. (Columbia, company). In the motion, Mr. Vasi stated that he has not received answers to interrogatories that he sent to Columbia on March 13, 2007. Mr. Vasi indicated that he has contacted counsel for Columbia by telephone, requested responses to his interrogatories, and been informed that the responses have been mailed out on more than one occasion. Mr. Vasi stated that he has exhausted all reasonable means of resolving Columbia's lack of response to his interrogatories and that, without the answers to the interrogatories, he cannot determine necessary parties, or know if the parties are qualified and have standing to participate in this action. Further, Mr. Vasi requested that the Commission compel Columbia to answer his interrogatories and sanction counsel for Columbia for refusing to respond, or in the alternative allow a default judgment in the amount of \$350,000.00 for damages caused by Columbia.
- (3) On May 3, 2007, Columbia filed a memorandum contra complainant's motion to compel and for sanctions.
- (4) In the memorandum contra, Columbia stated that the company sent out responses to complainant's interrogatories on April 4, 2007, but that delivery was unsuccessful because the address provided by the complainant was a vacant property (In

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support of this contention, Columbia attached to its pleading Exhibits A and B - a United Parcel Service [UPS] "Shipping Document" and a UPS "Tracking Detail" sheet noting that delivery was unsuccessful because the delivery address [618 Oberlin-Elyria Road, Elyria, Ohio 44035] was vacant.). Columbia then stated that, upon receiving the returned responses to the interrogatories from the UPS carrier, the company attempted to mail the responses by certified mail (Columbia attached Exhibit C to its pleading in support of this statement - a certified mail receipt.). However, Columbia noted that a return receipt verifying delivery of the certified mail has yet to be received by the company. Further, Columbia stated that the company resent the responses on April 20, 2007, by Federal Express (FedEx) Overnight Delivery and that the responses were delivered to the complainant's address on April 23, 2007 (In support, Columbia attached Exhibits D and E - a FedEx "USA Airbill" and a FedEx data sheet, "Track Shipments, Detailed Results," that note the complainant's address [618 Oberlin-Elyria Road, Elyria, Ohio 44035] and the following details: "Left at front door. Package delivered to recipient address.").

Columbia noted that Rule 4901-1-05, Ohio Administrative Code (O.A.C.) (Rule 4901-1-05), requires a party to serve all motions, pleadings, or other papers by mail or in person to the last known address of the recipient. Moreover, according to Rule 4901-1-05, the last known address means "the address set forth in the most recent pleading or other paper." Columbia thus argued that, having successfully delivered the responses to the complainant's address, the company has complied with the requirement to provide responses to the complainant's discovery requests.

Finally, Columbia argued that complainant's requests for sanctions and monetary damages should be denied. Columbia stated that the company has complied with all applicable Commission rules and that monetary damages are beyond the Commission's jurisdiction.

- (5) Rule 4901-1-23, O.A.C. (Rule 4901-1-23), provides that:

No motion to compel discovery shall be filed under this rule until the party seeking discovery

has exhausted all other reasonable means of resolving any differences with the party or person from whom discovery is sought. A motion to compel discovery shall be accompanied by:

- (A) A memorandum in support, setting forth:
 - (1) The specific basis of the motion, and citations of any authorities relied upon;
 - (2) A brief explanation of how the information sought is relevant to the pending proceeding; and
 - (3) Responses to any objections raised by the party or person from whom the discovery is sought.
 - (B) Copies of any specific discovery requests which are the subject of the motion to compel, and copies of any responses or objections thereto; and
 - (C) An affidavit of counsel, or the party seeking discovery if such party is not represented by counsel, setting forth the efforts that have been made to resolve any differences with the party or person from whom discovery is sought.
- (6) From a procedural standpoint, complainant's motion to compel lacks certain requisite information. Rule 4901-1-23 requires that the party seeking to compel discovery must submit an affidavit with its motion setting forth the efforts which have been made to resolve the parties' differences, and copies of any specific discovery requests which are the subject of the motion to compel. Complainant has not included the required affidavit or copies of specific discovery requests with his motion. Moreover, Rule 4901-1-23 requires that the party seeking to

compel discovery explain how the information being sought is relevant to the proceeding. Complainant, however, does not explain sufficiently how the discovery information is relevant. Complainant does indicate that he needs answers to his interrogatories in order to determine necessary parties and to know if all parties are qualified and have standing to participate in this action. With regard to this assertion, the Attorney Examiner would merely note that the company's witnesses may be questioned about their qualification and standing during cross examination at hearing.

- (7) From a substantive standpoint, complainant's motion to compel appears to be moot. Columbia has provided evidence, the FedEx bill and data tracking sheet attached to the company's memoranda contra as Exhibits D and E, indicating that delivery of Columbia's April 20, 2007 shipment was made at complainant's front door on April 23, 2007. As Columbia noted, under the provisions of Rule 4901-1-05, service may be accomplished by delivering the documents to be served at the last known address of the person to be served. As specified in Rule 4901-1-05, the last known address of the person to be served is the address set forth in that person's most recent pleading. In this case, the complainant's address has been listed throughout this proceeding as 618 Oberlin-Elyria Road, Elyria, Ohio 44035, the same address listed in his motion to compel. The Examiner, therefore, believes that the company's third attempt to serve answers to interrogatories on the complainant was successful under the meaning of Rule 4901-1-05.
- (8) Accordingly, complainant's motion to compel should be denied. The hearing in this case will go forward as scheduled on May 24, 2007. At the hearing, the parties should be prepared to present testimony and any documentary evidence in support of their arguments. The parties, however, are encouraged to remain in contact before the hearing and to collaborate on such matters as the witnesses to be presented, the scheduling of witnesses, and possible admissions or stipulations regarding issues of fact.
- (9) Complainant's request for sanctions against the company or, in the alternative, for a default judgment involving a monetary amount should also be denied. The Commission does not have

jurisdiction to award monetary damages in this matter. Furthermore, rulings on the issues in the case, as raised by the allegations in the complaint, should be made after information is gathered at hearing. The information available thus far in the case does not support a finding for any sanctions against the company, or for a default judgment in favor of the complainant, at this time.

It is, therefore,

ORDERED, That complainant's motion to compel discovery and for sanctions against Columbia be denied. It is, further,

ORDERED, That the hearing in this matter proceed as scheduled on May 24, 2007. It is, further,

ORDERED, That this case proceed under the terms set forth in Finding (8). It is, further,

ORDERED, That a copy of this entry be served on each party of record.

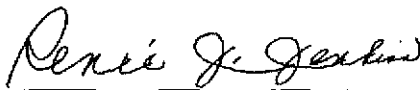
THE PUBLIC UTILITIES COMMISSION OF OHIO


By: Kerry K. Sheets
Attorney Examiner

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Entered in the Journal

MAY 09 2007



Renee J. Jenkins
Secretary