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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of)	
Jon A. Olivito)	
)	Case No. 09-1841-GA-CSS
Complainant,)	
v.)	
)	
Columbia Gas of Ohio, Inc.,)	
Respondent.)	

**MOTION TO DISMISS OF RESPONDENT
COLUMBIA GAS OF OHIO, INC.**

Now comes the Respondent, Columbia Gas of Ohio, Inc. ("Columbia"), and files its Motion to Dismiss the Complaint of Jon A. Olivito. For the reasons more fully discussed in the attached Memorandum in Support, Columbia submits that the Complainant has failed to prosecute his Complaint in accordance with the Attorney Examiner's Entry dated February 16, 2010. Therefore, Columbia respectfully requests that the Public Utilities Commission of Ohio ("Commission") dismiss the Complaint herein.

Respectfully submitted by,
COLUMBIA GAS OF OHIO, INC.



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**Attorney for Respondent
COLUMBIA GAS OF OHIO, INC.**

MEMORANDUM IN SUPPORT

Complainant filed his Complaint in this proceeding on November 20, 2009, alleging conspiratorial plots and a wrongful \$500 charge for natural gas service. Complainant also requested \$3,000 of damages for lawn and legal expenses. These claims and requests for relief, as stated in Columbia's Motion to Dismiss filed on December 10, 2009, are unfounded and unreasonable, failing to meet the complaint standard provided under Ohio Revised Code § 4905.26.

Aside from Complainant's failure to state a claim, Complainant has also failed to prosecute his Complaint in accordance with the Attorney Examiner's February 16, 2010 Entry. The Complainant has the sole burden of proving the allegations in his Complaint. *In the Matter of the Complaint of Jon A. Olivito v. Columbia Gas of Ohio, Inc.*, 2009 Ohio PUC LEXIS 1201 (Ohio PUC 2009), Case No. 09-1841-GA-CSS (Entry, December 21, 2009) (citing *Grossman v. Pub. Util. Comm.*, 214 N.E.2d 666, 667 (Ohio 1966)). The Complainant, as he is not represented and is appearing in this proceeding in propria persona, has the sole obligation to prosecute this proceeding on his own behalf. Ohio Admin. Code 4901-1-08(A).

The Commission has previously dismissed a complaint for a complainant's failure to prosecute when it failed to attend a prehearing conference. In *Complaint of Salim*, the attorney examiner issued an entry to remind the parties of a prehearing settlement conference. *In the Matter of the Complaint of Farah Salim v. American Electric Power*, 2006 Ohio PUC LEXIS 351 (Ohio PUC 2006), Case No. 06-362-EL-CSS (Entry, June 6, 2006). Within the entry, the attorney examiner explicitly reminded the parties that "failure to attend the prehearing conference on the part of Ms. Salim may result in the attorney examiner recommending that the Commission dismiss the complaint for failure to prosecute the matter." *Id.* at *3. Ms. Salim did

not appear at the prehearing conference and did not provide a reason for failing to do so. *Id.* The Commission dismissed the complaint because of Ms. Salim's failure to appear without reason, in spite of the warning issued prior to the hearing. *Id.*

Similar to *Complaint of Salim*, Complainant both failed to appear at the settlement conference on February 10, 2009, and received a warning from the attorney examiner of possible dismissal for his inaction. Moreover, the warning from the attorney examiner provided Complainant with ten days to respond, three days more than the warning received in *Complaint of Salim*. The Attorney Examiner also unsuccessfully attempted to contact Complainant by telephone after the scheduled settlement conference. Finally, the Complainant has failed to follow the Attorney Examiner's explicit instructions to provide the requisite contact requested in the Entry. Therefore, similar to *Complaint of Salim*, the Commission should dismiss the Complaint for failure to prosecute this matter.


Most recently, the Commission dismissed a complaint against Duke Energy. *In the Matter of Complaint of Glenn A. Ray v. Duke Energy Ohio, Inc.*, 2010 Ohio PUC LEXIS 115 (Ohio PUC 2010), Case No. 09-874-EL-CSS, (Entry, January 27, 2010). In this proceeding, the Mr. Ray, the complainant, failed to appear at the scheduled settlement conference. *Id.* at *1. After the settlement conference, the attorney examiner issued an entry directing Mr. Ray to inform the Commission within 10 days, in writing, if he wished to proceed with his complaint. *Id.* at *2. The entry further stated that upon the Commission receiving no response from Mr. Ray, the Commission would dismiss his complaint for a lack of prosecution. *Id.* Mr. Ray did not provide the requested communication, and the case was dismissed for failure to prosecute. *Id.*

Similar to the *Complaint of Ray*, the Attorney Examiner issued an identical warning to Complainant, with the added requirement of Complainant providing acceptable dates for a

settlement conference. Complainant has both failed to respond to the Commission within the ten day deadline, and, in accordance with the Entry, failed to prosecute his Complaint.

WHEREFORE, Columbia respectfully requests the Commission dismiss the Complaint for failure to prosecute in accordance with the Attorney Examiner's Entry dated February 16, 2010.

COLUMBIA GAS OF OHIO, INC.



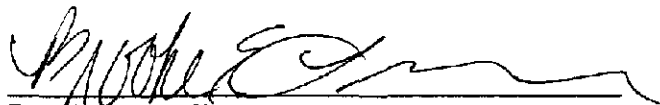
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**Attorney for Respondent
COLUMBIA GAS OF OHIO, INC.**

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing *Motion to Dismiss of Respondent Columbia Gas of Ohio, Inc.* by ordinary U.S. mail, postage prepaid, to Jon A. Olivito, 501 Buena Vista Blvd., Steubenville, Ohio 43952, this 4th day of March, 2010.



Brooke E. Leslie

Attorney for

COLUMBIA GAS OF OHIO, INC.